

January 28, 1998

SENATE BILL No. 431

DIGEST OF SB0431 (Updated January 27, 1998 10:55 am - DI 75)

Citations Affected: IC 8-1; IC 8-1.5-6; IC 8-1.8; IC 12-7-2; IC 12-14.

Synopsis: Electric utility competition and deregulation. Establishes a procedure for deregulation of electric utilities. Freezes electricity rates of electric utility companies as of July 1, 1999, and requires those rates to trend down after that date to a statewide average by June 30, 2004. Provides that after June 30, 2004, the utility regulatory commission may not generally regulate the production, sale, or marketing of electricity. Establishes protections for retail electric customers and allows them to choose their electricity supply companies after September 30, 1999. Requires the utility regulatory commission to adopt a code of conduct before September 1, 1998, to govern the
(Continued next page)

Effective: May 1, 1998; July 1, 1998; October 1, 1998; July 1, 1999; October 1, 1999.

Mills

January 13, 1998, read first time and referred to Committee on Commerce and Consumer Affairs.
January 27, 1998, reported out without recommendation.

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dealings between electric utility companies and various parties producing, supplying, and marketing electricity. Establishes protections for market competition among electric utility companies. Gives the utility regulatory commission certain authority over construction and upgrading of electric line facilities. Establishes the low income residential assistance fund to provide electric assistance and efficiency funding for low income residential customers. Provides that the director of family and children administers the fund and determines the criteria for eligibility and payments under the program. Sets funding levels for the fund. Requires the department of state revenue and the state board of tax commissioners jointly to study tax laws and procedures that affect the production, transmission, distribution, marketing, or sale of electricity and to report the results of the study and any recommendations to the regulatory flexibility committee. Requires the utility regulatory commission to study the effects of this act on the utility regulatory commission and other agencies and to report the results of the study and any recommendations to the regulatory flexibility committee. Requires the utility regulatory commission to report to the regulatory flexibility committee on the commission's proposed plan and budget for educating retail electric customers during the transition period from regulation to competition on the rights and responsibilities of customers under the restructuring of the industry.

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January 28, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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SENATE BILL No. 431

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1.8 IS ADDED TO THE INDIANA CODE AS A
2 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 1998]:

4 **ARTICLE 1.8. ELECTRIC UTILITY COMPANIES:**
5 **TRANSITION FROM REGULATION TO COMPETITION**

6 **Chapter 1. Findings, Policies, and Applicability Provisions**

7 **Sec. 1. The general assembly makes the following findings:**

8 (1) That the cost, availability, safety, and reliability of
9 electricity are important factors in the standard of living and
10 overall well-being of the citizens of Indiana.

11 (2) That the availability of safe, reliable, and competitively
12 priced electricity is essential to the health and general welfare
13 of the citizens of Indiana, the vitality of the economy of
14 Indiana, the profitability and competitiveness of the goods
15 and services produced within Indiana, and the creation of new

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jobs and economic growth within Indiana.

(3) That the reasonable regulation of retail electric service within Indiana is a proper and legitimate exercise of the power of the state.

(4) That the orderly unbundling, partial deregulation, and restructuring of the retail electric utility industry within Indiana is also a proper and legitimate exercise of the power of the state.

Sec. 2. The general assembly makes the following further findings and declarations of policy:

(1) That traditional regulation of the prices, facilities, services, and practices of Indiana retail electric utilities was intended to serve as a substitute for competition where retail electric customers had no competitive choices reasonably available to them.

(2) That recent economic, technological, and regulatory changes have furthered competition in the production of electricity and the availability of competitively priced electric transmission services within the United States.

(3) That reliance on competition and market forces in the selection of the providers of electricity for retail customers is generally more effective than traditional regulation of selection in ensuring that the price of electricity for all retail customers is just and reasonable.

(4) That increased competition in the Indiana retail electric utility industry is in the best interest of Indiana, Indiana's economy, the citizens of Indiana, Indiana's electric utilities, and the customers of those utilities.

(5) That the public interest requires that retail electric customers of utility companies be granted the right to choose the suppliers of their electricity.

(6) That the public interest requires that reliance be placed, to the maximum extent practicable, on competition, not regulation, to establish retail electric prices, earnings, facilities, and practices within Indiana.

(7) That the public interest requires that competition in the Indiana retail electric utility industry should protect customers against the abuse of market power by incorporating, among other things, provisions that:

(A) require the unbundling and separation of the production and marketing functions of utility companies from the transmission and distribution functions of those

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- 1 utilities, thereby providing movement toward a
 2 competitive market structure; and
 3 (B) impose a code of conduct to assure that no utility
 4 company has an unfair competitive advantage in the
 5 supply of electricity based upon its organizational
 6 structure, that would be inconsistent with the development
 7 and functioning of a competitive market within Indiana for
 8 the production and marketing of electricity to retail
 9 electric customers.
- 10 (8) That the Indiana utility statutes and regulatory practices
 11 in effect as of January 1, 1998, are not designed to facilitate an
 12 environment in which customers have competitive choices in
 13 the selection of the suppliers of their electricity.
- 14 (9) That a just and reasonable transition from regulation to
 15 competition for the supply of electricity for retail electric
 16 customers should, among other things, promote:
- 17 (A) lower future rates for all classes and sizes of retail
 - 18 electric customers;
 - 19 (B) the availability of electric service for all customers;
 - 20 (C) the continuation of programs to help low income
 - 21 residential electric customers;
 - 22 (D) the continuation of reliable retail electric service; and
 - 23 (E) the equitable treatment of transition costs in moving
 - 24 from regulation to competition for the supply of electricity.
- 25 (10) That an equitable treatment of the transition costs in
 26 moving from regulation to competition for the supply of
 27 electricity should incorporate, among other things, provisions
 28 that:
- 29 (A) allow a utility company to be compensated for its
 - 30 transition costs by, among other actions, retaining the
 - 31 value and other benefits from:
 - 32 (i) revising its electricity production asset or contract
 - 33 portfolio;
 - 34 (ii) changing the amounts, rates, methods, or term for
 - 35 the depreciation of its assets;
 - 36 (iii) changing the amounts, rates, methods, or term for
 - 37 the amortization of its regulatory assets and other assets;
 - 38 (iv) undertaking mergers, acquisitions, consolidations, or
 - 39 reorganizations;
 - 40 (v) implementing efficiency or technological
 - 41 improvements; and
 - 42 (vi) implementing capital, expense, and other cost



- 1 reductions;
- 2 (B) provide a moratorium against general retail electric
- 3 rate increases or decreases for utility companies before the
- 4 end of the transition from regulation to competition for the
- 5 supply of electricity;
- 6 (C) provide a price cap, with limited exceptions, for all
- 7 retail electric customer classes of utility companies during
- 8 the transition from regulation to competition for the
- 9 supply of electricity;
- 10 (D) provide for protection of the interests of utility
- 11 company employees who may be affected by the transition
- 12 from regulation to competition for the supply of electricity;
- 13 and
- 14 (E) provide an emergency provision to allow the
- 15 commission to prevent material and irreparable harm to
- 16 the state, the utility companies, their customers, or the
- 17 safety of their employees or the public.

18 **Sec. 3.** The general assembly declares that this article, coupled

19 with IC 8-1-7.5, IC 12-14-11.1, and IC 12-14-11.2, provides for a

20 just and reasonable transition from regulation to competition for

21 the supply of electricity for retail electric customers located within

22 Indiana by appropriately balancing the interests of the various

23 stakeholders.

24 **Sec. 4.** Based upon all of the legislative findings and declarations

25 of policy set forth in this chapter, together with all of the other

26 provisions of this article and all of the other provisions cited in this

27 chapter, the general assembly makes the following ultimate

28 findings and declarations of policy:

29 (1) That, for all of the reasons expressed in these findings and

30 declarations, the respective rates, charges, terms, and

31 conditions of retail electric service for all classes of customers

32 of each utility company during the period from July 1, 1998,

33 through June 30, 2004, which result from this article,

34 constitute just and reasonable rates, charges, terms, and

35 conditions of retail electric service for the utility company and

36 result in an appropriate balancing of interests.

37 (2) That, for all of the reasons expressed in these findings and

38 declarations, the respective rates, charges, terms, and

39 conditions of retail electric service for all classes of customers

40 of each utility company during the period from July 1, 1998,

41 through June 30, 2004, which result from this article, provide

42 the utility company with a sufficient return on its investment

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1 devoted to retail electric service, which can reasonably be
2 expected to:

3 (A) assure confidence in the financial integrity of the utility
4 company;

5 (B) maintain the utility company's creditworthiness and its
6 ability to attract, on reasonable terms, the necessary
7 capital to fulfill its public utility obligations; and

8 (C) fairly compensate investors in the utility company for
9 the risks that they have assumed by providing a return
10 that is commensurate with returns on investments in other
11 firms having corresponding risks.

12 (3) That, for all of the reasons expressed in these findings and
13 declarations, the respective rates, charges, terms, and
14 conditions of retail electric service for all classes of customers
15 of each utility company that, absent this article, would
16 otherwise have been in effect at any time during the period
17 from July 1, 1998, to June 30, 2004, do not constitute just and
18 reasonable rates, charges, terms, and conditions of retail
19 electric service for the utility company and are not in the
20 public interest because such rates, charges, terms, and
21 conditions of retail electric service for all customer classes
22 would not individually or collectively provide for the orderly
23 unbundling, partial deregulation, and restructuring of the
24 Indiana retail electric utility industry, which is necessary and
25 essential for the transition from regulation to competition for
26 the supply of electricity.

27 (4) That any commission orders, tariffs, contracts, or other
28 agreements or settlements that:

29 (A) were issued or entered into before July 1, 1998; and

30 (B) conflict with this article;

31 were issued or entered into, subject to the power of the state
32 to change or terminate those provisions when, and to the
33 extent, necessary to protect the public interest and the safety,
34 health, and welfare of the citizens of Indiana.

35 (5) That the emergency provisions of this article provide an
36 appropriate and timely remedy to prevent any material and
37 irreparable harm to the state, a utility company, its
38 customers, or the safety of its employees or the public.

39 Sec. 5. If a utility company is also a gas utility (as defined in
40 IC 8-1-2-87), sewage disposal company (as defined in IC 8-1-2-89),
41 telephone company (as defined in IC 8-1-2-88), or water utility (as
42 defined in IC 8-1-2-61.6), the utility company is not subject to this

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1 article with respect to its gas, sewage disposal, telephone, or water
2 service, operations, functions, customers, rates, charges, terms, and
3 conditions, and this article applies to the utility company only with
4 respect to the utility company's electric utility service, operations,
5 functions, customers, rates, charges, terms, and conditions.

6 Sec. 6. The other provisions of IC 8 shall be construed to give
7 full effect to this article.

8 Chapter 2. Definitions of General Applicability

9 Sec. 1. The definitions in this chapter apply throughout this
10 article. The definitions in this chapter also apply in IC 8-1-2-4.1,
11 IC 8-1-2-22.1, IC 8-1-2-42.1, IC 8-1-2-48.1, IC 8-1-2-49.1,
12 IC 8-1-2-75.6, IC 8-1-2-83.1, IC 8-1-2-84.1, IC 8-1-2-128,
13 IC 8-1-2.2-31, IC 8-1-2.3-2.1, IC 8-1-2.3-4, IC 8-1-2.5-2,
14 IC 8-1-6-3.2, IC 8-1-8-4, IC 8-1-8.5-9, IC 8-1-8.7-11, IC 8-1-9-6,
15 IC 8-1-11.1-26, IC 8-1-13-44, IC 8-1-13.1, IC 8-1-27-24, and
16 IC 8-1.5-6.

17 Sec. 2. "Affiliate" means, with respect to a person:

- 18 (1) the holding company of the person;
- 19 (2) a subsidiary (of any tier) of the person;
- 20 (3) a subsidiary (of any tier) of the person's holding company;
- 21 or
- 22 (4) a subsidiary (of any tier) of the person's holding company
- 23 system, regardless of whether the holding company system is
- 24 a registered or an exempt holding company system under
- 25 applicable state or federal law.

26 Sec. 3. "Aggregator" means a person that is engaged in the
27 business of:

- 28 (1) combining the electricity loads of retail electric customers
- 29 ("demand-side aggregator"); or
- 30 (2) combining electricity supply for sale to retail electric
- 31 customers ("supply-side aggregator").

32 Sec. 4. "Ancillary services" means those services that are
33 necessary to support the movement of electricity from resources to
34 loads while maintaining the reliable operation of an electric
35 transmission and distribution system.

36 Sec. 5. "Auxiliary services" means metering, billing, collection,
37 and related information services necessary to record, bill, and
38 collect for retail electric service.

39 Sec. 6. "Bundled electric service" means the traditional
40 provision of composite retail electric service, as provided by a
41 utility company before the restructuring of the utility company
42 required by this article.



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1 **Sec. 7. "Certified"** means holding, after having obtained, a valid
2 certification by the commission under IC 8-1.8-4 to engage in the
3 business of supplying, or arranging for the supply of, electricity
4 directly or indirectly to the public.

5 **Sec. 8. "Commission"** refers to the Indiana utility regulatory
6 commission created by IC 8-1-1-2.

7 **Sec. 9. "Default electricity supply company"** means the
8 electricity supply company that may be designated under
9 IC 8-1.8-4 to be the supplier of electricity for a service location of
10 a retail electric customer who either does not exercise the choice
11 allowed for that location under IC 8-1.8-3 or otherwise does not
12 have an electricity supply company for that location.

13 **Sec. 10. "Direct access"** means, with respect to electricity
14 supplied or arranged for supply by a third party, the legal and
15 technical ability of the third party to use the distribution services
16 and transmission services that are needed to deliver such
17 electricity.

18 **Sec. 11. "Distribution"** means the part, which is subject to
19 regulation by the commission, of the delivery of electricity by wire
20 by a utility company from the source of supply or from a point of
21 interconnection to a delivery point for delivery to a retail electric
22 customer.

23 **Sec. 12. "Distribution comparability tariff"** means the electric
24 tariff approved by the commission for a utility company or its
25 affiliated distribution utility under IC 8-1.8-5.

26 **Sec. 13. "Electricity"** means electric capacity and electric
27 energy for distribution or transmission by wires. The term does not
28 include electricity transmitted solely for the purpose of
29 transmitting intelligence or information.

30 **Sec. 14. "Electricity broker"** means a person that is engaged in
31 arranging for the sale of electricity and that does not acquire legal
32 title to the electricity.

33 **Sec. 15. "Electricity generating company"** means a person that
34 owns or controls a plant or equipment for the production of
35 electricity.

36 **Sec. 16. "Electricity marketer"** means a person that is engaged
37 in arranging for the sale of electricity and that acquires legal title
38 to the electricity.

39 **Sec. 17. "Electricity supply company"** means a person that is
40 engaged in supplying, or arranging for the supply of, electricity
41 directly or indirectly to the public. The term includes:

- 42 (1) an electricity generating company;

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1 (2) an electricity broker;
 2 (3) an electricity marketer; or
 3 (4) a supply-side aggregator;
 4 that arranges or supplies electricity directly or indirectly to the
 5 public.

6 Sec. 18. "Function" refers to the organization of personnel,
 7 plant, equipment, facilities, systems, materials, supplies, contracts,
 8 and other resources to provide services.

9 Sec. 19. "General district corporation" has the meaning set
 10 forth in IC 8-1-13-23.

11 Sec. 20. "Incumbent electricity supply company" means, with
 12 respect to the supply of electricity for a service location of a retail
 13 electric customer, the utility company in whose retail electric
 14 assigned service area the service location is located or that utility
 15 company's affiliated electricity supply company.

16 Sec. 21. "Joint agency" has the meaning set forth in
 17 IC 8-1-2.2-2.

18 Sec. 22. "Law" includes a statute, rule, or regulation having the
 19 force of law.

20 Sec. 23. "Local district corporation" has the meaning set forth
 21 in IC 8-1-13-23.

22 Sec. 24. "Marketing services" means the electric related services
 23 that are offered by a utility company or its affiliate, other than
 24 production, transmission, distribution, ancillary services, and
 25 auxiliary services.

26 Sec. 25. "Municipality" has the meaning set forth in
 27 IC 8-1-2.2-2.

28 Sec. 26. "Municipally owned utility" has the meaning set forth
 29 in IC 8-1-2-1.

30 Sec. 27. "Person" means individual, association, firm,
 31 corporation, partnership, limited liability company, governmental
 32 entity, trustee, representative, fiduciary, lessee, or receiver.

33 Sec. 28. "Production" means the generation of electricity.

34 Sec. 29. "Regulatory asset" means a cost of a utility company
 35 that has been recorded as an asset on the financial statements of
 36 the utility company solely because sufficient assurance of the utility
 37 company's recovery of the asset has been supplied by regulation,
 38 thereby permitting the recordation of the asset under the Financial
 39 Accounting Standards Board's Statement of Financial Accounting
 40 Standards No. 71.

41 Sec. 30. "Retail" means sale or delivery to an ultimate consumer
 42 or user. The term does not include sale or delivery for resale.



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1 **Sec. 31. "Retail electric assigned service area" has the meaning**
2 **set forth in IC 8-1-2.3.**

3 **Sec. 32. "Retail electric service contract" means a written**
4 **contract between a utility company and a retail electric customer**
5 **of the utility company that sets the utility company's rates, charges,**
6 **terms, and conditions for retail electric service to that customer**
7 **and that either:**

8 (1) **has been approved by the commission, by order or**
9 **otherwise, before July 1, 1998;**

10 (2) **is approved by the commission under IC 8-1.8-6 after June**
11 **30, 1998; or**

12 (3) **is negotiated by the utility company and the retail electric**
13 **customer under a commission approved tariff of the utility**
14 **company.**

15 **Sec. 33. "Third party" means, with respect to the supply of**
16 **electricity to a retail electric customer, a person other than the**
17 **incumbent electricity supply company.**

18 **Sec. 34. "Transition costs" means the costs incurred by, or the**
19 **value of any licenses, permits, franchises, regulatory assets, or**
20 **other rights (or any part thereof) arising under or by virtue of this**
21 **article that are lost by a utility company directly or indirectly as a**
22 **result of the transition from regulation to competition for the**
23 **supply of electricity. The term is not limited to costs or value lost**
24 **during the transition period.**

25 **Sec. 35. "Transition period" refers to the period beginning**
26 **October 1, 1999, and ending June 30, 2004. This section does not**
27 **limit the meaning of the term "transition" as used more generally**
28 **in this article.**

29 **Sec. 36. "Transition price" means a utility company's rates and**
30 **charges during the transition period for retail electric service, as**
31 **determined under IC 8-1.8-8. These rates and charges may vary in**
32 **amounts, among customer classes, and periodically during the**
33 **transition period.**

34 **Sec. 37. "Transmission" means the part, which is subject to**
35 **regulation by a federal utility regulatory agency or agencies, of the**
36 **delivery of electricity by wire by a utility company from the source**
37 **of supply, or from a point of interconnection, to a delivery point for**
38 **subsequent delivery.**

39 **Sec. 38. "Unbundled electric service" means the provision of**
40 **retail electric service as separately priced and separately provided**
41 **services.**

42 **Sec. 39. "Utility" and "public utility" have the meanings set**

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1 forth in IC 8-1-2-1. However, the terms do not include a joint
2 agency or municipality, a municipally owned utility, or a local
3 district corporation or general district corporation.

4 **Sec. 40. "Utility company"** means a utility that has a retail
5 electric assigned service area. Unless the context indicates
6 otherwise, after the restructuring of a utility company under
7 IC 8-1.8-7, the term includes the utility company's affiliated
8 transmission utility and distribution utility, if any, resulting from
9 the restructuring of the utility company.

10 **Sec. 41. "Wholesale"** means sale or delivery to a person for
11 resale or delivery to another person.

12 **Chapter 3. Customer Right To Choose**

13 **Sec. 1. After September 30, 1999, a retail electric customer of a**
14 **utility company may choose, in accordance with the utility**
15 **company's distribution comparability tariff in effect at the time the**
16 **choice is made, the electricity supply company or companies that**
17 **will supply electricity for a service location of the customer.**

18 **Sec. 2. (a) After September 30, 1999, a retail electric customer**
19 **of a municipally owned utility may choose, in accordance with**
20 **IC 8-1.5-6, the electricity supply company or companies that will**
21 **supply electricity for a service location of the customer. However,**
22 **this section does not apply if the legislative body of the municipality**
23 **in which the municipally owned utility is located adopts before**
24 **October 1, 1999, an ordinance under IC 8-1.5-6 (using the**
25 **procedure set forth in IC 8-1.5-3-9 or IC 8-1.5-3-9.1) authorizing**
26 **the municipally owned utility to continue to provide, under**
27 **IC 8-1.5-3 and IC 8-1-2.3, exclusive bundled electric service to**
28 **retail customers within its retail electric assigned service area. If**
29 **such an ordinance is adopted after September 30, 1999, it is void.**

30 **(b) The commission may not grant to a municipally owned**
31 **utility covered by a valid ordinance under subsection (a), or to a**
32 **joint agency in which a municipally owned utility covered by a**
33 **valid ordinance under subsection (a) or in which the municipality**
34 **that created the municipally owned utility is a member or**
35 **participant, a certificate to provide electricity to retail electric**
36 **customers within the retail electric assigned service area of an**
37 **electricity supplier (as defined in IC 8-1-2.3). If a valid ordinance**
38 **under subsection (a) is adopted before October 1, 1999, a**
39 **certificate previously granted by the commission to the municipally**
40 **owned utility covered by the ordinance (or the applicable joint**
41 **agency) is void.**

42 **Sec. 3. (a) After September 30, 1999, a retail electric customer**



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1 of a local district corporation may choose, in accordance with
 2 IC 8-1-13.1, the electricity supply company or companies that will
 3 supply electricity for a service location of the customer. However,
 4 this section does not apply if the governing board of the
 5 corporation adopts before October 1, 1999, a resolution under
 6 IC 8-1-13.1 (using the procedure set forth in IC 8-1-13-18.5)
 7 authorizing the corporation to continue to provide, under
 8 IC 8-1-13 and IC 8-1-2.3, exclusive bundled electric service to retail
 9 customers within its retail electric assigned service area. If such a
 10 resolution is adopted after September 30, 1999, it is void.

11 (b) The commission may not grant to a local district corporation
 12 covered by a valid resolution under subsection (a), or to a general
 13 district corporation (or to an entity that is similar to a general
 14 district corporation even though formed under IC 23-17 or prior
 15 or similar law) that provides full or partial electricity requirements
 16 to the local district corporation, a certificate to provide electricity
 17 to retail electric customers within the retail electric assigned
 18 service area of an electricity supplier (as defined in IC 8-1-2.3). If
 19 a valid resolution under subsection (a) is adopted before October
 20 1, 1999, a certificate previously granted by the commission to the
 21 local district corporation covered by the resolution (or the
 22 applicable general district corporation or similar entity) is void.

23 Sec. 4. (a) Notwithstanding any other law, after September 30,
 24 1999, neither the production, the sale, nor the marketing of
 25 electricity by a utility company or electricity supply company
 26 under this article to a retail electric customer is subject to utility
 27 regulation by the state, other than as provided in this article.

28 (b) Notwithstanding any other law, after June 30, 2004, the
 29 commission may not, except as otherwise provided in this article,
 30 regulate the production, sale, or marketing of electricity by a utility
 31 company, electricity supply company, or demand-side aggregator.

32 Sec. 5. During the transition period the commission shall
 33 develop and implement a program for educating retail electric
 34 customers on the rights and responsibilities of customers under this
 35 chapter.

36 Chapter 4. Customer Protection Provisions

37 Sec. 1. (a) A utility company shall connect any retail electric
 38 customer located within the utility company's retail electric
 39 assigned service area to those facilities of the utility company that
 40 are used for the distribution or transmission of electricity.

41 (b) The obligation to connect under this section includes the
 42 extension, in accordance with the commission's rules and the

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1 applicable tariffs of the utility company, of necessary electric line
2 facilities (as defined in IC 8-1-7.5).

3 Sec. 2. (a) From July 1, 1998, through June 30, 2004, with
4 respect to production services, a utility company shall furnish
5 reasonably adequate service and facilities to retail electric
6 customers located within the utility company's retail electric
7 assigned service area.

8 (b) The obligation to furnish reasonably adequate service and
9 facilities under this section does not apply to a service location to
10 which any service or facilities are provided, or are to be provided,
11 as a result of a retail electric customer exercising its right under
12 this article to choose an electricity supply company or companies.

13 (c) The obligations of a utility company under this article do not
14 require a utility company to own, operate, manage, or control any
15 electricity production plant or equipment.

16 Sec. 3. Except as provided in section 4 of this chapter, after June
17 30, 2004, a utility company has no obligation under this article or
18 any other law to furnish production service or facilities to retail
19 electric customers located within the utility company's retail
20 electric assigned service area.

21 Sec. 4. After June 30, 2004, a customer who does not exercise the
22 choice allowed under IC 8-1.8-3 or otherwise does not have an
23 electricity supply company for a service location is entitled to be
24 served at that location by a default electricity supply company
25 determined and designated by the commission under this chapter.
26 However, a customer who receives electricity from an electricity
27 supply company (other than the default electricity supply
28 company) at a location for all or part of the customer's electricity
29 load is not entitled to have the default electricity supply company
30 also be a supplier of electricity to that location.

31 Sec. 5. (a) The incumbent electricity supply company shall be
32 designated as the initial default electricity supply company for its
33 retail electric assigned service area, unless it declines to be so
34 designated by notifying the commission before July 1, 2003.

35 (b) Before July 1, 2004, the commission shall, by order,
36 determine and designate the default electricity supply companies
37 for each retail electric assigned service area in which an incumbent
38 electricity supply company has declined to be the default electricity
39 supply company under subsection (a). The designation under this
40 section applies to the five (5) year period from July 1, 2004,
41 through June 30, 2009.

42 Sec. 6. (a) After June 30, 2009, the incumbent electricity supply

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1 company shall be designated as the default electricity supply
 2 company for its retail electric assigned service area, unless it
 3 declines to be so designated by notifying the commission before
 4 July 1, 2008.

5 (b) Before July 1, 2009, the commission shall, by order,
 6 determine and designate the default electricity supply companies
 7 for each retail electric service area in which an incumbent
 8 electricity supply company has declined to be the default electricity
 9 supply company under subsection (a). The designation under this
 10 section applies to the five (5) year period from July 1, 2009,
 11 through June 30, 2014.

12 Sec. 7. (a) After June 30, 2014, all default electricity supply
 13 companies and all default supplier territories must be determined
 14 and designated by order of the commission under section 8 of this
 15 chapter. The commission shall determine and designate the
 16 companies and territories at least six (6) months before the
 17 designations take effect.

18 (b) An incumbent electricity supply company may be designated
 19 as a default electricity supply company.

20 Sec. 8. (a) In making its designations and determinations of the
 21 default electricity supply companies and default supplier
 22 territories under sections 5, 6, and 7 of this chapter, the
 23 commission shall use a bidding procedure as part of its selection
 24 process. The commission may include in its bidding procedure the
 25 following elements:

- 26 (1) The cost per kilowatt hour that the applicant proposes to
 27 charge each class of customer.
- 28 (2) The effect of the selection process on the development and
 29 functioning of a competitive market within Indiana for the
 30 production and marketing of electricity.
- 31 (3) The reliability of electric service provided by the
 32 applicant.
- 33 (4) The effect of the selection process and the results of that
 34 process on the economy of Indiana.
- 35 (5) The financial, managerial, and technical capability of the
 36 applicant.

37 (b) Before July 1, 2002, the commission shall adopt rules to
 38 govern the proceedings and bidding required by this section. The
 39 rules must provide that after June 30, 2014, the determination of
 40 default electricity supply companies and default supplier
 41 territories will recur no less frequently than every ten (10) years.

42 Sec. 9. (a) Before September 1, 1998, the commission shall adopt



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1 a code of conduct with affiliate guidelines to govern the course of
 2 dealings between a utility company and its affiliated electricity
 3 generating company, affiliated electricity supply company,
 4 production function, and marketing function, if any, and to prevent
 5 any cross-subsidization between regulated and nonregulated
 6 activities or persons and between jurisdictional and
 7 nonjurisdictional activities or persons.

8 (b) The code of conduct must ensure that a utility company:

9 (1) provides distribution services to electricity supply
 10 companies in a nondiscriminatory manner and without
 11 regard to corporate affiliation;

12 (2) makes available nonpublic information to electricity
 13 supply companies in a nondiscriminatory manner and without
 14 regard to corporate affiliation;

15 (3) offers any discounts, rebates, or fee waivers for
 16 distribution services to electricity supply companies in a
 17 nondiscriminatory manner and without regard to corporate
 18 affiliation; and

19 (4) handles transactions with electricity supply companies in
 20 a nondiscriminatory manner and without regard to corporate
 21 affiliation.

22 (c) A utility company shall incorporate the code of conduct into
 23 its restructuring plan filed with the commission under IC 8-1.8-7.

24 (d) The commission may hear complaints, investigate, and enter
 25 appropriate orders to correct and prevent violations of the code of
 26 conduct. This subsection does not require the exhaustion of
 27 administrative remedies available through the commission before
 28 the commencement of an action seeking relief under subsection (e).

29 (e) If a person suffers a pecuniary loss as a result of a violation
 30 of the code of conduct, the person may bring a civil action in a trial
 31 court of general jurisdiction of the state for injunctive relief, and,
 32 when appropriate, for recovery of damages. This subsection does
 33 not confer a right to trial by jury in such a civil action.

34 **Sec. 10.** The purpose of this section is to permit retail electric
 35 customers with small electricity loads to benefit from competition
 36 for the supply of electricity and to encourage small suppliers of
 37 electricity to compete for the supply of electricity. Supply-side
 38 aggregators and demand-side aggregators may compete for
 39 electricity supply and loads, respectively, if they comply with this
 40 article.

41 **Sec. 11.** This section applies only to the extent that the
 42 commission determines that adequate load shape and metering

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1 information is otherwise available to a utility company. A utility
 2 company may not require its retail electric customers to purchase
 3 or pay for special metering equipment beyond that required to
 4 accurately and cost-effectively determine the respective bills of its
 5 retail electric customers.

6 **Sec. 12. (a)** A third party electricity supply company must apply
 7 for and be certified by the commission before supplying electricity
 8 to retail electric customers under this article. An incumbent
 9 electricity supply company is considered certified with respect to
 10 supplying electricity to retail electric customers in its retail electric
 11 assigned service area.

12 (b) An application for certification must be verified and
 13 submitted in the form prescribed by the commission, establishing
 14 the applicant's financial, managerial, and technical capabilities to
 15 carry out the responsibilities and obligations imposed upon an
 16 electricity supply company. The applicant may submit any
 17 additional information or materials it desires.

18 (c) An applicant shall give notice to the public of filing of its
 19 application for certification by publication in a newspaper of
 20 general circulation in Marion County, Indiana. The commission
 21 shall also provide notice of the filing to any interested person who
 22 requests notice.

23 (d) The commission shall grant the application and certify the
 24 applicant as an electricity supply company under this article if the
 25 commission finds that the applicant has, and will continue to have
 26 for the foreseeable future, the required capabilities to carry out the
 27 responsibilities and obligations of an electricity supply company.
 28 The commission shall serve a copy of its determination concerning
 29 the application on all interested persons who have so requested.
 30 The commission's determination is final if no request for a de novo
 31 determination is timely filed with the commission.

32 **Sec. 13. (a)** A person who is aggrieved by the commission's
 33 determination concerning certification of an electricity supply
 34 company may file a written request with the commission for a de
 35 novo determination of the application by the commission. Such a
 36 request must be filed within twenty (20) days after the issuance of
 37 the commission's determination.

38 (b) The commission shall, within forty-five (45) days after the
 39 filing of a request for de novo determination, hold a public hearing
 40 concerning the application for certification, and the commission
 41 shall issue its final order granting or denying certification within
 42 thirty (30) days after the hearing.



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1 (c) If the commission determines, based upon the evidence
2 admitted at the public hearing, that the applicant has, and will
3 continue to have for the foreseeable future, the financial,
4 managerial, and technical capabilities to carry out the
5 responsibilities and obligations of an electricity supply company,
6 the commission shall grant the certificate. Otherwise, the
7 commission shall deny the certificate.

8 Sec. 14. (a) As a condition of certification by the commission of
9 an electricity supply company under this chapter, the company
10 must do all of the following:

11 (1) Agree to reimburse the distribution utility or transmission
12 utility, or both, in whose retail electric assigned service area
13 is located a retail electric customer for any unpaid customer
14 bills for service provided by the transmission utility or
15 distribution utility as a result of the utility or utilities being
16 prevented by IC 8-1-2-121 or IC 8-1-2-122, or both, from
17 terminating electric service to the retail electric customer.
18 Such reimbursement is not required to the extent that the
19 transmission utility or distribution utility, or both, are
20 reimbursed for their unpaid customer bills by the low income
21 residential customer electricity assistance fund created by
22 IC 12-14-11.1.

23 (2) Consent irrevocably to the jurisdiction of the courts of the
24 state and service of process in Indiana, including service of
25 summonses and subpoenas, for a civil or criminal proceeding
26 arising out of, or relating to, in any manner, its activities as an
27 electricity supply company, by filing with the commission and
28 the secretary of state a document providing such irrevocable
29 consent.

30 (3) Designate an agent authorized to receive service of process
31 in Indiana by filing with the commission and the secretary of
32 state a document initially designating the agent and by
33 similarly filing such other documents as may be periodically
34 required to update the designated agent.

35 (4) Agree to make available in Indiana, at reasonable times
36 and places, the books and records and officers and employees
37 of the company, to the extent required by the courts of the
38 state or the commission, or both.

39 (5) Agree to pay any assessed state and local taxes with
40 respect to the electricity supply company's activities,
41 revenues, receipts, income, or sales.

42 (6) Offer to make available to retail electric customers

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1 environmentally conscious option electricity
 2 ("ECO-electricity", as defined in subsection (b)). The price
 3 paid by the customer for ECO-electricity is not subject to
 4 IC 8-1-2 or IC 8-1.8-8. This condition does not require an
 5 electricity supply company to have at the time of its
 6 application for certification the ability to make
 7 ECO-electricity available. However, after a **good faith** request
 8 from a retail electric customer to be supplied with
 9 ECO-electricity, the company must then acquire the ability to
 10 supply the requested ECO-electricity, if available.

11 (b) "ECO-electricity" means electricity generated from organic
 12 waste, clean coal technology (certificated by the commission under
 13 IC 8-1-8.7), biomass, municipal solid waste, resource recovery,
 14 refuse-derived fuel, wood, tires, dedicated energy crops, landfill
 15 gas, coal-bed methane, hydro, geothermal, solar, wind, fuel cells,
 16 photovoltaic resources, or renewable energy resources, regardless
 17 of whether the generation is located within Indiana, or whether the
 18 generating resource is an existing resource or a new resource.

19 **Sec. 15. (a)** Whenever the commission finds that a matter
 20 relating to an electricity supply company should be investigated, it
 21 may, on petition by any interested person or on its own motion,
 22 summarily investigate the matter, with or without notice.

23 (b) If the commission finds that sufficient grounds exist to
 24 warrant a formal hearing being ordered as to the matter so
 25 investigated, it shall furnish the respondent electricity supply
 26 company a statement notifying it of the matters under
 27 investigation. Thirty (30) days after notice is given, the commission
 28 may proceed to set a time and place for a hearing.

29 (c) Notice of the time and place for the hearing shall be given to
 30 the respondent electricity supply company and to such other
 31 interested persons as the commission considers necessary, and
 32 thereafter proceedings shall be had and conducted in reference to
 33 the matter investigated in like manner as though a complaint had
 34 been filed with the commission relative to the matter investigated,
 35 and the same order or orders may be made in reference to the
 36 matter as if the investigation had been made on complaint.

37 (d) If after notice and hearing the commission determines that
 38 the respondent electricity supply company is not complying with
 39 the responsibilities and obligations of an electricity supply
 40 company and that the public interest would not be served by
 41 continued certification of the electricity supply company, the
 42 commission shall revoke the electricity supply company's



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1 certification. If the respondent electricity supply company has been
 2 supplying electricity without being certified, the commission shall
 3 find that the respondent has violated Indiana law and issue an
 4 order barring the respondent from supplying electricity in Indiana
 5 until it is granted a certificate.

6 Sec. 16. After June 30, 2004, the rates and charges for a
 7 transmission utility or distribution utility offered to each class of
 8 its retail electric customers must be designed, to the maximum
 9 extent practicable, to reflect the costs of providing that service to
 10 the class. However, this section does not affect IC 8-1-2-6.

11 Sec. 17. If a retail electric service contract executed before July
 12 1, 1998, contains a discount from the rates, charges, terms, and
 13 conditions that otherwise would have applied to the customer, for
 14 purposes of any applicable allocations under IC 8-1.8-5 and
 15 IC 8-1.8-8, the discount shall be treated as a discount of the
 16 production component of the rates, charges, terms, and conditions.

17 Chapter 5. Market Protection Provisions

18 Sec. 1. A utility company may not collect or impose rates,
 19 charges, terms, or conditions for transmission or distribution for
 20 retail electric service that discriminate based on the source of
 21 production being a source other than the utility company or its
 22 affiliate.

23 Sec. 2. A retail electric customer may not resell or otherwise
 24 redistribute or retransmit electricity directly or indirectly to the
 25 public unless the customer is certified as an electricity supply
 26 company.

27 Sec. 3. (a) Before October 1, 1998, a utility company shall file
 28 with the commission for approval its proposed rates, charges,
 29 terms, and conditions for unbundled electric service, including its
 30 proposed distribution comparability tariff and ancillary and
 31 auxiliary services. For each ancillary and auxiliary service, the
 32 utility company shall specify whether the retail electric customer
 33 is required to purchase the service and whether the utility
 34 company will be the exclusive provider of the service.

35 (b) In its filing under this section, the utility company shall
 36 specify the marketing services that its retail electric customers are
 37 not required to purchase and of which the utility company is not
 38 the exclusive provider. If this specification of marketing services is
 39 approved by the commission under this chapter, then those
 40 marketing services are not subject to regulation under this article
 41 or IC 8-1-2.

42 Sec. 4. Before July 1, 1999, the commission shall, after notice



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and hearing, issue an order either approving or disapproving a filing under section 3 of this chapter.

Sec. 5. A filing under section 3 of this chapter shall be approved if the commission finds that:

- (1) the proposed distribution comparability tariff offers to provide distribution to all electricity generating companies and electricity supply companies on the same or a comparable basis, and under the same or comparable rates, charges, terms, and conditions, as the utility company offers to provide distribution to itself or its affiliates;
- (2) the proposed rates, charges, terms, and conditions are consistent with this article; and
- (3) the proposed specifications of ancillary and auxiliary services and marketing services are fair, reasonable, and consistent with this article.

Sec. 6. (a) If the proposed rates, charges, terms, conditions, and specifications for unbundled electric service contained in a filing under section 3 of this chapter do not satisfy the requirements of section 5 of this chapter, the commission shall issue an order disapproving the proposed rates, charges, terms, conditions, and specifications.

(b) In its order, the commission shall specify the modifications necessary for the proposal to satisfy the requirements of section 5 of this chapter.

(c) Subject to the right of appeal under IC 8-1-3, the utility company shall, before August 1, 1999, file with the commission revised rates, charges, terms, and conditions for unbundled electric service, including its proposed distribution comparability tariff and specifications of ancillary and auxiliary services and marketing services that incorporate the necessary modifications specified in the commission's order.

Sec. 7. Ancillary or auxiliary services that are exclusively provided by a utility company shall be provided on a nondiscriminatory basis and at rates, charges, terms, and conditions that are the same as or comparable to those for ancillary and auxiliary services that the utility company provides to itself or to its affiliate for the utility company's or the affiliate's use to serve retail electric customers.

Sec. 8. After its approval by the commission, the distribution comparability tariff sets forth the rates, charges, terms, and conditions under which the utility company or its affiliated distribution utility shall, after September 30, 1999:

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- 1 (1) provide distribution for electricity supplied by an
- 2 electricity generating company and an electricity supply
- 3 company for delivery by the utility company to the retail
- 4 electric customers located within the utility company's retail
- 5 electric assigned service area; and
- 6 (2) offer to provide distribution for electricity generating
- 7 companies and electricity supply companies on the same or
- 8 comparable rates, charges, terms, and conditions as the utility
- 9 company offers to provide distribution to itself or its affiliate
- 10 for the utility company's or the affiliate's use to serve the
- 11 retail electric customers.

12 **Sec. 9. (a)** During the transition period, a retail electric
 13 customer may choose an electricity supply company or companies
 14 that will supply electricity for the customer only during the open
 15 window period specified in the distribution comparability tariff,
 16 with the supply to begin as of the date specified in the tariff.

- 17 (b) Each open window period must provide:
- 18 (1) a reasonable period for the retail electric customer to
- 19 provide notice of its choice to the utility company;
- 20 (2) a reasonable period for the utility company to arrange for
- 21 the implementation of the retail electric customer's choice and
- 22 provide information to the customer with respect to the
- 23 customer's choice; and
- 24 (3) a reasonable deadline by which the retail electric customer
- 25 must confirm and commit to its choice or rescind its choice.

26 (c) The commission shall coordinate the timing and the terms of
 27 the open window periods of the various utility companies to
 28 provide the maximum flexibility for choice of electricity supply
 29 companies by retail electric customers that have electricity loads
 30 at service locations in more than one retail electric assigned service
 31 area.

32 **Sec. 10. (a)** After the commission issues an order approving a
 33 utility company's proposed or revised rates, charges, terms, and
 34 conditions for unbundled electric service filed under section 3 of
 35 this chapter, and specifications of ancillary and auxiliary services
 36 and marketing services, the commission may issue further orders
 37 only to the extent that the authority of the commission over the
 38 rates, charges, terms, and conditions is neither preempted by
 39 federal law nor precluded by this article.

- 40 (b) If authorized by this section, the commission may issue
- 41 further orders approving subsequent changes to the distribution
- 42 comparability tariff or rates, charges, terms, and conditions,

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1 whichever is applicable:

2 (1) with respect to the period before July 1, 2004, if the
3 changes are consistent with IC 8-1.8-8; and

4 (2) with respect to the period after June 30, 2004, if the
5 changes are just and reasonable, not unduly discriminatory,
6 cost based (as described in IC 8-1.8-4-16), and in accordance
7 with IC 8-1-2.

8 **Sec. 11. To assure reliable transmission and distribution within**
9 **Indiana for customers who are served by the interconnected**
10 **electricity transmission system within Indiana, a utility company**
11 **may become a member of an independent transmission system**
12 **operator organization certified by the Federal Energy Regulatory**
13 **Commission for all or part of the interconnected electricity**
14 **transmission system located within Indiana. Membership in a**
15 **certified independent transmission system operator organization**
16 **shall be favorably considered by the commission in a proceeding**
17 **relating to restructuring under this article, and by any other state**
18 **agency in any other proceeding under state law.**

19 **Sec. 12. (a) This section applies to transactions covered by**
20 **subsection (b) if there does not exist a sufficiently competitive**
21 **market within Indiana and the surrounding states for the**
22 **production and marketing of electricity to retail electric customers.**
23 **However, the applicability of this section is subject to the**
24 **following:**

25 (1) A petition must be filed by a utility company with the
26 commission during calendar year 2003 that requests that this
27 section be implemented. Upon receipt of such a petition, the
28 commission shall give notice and hold a public hearing to
29 determine whether there exists a sufficiently competitive
30 market within Indiana and the surrounding states for the
31 production and marketing of electricity to retail electric
32 customers.

33 (2) This section may be implemented by the commission only
34 if, and so long as, the commission determines that a
35 sufficiently competitive market does not exist within Indiana
36 and the surrounding states for the production and marketing
37 of electricity to retail electric customers.

38 (3) This section does not apply before July 1, 2004, or after the
39 date that the commission determines is necessary to protect
40 the public interest in the development and functioning of a
41 competitive market for the production and marketing of
42 electricity to retail electric customers.



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1 **(4) Any consents entered into under subsection (b) by a third**
 2 **party electricity supply company must terminate on the**
 3 **earlier of the following dates:**

4 **(A) The effective date of any direct access rights or the**
 5 **right to choose the supplier of electricity that is mandated**
 6 **by a law of Indiana, another state, or the United States, for**
 7 **retail electric customers in an applicable state of the third**
 8 **party electricity supply company (or its affiliate, or both)**
 9 **upon which obligations are imposed by subsection (b) or**
 10 **(c).**

11 **(B) December 31, 2005.**

12 **(b) This subsection applies to a third party electricity supply**
 13 **company (and any other person that is obligated to provide**
 14 **comparable direct access rights as determined in this section) that**
 15 **supplies or arranges for the supply of electricity to a retail electric**
 16 **customer located in the retail electric assigned service area of a**
 17 **utility company. Such a company (or other person) must consent**
 18 **in writing to provide (and must be legally capable of providing),**
 19 **upon request by the incumbent electricity supply company,**
 20 **comparable direct access rights, on similar terms, conditions, rates,**
 21 **and charges, and over comparable facilities, so that the incumbent**
 22 **electricity supply company may supply, or arrange for the supply**
 23 **of, electricity to retail electric customers who would otherwise be**
 24 **supplied with electricity by the third party electricity supply**
 25 **company.**

26 **(c) If the third party electricity supply company does not supply**
 27 **electricity to any retail electric customers, then the comparable**
 28 **direct access rights apply to any retail electric customers who**
 29 **would otherwise be supplied with electricity by an affiliate of the**
 30 **third party electricity supply company.**

31 **Chapter 6. Commission Review of Service Contracts**

32 **Sec. 1. A utility company may, at its sole option and in its sole**
 33 **discretion, enter into a retail electric service contract with a retail**
 34 **electric customer located in the utility company's retail electric**
 35 **assigned service area. If a retail electric service contract executed**
 36 **by a utility company and a customer has neither been approved**
 37 **nor finally rejected by the commission before July 1, 1998, the**
 38 **effectiveness of the contract shall be determined under this**
 39 **chapter.**

40 **Sec. 2. If a retail electric service contract executed by a utility**
 41 **company and a retail electric customer has neither been approved**
 42 **nor finally rejected by the commission before July 1, 1998, the**



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1 retail electric service contract must be filed with the commission
2 for the commission's review and determination under this chapter.
3 Unless the commission rejects the retail electric service contract
4 within sixty (60) days after the date that the utility company files
5 the contract with the commission, the retail electric service
6 contract shall be considered approved by the commission effective
7 as of the later of:

8 (1) the date sixty (60) days after it was filed with the
9 commission; or

10 (2) July 1, 1998.

11 Sec. 3. If the commission determines, based upon the utility
12 company's filing and the provisions of a retail electric service
13 contract, that the contract complies with section 6 of this chapter
14 or is otherwise consistent with the development and functioning of
15 a competitive market within Indiana for the production and
16 marketing of electricity to retail electric customers, the commission
17 shall issue an order approving the contract. Otherwise, it shall
18 reject the contract. The utility company or the retail electric
19 customer may request that the commission reconsider such a
20 rejection by filing with the commission its request for
21 reconsideration within thirty (30) days after the issuance of the
22 commission's order rejecting the contract. The commission shall
23 issue its order in response to such a request for reconsideration
24 within thirty (30) days after the request is filed with the
25 commission.

26 Sec. 4. The commission may not reject a retail electric service
27 contract entered into by the parties at any time because the
28 contract voluntarily permits a retail electric customer to have
29 access through a retail wheeling, buy-through, or similar
30 arrangement to electricity from a supplier other than the
31 electricity supplier under IC 8-1-2.3 in whose retail electric
32 assigned service area the customer's applicable electricity load is
33 located.

34 Sec. 5. The commission may not reject a retail electric service
35 contract because of real or potential federal and state jurisdictional
36 conflicts resulting from such an arrangement.

37 Sec. 6. (a) The commission shall approve a retail electric service
38 contract if the contract:

39 (1) applies to new electricity load of the retail electric
40 customer resulting from the customer locating new or
41 expanded industrial or commercial facilities within the retail
42 electric assigned service area of the utility company, when

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either:

(A) the new electrical load of the retail electric customer provides significant economic development benefits; or

(B) the execution of the retail electric service contract is part of an economic development package offered by state or local government to the retail electric customer in order for the customer to locate new or expanded industrial or commercial facilities within Indiana; or

(2) applies to new or existing electricity load of the retail electric customer within the retail electric assigned service area of the utility company, when either:

(A) the retail electric service contract provides significant value to the utility company as a means of avoiding, deferring, or delaying future electricity generating capacity or electricity purchase requirements, or otherwise reducing the utility company's overall costs; or

(B) the retail electric service contract is required for the utility company to meet competition for the supply of electricity to the retail electric customer.

(b) This section does not limit the authority of the commission to otherwise approve a proposed retail electric service contract under this chapter.

Chapter 7. Duty To Restructure

Sec. 1. Before October 1, 1998, a utility company shall file with the commission, for review and approval, the utility company's multistep plan for restructuring the organization of the utility company to separate, by June 30, 2004, the production and marketing functions, if any, of the utility company from the transmission and distribution functions, if any, of the utility company. The plan must restructure the utility company to the extent necessary to eliminate, as determined by the commission, any unfair competitive advantage that the utility company may possess because of its organizational structure that would be inconsistent with the development and functioning of a competitive market within Indiana for the production and marketing of electricity to retail electric customers.

Sec. 2. A utility company shall include in its restructuring plan the utility company's proposed amount, rate, method, and term for the amortization of each of the utility company's regulatory assets (allocated to the utility company's Indiana retail electric customers) that are expected to be remaining as of the beginning of the transition period. The commission, in its order issued with

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1 respect to the restructuring plan and consistent with IC 8-1.8-8,
2 shall determine and order the amount, rate, method, and term to
3 be used by the utility company for the amortization of its
4 regulatory assets.

5 Sec. 3. (a) Each utility company shall include in its restructuring
6 plan filed with the commission under this chapter a description of
7 the utility company's plans concerning retraining, relocation, or
8 early retirement or severance pay opportunities for the utility
9 company's employees who may be economically displaced or
10 otherwise affected by the restructuring of the utility company. The
11 utility company's restructuring plan must describe the manner in
12 which the utility company's operating standards will be maintained
13 during the transition period to protect the safety of the public and
14 the utility company's workforce.

15 (b) The provisions of this chapter requiring a utility company to
16 restructure the organization of the utility company do not give a
17 party to a collective bargaining agreement any greater rights
18 under the agreement than the party had before January 1, 1998.

19 (c) The provisions of this chapter requiring a utility company to
20 restructure the organization of the utility company do not
21 authorize the commission to order a party to a collective
22 bargaining agreement to cancel, terminate, amend, or otherwise
23 modify the collective bargaining agreement.

24 (d) The provisions of this chapter requiring a utility company to
25 restructure the organization of the utility company may not be
26 implemented by the commission in a way that would give a party
27 to a collective bargaining agreement any greater rights under the
28 agreement than the party had before January 1, 1998.

29 (e) The provisions of this chapter requiring a utility company to
30 restructure the organization of the utility company do not preclude
31 the extension of a collective bargaining agreement, if any, to which
32 the utility company is a party to a successor affiliate, if any, to
33 which personnel of the utility company covered by the collective
34 bargaining agreement may be reassigned because of the
35 restructuring of the utility company.

36 Sec. 4. On or before July 1, 2004, a utility company must, to the
37 extent legally permissible, restructure the organization of its assets,
38 personnel, and other resources to assure that:

39 (1) the costs and revenues of the production and marketing
40 functions, if any, of the utility company will thereafter be
41 identified, accounted for, and reported separately from the
42 costs and revenues of the transmission and distribution

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- 1 functions, if any, of the utility company, with the costs and
 2 revenues fully allocated among the utility company's sales and
 3 services;
- 4 (2) transfers of goods and services, other than the purchase of
 5 electricity, between the production and marketing functions,
 6 if any, of the utility company and the transmission and
 7 distribution functions, if any, of the utility company will
 8 thereafter be internally documented, accounted for, and
 9 reported in the same manner as transactions between the
 10 utility company and a third party that is not an affiliate of the
 11 utility company;
- 12 (3) personnel assigned to the production and the marketing
 13 functions, if any, of the utility company will thereafter be
 14 separate from the personnel assigned to the transmission and
 15 distribution functions, if any, of the utility company;
- 16 (4) any performance based compensation (other than letter
 17 stock of the utility company's holding company, if any) of the
 18 key personnel responsible for the transmission and
 19 distribution functions, if any, of the utility company will
 20 thereafter be based upon achieving objectives and results of
 21 the transmission and distribution functions, if any, of the
 22 utility company as separate from the production and
 23 marketing functions, if any, of the utility company;
- 24 (5) securities issued by the utility company for which property
 25 of the utility company is pledged to secure the payment of
 26 principal or interest, or both, will thereafter pledge the
 27 property of either:
- 28 (A) the production and marketing functions, if any, of the
 29 utility company; or
- 30 (B) the transmission and distribution functions, if any, of
 31 the utility company;
- 32 but not the functions described in both clauses (A) and (B).
- 33 (6) the outstanding securities of the utility company, issued
 34 before January 1, 2003, for which assets of the utility
 35 company have been pledged to secure the payment of
 36 principal or interest, or both, will have been, before July 1,
 37 2004, the subject of the good faith best efforts of the utility
 38 company to arrange either:
- 39 (A) for their cost effective retirement; or
- 40 (B) their renegotiation with the holders, or applicable
 41 trustees or other representatives, to cost effectively pledge
 42 assets of:



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- 1 (i) the production and marketing functions, if any, of the
- 2 utility company; or
- 3 (ii) the transmission and distribution functions, if any, of
- 4 the utility company;
- 5 but not the functions described in both items (i) and (ii).

6 Sec. 5. A utility company shall give notice to the public of the
 7 filing with the commission of the utility company's restructuring
 8 plan by publication in a newspaper of general circulation in each
 9 county in which the utility company renders electric service.

10 Sec. 6. The commission shall, before July 1, 1999, hold a public
 11 hearing concerning a restructuring plan filed by a utility company
 12 and issue an order either approving or rejecting the plan.

13 Sec. 7. In considering whether a restructuring plan satisfies the
 14 requirements of this chapter, the commission may consider, after
 15 notice and hearing and without limitation, the following:

- 16 (1) Whether the organizational structure of the utility
- 17 company is required by the laws under which the utility
- 18 company is organized.
- 19 (2) Whether it is legally possible to restructure the utility
- 20 company under the laws under which it is organized in such
- 21 a manner that the production and marketing functions, if any,
- 22 of the utility company would be, after the restructuring,
- 23 separate from the transmission and distribution functions, if
- 24 any, of the utility company. (If the laws under which the
- 25 utility company is organized legally preclude such separation,
- 26 the commission may consider whether the utility company can
- 27 be reorganized under different laws that permit an
- 28 organizational structure allowing such separation.)
- 29 (3) Whether there exist joint ownership agreements, operating
- 30 agreements, interconnection agreements, or mortgages or
- 31 other financial instruments covering any production or other
- 32 assets of the utility company that render legally impossible the
- 33 restructuring of the utility company in such a manner that the
- 34 production and marketing functions, if any, of the utility
- 35 company would be, after the restructuring, separate from the
- 36 transmission and distribution functions, if any, of the utility
- 37 company.
- 38 (4) Whether any long term electricity purchase or sales
- 39 agreements exist to which the utility company is a party that
- 40 render legally impossible the restructuring of the utility
- 41 company in such a manner that the production and marketing
- 42 functions, if any, of the utility company would be, after the

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1 restructuring, separate from the transmission and
2 distribution functions, if any, of the utility company.

3 (5) Whether there are compelling financial, operational,
4 technical, or legal reasons for not requiring that, after the
5 restructuring, the production and marketing functions, if any,
6 of the utility company be separate from the transmission and
7 distribution functions, if any, of the utility company.

8 **Sec. 8. (a)** After notice and hearing, the commission shall
9 approve a restructuring plan filed by a utility company if the
10 commission determines that the plan satisfies the requirements of
11 this chapter. Otherwise, the commission shall disapprove the
12 restructuring plan.

13 (b) If the commission disapproves the restructuring plan, the
14 commission shall specify the modifications necessary to the plan
15 for the plan to satisfy the requirements of this chapter. Subject to
16 the right of appeal under IC 8-1-3, the utility company shall, before
17 August 1, 1999, make a compliance filing with the commission of
18 a revised restructuring plan that incorporates the necessary
19 modifications specified in the commission's order rejecting the
20 utility company's previous plan. The revised plan shall be further
21 revised by the utility company and approved by the commission if,
22 and to the extent that, the order of the commission disapproving
23 the previous plan is reversed upon appeal (without any further
24 appeal, reconsideration, or rehearing of the reversal).

25 **Sec. 9. (a)** This section applies to a utility company if, after
26 notice and hearing, the commission determines that, despite the
27 good faith best efforts of the utility company, either:

- 28 (1) it is legally impossible to restructure; or
29 (2) there are compelling financial, operational, technical, or
30 legal reasons for not requiring the restructuring of;

31 the utility company in such a manner that the production and
32 marketing functions, if any, of the utility company would be, after
33 the restructuring, separate from the transmission and distribution
34 functions, if any, of the utility company.

35 (b) A utility company to which this section applies shall
36 restructure the organization of its functions to the extent that the
37 commission by order determines is:

- 38 (1) legally possible and appropriate, with the good faith best
39 efforts of the utility company; and
40 (2) necessary to eliminate any unfair competitive advantage
41 that the utility company may possess because of its
42 organizational structure and that would be inconsistent with

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1 the development and functioning of a competitive market
2 within Indiana for the production and marketing of electricity
3 to retail electric customers.

4 (c) If the commission issues an order as described in subsection
5 (b), then the commission may also use, for retail ratemaking
6 purposes for transmission and distribution functions (but only to
7 the extent that the production and marketing functions of the
8 utility company remain in the same corporation as that containing
9 the transmission and distribution functions of the utility company):

10 (1) after June 30, 2004, an adjusted cost of equity capital for
11 the utility company that represents the cost of equity capital
12 for the utility company after making adjustments necessary
13 to reflect the elimination of the production and marketing
14 functions, revenues, and expenses from the utility company;
15 and

16 (2) after June 30, 2004, an adjusted capital structure for the
17 utility company that represents the just and reasonable
18 capital structure for the utility company after making
19 adjustments necessary to reflect the elimination of the
20 production and marketing functions, revenues, and expenses
21 from the utility company.

22 Sec. 10. (a) The commission does not have authority under this
23 article or any other law to order, direct, or otherwise require a
24 utility company, or any affiliate of the utility company, to:

25 (1) divest itself of production, transmission, distribution, or
26 marketing functions of the utility company or affiliate, or any
27 combination thereof; or

28 (2) establish separate corporate subsidiaries for any
29 production, transmission, distribution, or marketing functions
30 of the utility company or affiliate, or any combination thereof.

31 (b) Neither this article nor any other law prohibits or restricts
32 a utility company, or any affiliate of the utility company, from
33 voluntarily:

34 (1) divesting itself of any production, transmission,
35 distribution, or marketing functions of the utility company or
36 affiliate, or any combination thereof; or

37 (2) establishing separate corporate subsidiaries for any
38 production, transmission, distribution, or marketing functions
39 of the utility company or affiliate, or any combination thereof.

40 (c) For purposes of this section, "divest itself" refers to a
41 transfer to a person that is not an affiliate of the entity making the
42 transfer.



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1 **Sec. 11. (a)** After the commission has issued an order approving
 2 a utility company's restructuring plan or revised plan, the
 3 commission may not order that the utility company make any
 4 changes to the plan or revised plan, unless the utility company
 5 agrees to the changes after a public hearing in which all interested
 6 parties are allowed to participate.

7 **(b)** The commission's consideration and approval of changes to
 8 the restructuring plan or revised plan are subject to the same
 9 notice, public hearing, and approval requirements, and all other
 10 provisions of this chapter, as are applicable to the utility
 11 company's approved or revised plan.

12 **Sec. 12.** This chapter does not authorize the commission at any
 13 time other than as part of an order under section 9 of this chapter
 14 to order, direct, or otherwise require a utility company to
 15 restructure the organization of its assets, personnel, or other
 16 resources as a remedy to eliminate any unfair competitive
 17 advantage that the utility company may possess because of its
 18 organizational structure and that would be inconsistent with the
 19 development and functioning of a competitive market within
 20 Indiana for the production and marketing of electricity to retail
 21 electric consumers.

22 **Chapter 8. Transitional Provisions**

23 **Sec. 1. (a)** As of July 1, 1998, the terms, conditions, and rate
 24 design of each retail electric tariff of a utility company shall be
 25 frozen, except as otherwise provided in this article. The freeze on
 26 the terms, conditions, and rate design does not preclude a utility
 27 company from offering new retail electric tariffs or extending or
 28 entering into retail electric service contracts.

29 **(b)** Notwithstanding any other law, during the period from July
 30 1, 1998, through June 30, 2004, the rates, charges, terms, and
 31 conditions of retail electric service by a utility company shall be
 32 determined by this article and, during that period, no change to the
 33 rates, charges, terms, and conditions may be made except as
 34 provided in this article.

35 **Sec. 2. (a)** This chapter shall be applied so as to allow each
 36 utility company the opportunity from July 1, 1998, through June
 37 30, 2004, to be compensated for its transition costs by, among other
 38 things, retaining the value and other benefits from the following:

39 **(1)** Revising its electricity production asset or contract
 40 portfolio, or both, through sales, exchanges, leases, or
 41 purchases, or any combination thereof.

42 **(2)** Changing the amounts, rates, methods, or term, or any



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1 combination thereof, of depreciation of its assets.

2 (3) Changing the amounts, rates, methods, or term, or any
3 combination thereof, of amortization of its regulatory or other
4 assets.

5 (4) Undertaking mergers, consolidations, acquisitions, or
6 reorganizations, or any combination thereof.

7 (5) Implementing efficiency or technological improvements,
8 or both.

9 (6) Implementing capital, expense, and other cost reductions.

10 (b) The commission shall ascertain, determine, and order for a
11 utility company accounting and other provisions or changes, or
12 both, consistent with the requirements of the Financial Accounting
13 Standards Board's Statement of Financial Accounting Standards,
14 as may be necessary during the period from July 1, 1998, through
15 June 30, 2004, to allow the utility company's efforts to be
16 compensated for its transition costs under subsection (a).

17 Sec. 3. (a) For the period from July 1, 1998, through June 30,
18 1999, the utility company's rates and charges for retail electric
19 service must equal the utility company's rates and charges in effect
20 on June 30, 1998, as adjusted during the period under its
21 adjustment mechanisms in effect on June 30, 1998, which
22 mechanisms must continue to operate during the period.

23 (b) Except as otherwise provided in this chapter, the utility
24 company's rates and charges for retail electric service from July 1,
25 1999, through June 30, 2004, must equal the utility company's
26 transition price.

27 Sec. 4. (a) The utility company's initial transition price for each
28 class of customers, except those covered by section 5 of this
29 chapter, shall be determined as follows:

30 (1) The utility company's base retail electric rates and charges
31 are the rates and charges (as determined under the terms and
32 conditions of the utility company's tariffs) as approved by the
33 commission in its last order approving base retail electric
34 rates and charges for the utility company issued as a result of
35 a petition for a general retail electric rate proceeding filed by
36 the utility company with the commission at any time before
37 January 1, 1998.

38 (2) The base retail electric rates and charges determined
39 under subdivision (1) shall be adjusted by adding to or
40 subtracting from the rates and charges, whichever is
41 applicable, the July 1, 1999, annualized level of all
42 adjustments thereto, as determined exclusively under an



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1 adjustment mechanism for the utility company in effect on
 2 July 1, 1999, as approved by the commission, by order or
 3 otherwise, before July 1, 1999. However, the effects of any
 4 provisions in the adjustment mechanisms to reconcile over or
 5 under collections thereunder or to implement the tests
 6 contained in IC 8-1-2-42(d)(2) and IC 8-1-2-42(d)(3), coupled
 7 with IC 8-1-2-42.3, shall be ignored for purposes of
 8 determining the annualized level of an adjustment under this
 9 subdivision, except that these provisions may not be ignored
 10 for purposes of determining an amount that the utility
 11 company may owe, as of the July 1, 1999, adjustment period,
 12 to the customers of the utility company (or that the customers
 13 may owe to the utility company) which amount shall be
 14 returned to the customers or the utility company, whichever
 15 is applicable, in the same manner as that used for similar
 16 amounts before July 1, 1999.

17 (b) A determination under subsection (a)(2) must ignore the
 18 effects of any provisions in commission orders, in adjustment
 19 mechanisms, documents, or agreements addressing either the
 20 length of time that the orders, adjustment mechanisms, documents,
 21 or agreements will remain in effect, or any other change in the
 22 level of any adjustments thereunder that occur after July 1, 1999.

23 (c) As used in this chapter, "adjustment mechanism" means:

- 24 (1) a tracking provision;
- 25 (2) a surcharge provision; or
- 26 (3) a mechanism or provision similar to that described in
 27 subdivision (1) or (2);

28 approved by the commission for use by a utility company to
 29 periodically adjust its retail electric rates or charges, or both, as a
 30 result of changes in the utility company's costs, expenses, revenues,
 31 returns, or profits, or any combination thereof, that are covered by
 32 the specific mechanism or provision.

33 (d) For purposes of this chapter, each retail electric tariff of a
 34 utility company shall be treated as a customer class.

35 Sec. 5. (a) A utility company's initial transition price for a retail
 36 electric customer having a retail electric service contract that
 37 remains in effect after June 30, 1999, equals the retail electric rates
 38 and charges as determined under the terms and conditions of the
 39 retail electric service contract as of July 1, 1999. If the term of the
 40 contract terminates before July 1, 2004, then, after termination,
 41 the utility company's transition price for the customer is the
 42 transition price for the customer class of the utility company under



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1 which the customer is served at the termination of the contract
2 under the utility company's retail electric tariffs then in effect.

3 (b) For purposes of this chapter, a customer served under a
4 retail electric service contract shall be treated while being served
5 under that contract as a separate customer class.

6 Sec. 6. The applicability of IC 8-1-2-42(d), coupled with
7 IC 8-1-2-42.3, terminates for each utility company's retail electric
8 service effective as of July 2, 1999. However, if before that date the
9 commission orders a reduction in a utility company's fuel charge
10 under IC 8-1-2-42(d), coupled with IC 8-1-2-42.3, then the
11 commission shall, if the utility company incurs expenses for
12 nuclear decommissioning, order the utility company:

13 (1) to refund or credit to its Indiana retail electric customers
14 fifty percent (50%) of the amount of the reduction; and

15 (2) to transfer or deposit the remaining fifty percent (50%) of
16 the reduction into the utility company's nuclear
17 decommissioning trusts for the benefit of its customers.

18 Sec. 7. (a) Except as provided in subsection (c), if the utility
19 company's transition price for a retail electric customer class
20 exceeds the applicable target price as determined under section 9
21 of this chapter, the transition price must trend, ratably in
22 approximately equal annual decrements via a straight line, over
23 the transition period from the then applicable transition price to
24 the utility company's then applicable target price for the customer
25 class. However, the trending shall be adjusted up or down,
26 whichever is applicable, if and only to the extent that the utility
27 company's applicable transition price is similarly adjusted as
28 specified in section 11 or 12 of this chapter.

29 (b) For the sole purpose of computing an access charge under
30 section 13 of this chapter for a retail electric customer that has a
31 retail electric service contract that is in effect after June 30, 1999,
32 but is terminated before the customer begins receiving service to
33 which an access charge applies, the applicable transition price for
34 the customer is the transition price the customer was paying under
35 the retail electric service contract immediately before it
36 terminated.

37 (c) The transition price for a utility company does not trend
38 under this section if, and to the extent that, the utility company
39 transfers or deposits in the utility company's nuclear
40 decommissioning trusts the entire difference in revenue between:

41 (1) the utility company's transition price in effect on October
42 1, 1999; and



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- 1 (2) the transition price that otherwise would have been in
2 effect absent this subsection.
- 3 (d) The deposits described in subsection (c) are in addition to
4 any amounts collected from retail electric customers and deposited
5 in the utility company's nuclear decommissioning trusts under the
6 utility company's base retail electric rates and charges (as
7 approved in the commission's applicable rate order for the utility
8 company as specified in section 4(a)(1) of this chapter or according
9 to a commission order under section 6 of this chapter). However,
10 subsection (c) does not apply to a utility company that has had
11 adjustments made to its transition price for material changes in its
12 annual nuclear decommissioning expenses under section 11 of this
13 chapter or to a utility company that has accumulated funds in its
14 jurisdictional nuclear decommissioning trusts that fully fund the
15 utility company's projected retail electric jurisdictional cost of
16 nuclear decommissioning.
- 17 Sec. 8. Before July 1, 1999, the commission shall issue orders
18 determining, under this chapter, the target price that is to be in
19 effect during the transition period for each customer class of a
20 utility company. These determinations shall be made by the
21 commission, after notice and hearing held solely for the purpose of
22 considering target prices for each utility company, using the
23 Indiana average retail electricity production price (at the meter)
24 for all utility companies as described in section 9 of this chapter.
- 25 Sec. 9. (a) The target price for each customer class of a utility
26 company shall be determined by the commission according to the
27 following steps:
- 28 **STEP ONE:** The commission shall use thirty-seven dollars
29 (\$37) per megawatt hour as the Indiana average retail
30 electricity production price (at the customer's meter)
31 applicable to all utility companies. This amount is computed
32 based upon the information contained in or derived from each
33 utility company's Federal Energy Regulatory Commission
34 (FERC) Form No. 1 for calendar year 1996 for the five (5)
35 investor owned electric utilities in Indiana, according to the
36 following formula:
- 37 (A) Total sales to Ultimate Consumers (in megawatt hours)
38 recognized as reported in each such FERC Form No. 1.
- 39 (B) Total Retail Production Revenue in dollars as
40 computed according to the following formula, where all
41 data are from the FERC Form No. 1:
42 Total Retail Production Revenue equals

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1 **Total Electric Operating Revenue from Sales to Ultimate**
 2 **Consumers;**
 3 **Less:**
 4 **Retail Distribution Operating Expense Related Revenue;**
 5 **Retail Transmission Operating Expense Related**
 6 **Revenue;**
 7 **Retail Distribution Return, Depreciation, and Tax**
 8 **Related Revenue; and**
 9 **Retail Transmission Return, Depreciation, and Tax**
 10 **Related Revenue.**

11 **Using the above results, the Indiana average retail electricity**
 12 **production price applicable to all utility companies is**
 13 **computed by dividing (y) the sum of Total Retail Production**
 14 **Revenue for all five (5) investor owned electric utilities within**
 15 **Indiana by (z) the sum of Total Sales to Ultimate Consumers**
 16 **(in megawatt hours) for those utilities.**

17 **STEP TWO: For each utility company, the commission shall**
 18 **determine the production component of the target price for**
 19 **each customer class of the utility company by multiplying the**
 20 **thirty-seven dollar (\$37) per megawatt hour Indiana average**
 21 **retail electricity production price by the ratio of (y) the**
 22 **production component of the initial transition prices**
 23 **applicable to the customer class to (z) the volume-weighted**
 24 **average of the production components of the initial transition**
 25 **prices for all customer classes of the utility company. The**
 26 **intended consequence of this STEP is that no customer class**
 27 **of the utility company should have transition prices that trend**
 28 **down from its initial transition price while other customer**
 29 **classes of the utility company have transition prices that**
 30 **remain fixed at the initial transition price (before reflecting**
 31 **any adjustments as a result of sections 11 and 12 of this**
 32 **chapter).**

33 **STEP THREE: For each utility company, the commission**
 34 **shall last determine the target price for each customer class of**
 35 **the utility company by adding to the production component**
 36 **determined in STEP TWO the remaining nonproduction**
 37 **components of the initial transition price applicable to the**
 38 **customer class of the utility company. The relationship**
 39 **between the transition prices for the various customer classes**
 40 **of the utility company must remain comparable at all times**
 41 **during the transition period.**

42 **(b) The target price for each customer class of a utility company**



1 shall thereafter be adjusted up or down, whichever is applicable,
 2 if, and only to the extent that, the utility company's transition price
 3 is similarly adjusted because of a material change in the utility
 4 company's annual tax expense or annual nuclear decommissioning
 5 expense under section 11 of this chapter.

6 **Sec. 10.** Notwithstanding any other law and except as otherwise
 7 provided in this chapter:

8 (1) no utility company is entitled to a general increase in its
 9 base retail electric rates and charges from January 1, 1998,
 10 through June 30, 2004;

11 (2) no person is entitled to a general decrease in a utility
 12 company's base retail electric rates and charges from January
 13 1, 1998, through June 30, 2004; and

14 (3) there may not be an increase or decrease in the utility
 15 company's applicable transition price from July 1, 1999,
 16 through June 30, 2004. However, a utility company may, with
 17 commission approval, voluntarily decrease the applicable
 18 transition price for any customer class.

19 **Sec. 11. (a)** After a public hearing held solely for the purpose of
 20 considering the adjustments and the reasons for the adjustments,
 21 the utility company's applicable transition price shall be adjusted
 22 up or down, whichever is applicable, by the applicable adjustment
 23 mechanisms, which must be approved by order of the commission
 24 before taking effect, for:

25 (1) material changes in the utility company's annual tax
 26 expenses or annual environmental expenses (including
 27 carrying costs on capital investments), resulting, in either
 28 case, solely from changes in federal, state, or local tax or
 29 environmental laws, or changes in the interpretation or
 30 application of those laws, or both, enacted or adopted after
 31 January 1, 1997; or

32 (2) material changes in the utility company's annual expenses
 33 for nuclear regulatory requirements (such as costs associated
 34 with continuing operations, regulatory mandates, or license
 35 requirements) or in the utility company's annual nuclear
 36 electric plant decommissioning expense, or both.

37 (b) For purposes of this section, a material change resulting
 38 solely from the changes set forth in subsection (a) means any of the
 39 following:

40 (1) A cumulative increase (in one (1) or more steps) in the
 41 utility company's annual tax expenses (as reflected in the
 42 commission's applicable rate order for the utility company as



1 specified in section 4(a)(1) of this chapter) aggregating in
 2 excess of five percent (5%), or a cumulative decrease (in one
 3 (1) or more steps) in the utility company's annual tax expenses
 4 (as so defined) aggregating in excess of five percent (5%), of
 5 the utility company's allowed retail electric net operating
 6 income as approved in the commission's applicable rate order
 7 for the utility company as specified in section 4(a)(1) of this
 8 chapter.

9 (2) A cumulative increase (in one (1) or more steps) in the
 10 utility company's annual environmental expenses, including
 11 carrying costs on capital investments (as reflected in the
 12 commission's applicable rate order for the utility company as
 13 specified in section 4(a)(1) of this chapter), aggregating in
 14 excess of five percent (5%) of the utility company's allowed
 15 retail electric net operating income as approved in the
 16 commission's applicable rate order for the utility company as
 17 specified in section 4(a)(1) of this chapter.

18 (3) A cumulative increase (in one (1) or more steps) in the
 19 utility company's annual expenses for nuclear regulatory
 20 requirements (as reflected in the commission's applicable rate
 21 order for the utility company as specified in section 4(a)(1) of
 22 this chapter), aggregating in excess of five percent (5%) of the
 23 utility company's allowed retail electric net operating income
 24 as approved in the commission's applicable rate order for the
 25 utility company as specified in section 4(a)(1) of this chapter.

26 (4) A cumulative combined change (in one (1) or more steps)
 27 under subdivisions (1), (2), and (3) aggregating in excess of
 28 five percent (5%) of the utility company's allowed retail
 29 electric net operating income as approved in the commission's
 30 applicable rate order for the utility company as specified in
 31 section 4(a)(1) of this chapter.

32 (5) Any change in the utility company's annual nuclear
 33 decommissioning expenses (as reflected in the commission's
 34 applicable rate order for the utility company as specified in
 35 section 4(a)(1) of this chapter) resulting from a mandate of a
 36 federal agency or court or a change in federal law that
 37 requires the utility company to increase, decrease, or
 38 otherwise change the funding of the utility company's nuclear
 39 decommissioning expenses.

40 (c) The determinations required by this section, along with the
 41 resulting adjustments to the applicable transition price, may, upon
 42 request of the utility company, be made by the commission based

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1 upon forecasted data with a reconciliation mechanism to correct
 2 for an over or under variance between the forecasted data and the
 3 actual data. The commission shall determine the interest rate to be
 4 applied to an amount over or under collected because of the use of
 5 the forecasted data.

6 (d) If there is a material change under subsection (b)(1), (b)(2),
 7 (b)(3), or (b)(4) for the utility company, the utility company's
 8 applicable transition price shall be adjusted by the amount by
 9 which the changes individually or collectively exceed the five
 10 percent (5%) threshold amount specified in this section.

11 (e) Before any change in a utility company's annual
 12 environmental expenses as described in this section may be
 13 included in an adjustment, any environmental compliance measure
 14 that caused the expense change must have been approved and
 15 authorized by the commission.

16 **Sec. 12. (a)** This section applies notwithstanding any other
 17 provision of this chapter or any other law.

18 (b) If the commission judges that an emergency exists, but only
 19 if and to the extent that the commission considers it necessary to
 20 prevent:

21 (1) material and irreparable harm to the utility company
 22 (which may include harm from confiscatory rates and
 23 charges);

24 (2) material and irreparable harm to the utility company's
 25 customers; or

26 (3) material and irreparable harm to the safety of the public
 27 or the utility company's workforce;

28 the commission may temporarily amend the applicable transition
 29 price of the utility company. The amendments of the transition
 30 price, as determined and directed by the commission, take effect at
 31 the time, and remain in force for the length of time (but not to
 32 extend beyond the end of the transition period), prescribed by the
 33 commission.

34 (c) Within sixty (60) days after the commission issues an order
 35 granting relief under subsection (b), the commission shall submit
 36 a report to the regulatory flexibility committee established under
 37 IC 8-1-2.5-9 and IC 8-1-2.6-4. The report must explain the nature
 38 and scope of the emergency and the relief provided by the
 39 commission under this section.

40 **Sec. 13. (a)** A nonbypassable access charge shall be imposed
 41 during the transition period upon each present and future retail
 42 electric customer of a utility company, if the customer elects to

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1 purchase its electricity supply for a service location from an
 2 electricity supply company other than the utility company during
 3 the balance of the transition period. The access charge, which may
 4 not be less than zero dollars (\$0), shall be paid by the retail electric
 5 customer to the utility company for the balance of the transition
 6 period instead of the transition price.

7 (b) The access charge is computed as of the time the retail
 8 electric customer begins purchasing its electricity supply from an
 9 electricity supply company other than the utility company, and
 10 equals the difference between:

11 (1) the amount of revenues that the utility company would
 12 have received had the utility company collected, or continued
 13 to collect, the applicable transition price from the customer
 14 for the service location for the balance of the transition
 15 period; and

16 (2) the amount of revenues that the utility company is
 17 determined to receive over the balance of the transition
 18 period from good faith sales of the electricity that the
 19 customer will not be purchasing from the utility company.

20 (c) The method for determining the access charge shall be
 21 described in sufficient detail in each utility company's distribution
 22 comparability tariff so that a customer may estimate the applicable
 23 access charge. A historical twelve (12) consecutive month hourly
 24 electricity load shape for the customer's service location with the
 25 utility company shall be used in the computation of the access
 26 charge for the customer. For a customer that does not have a
 27 historical twelve (12) consecutive month hourly electricity load
 28 shape with the utility company, a representative twelve (12)
 29 consecutive month hourly electricity load shape used for the
 30 customer until such time as the customer has a historical twelve
 31 (12) consecutive month hourly electricity load shape with the utility
 32 company. The computation of the access charge under subsections
 33 (b)(1) and (b)(2) must exclude the revenue effects of growth in the
 34 customer's electricity load at the service location after the
 35 customer begins purchasing its electricity supply for that service
 36 location from an electricity supply company other than the utility
 37 company.

38 (d) The commission after notice and hearing shall specify a
 39 procedure applicable to all utility companies for determining the
 40 amount of revenue that a utility company will receive over the
 41 balance of the transition period from good faith sales. Except as
 42 provided in subsection (e), the procedure must provide for:



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- 1 (1) an annual aggregation by each utility company of the
- 2 electricity loads of all customers that have notified the utility
- 3 company of the customer's intent to begin purchasing its
- 4 electricity supply from an electricity supply company other
- 5 than the utility company;
- 6 (2) an annual public market solicitation by the utility
- 7 company of good faith bids for the purchase of all or part of
- 8 that aggregate load;
- 9 (3) the use of an average weighted price determined from the
- 10 bidding process to be used for determination of the access
- 11 charge of a customer; and
- 12 (4) a complaint and public hearing process, to be timely
- 13 completed, by which a customer or utility company may
- 14 challenge any bids used to determine the average weighted
- 15 price.
- 16 (e) If the commission determines that the use of a market
- 17 mechanism (such as a regional power exchange) would result in a
- 18 revenue determination as just and reasonable as that set forth in
- 19 subsection (d), the commission may specify a market mechanism
- 20 to be used as the procedure for making the revenue determination.
- 21 (f) The utility company shall collect the access charge from a
- 22 customer as a monthly, volume-based charge applied to the actual
- 23 electricity usage of the customer at the service location. The
- 24 monthly charge for a customer, when applied to the customer's
- 25 historical load shape determined under subsection (c), must allow
- 26 the utility company to collect over the period covered by the access
- 27 charge the amount determined under subsection (b). The net access
- 28 charge paid by a customer for the twelve (12) consecutive month
- 29 period, however, must equal the lesser of the following amounts:
- 30 (1) The product of the customer's historical load shape
- 31 multiplied by the monthly charge for the customer.
- 32 (2) The product of the customer's actual electricity usage at
- 33 the service location during the twelve (12) consecutive month
- 34 period multiplied by the monthly charge for the customer.
- 35 (g) The twelve (12) consecutive month period for a customer
- 36 under this section begins on the date (or the anniversary of the
- 37 date) when the customer begins purchasing its electricity supply
- 38 for a service location from an electricity supply company other
- 39 than the utility company.
- 40 (h) A utility company shall reconcile any over or under
- 41 collection of the access charge from a customer during the twelve
- 42 (12) consecutive month period.

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1 **Sec. 14. (a) Beginning July 1, 1999, and continuing after that**
 2 **date, to the extent that a utility company's net investments (after**
 3 **reduction for any new customer service connection charges**
 4 **received) made after June 30, 1999, in transmission or distribution**
 5 **facilities, or both, that perform a distribution function (allocable**
 6 **to the utility company's Indiana retail electric jurisdiction) for new**
 7 **service connections exceed the utility company's depreciation**
 8 **expense (allocable to the utility company's Indiana retail electric**
 9 **customers) for those transmission and distribution facilities for a**
 10 **year, the utility company may continue to:**

11 **(1) accrue allowance for funds used during construction**
 12 **(AFUDC); and**

13 **(2) defer depreciation expense;**
 14 **for those investments.**

15 **(b) The accrual or deferral, or both, under this section with**
 16 **respect to a facility begins on the date the facility first goes into**
 17 **service and continues until the utility company's investment in the**
 18 **facility is first reflected in the utility company's base rates and**
 19 **charges approved in the utility company's first general retail**
 20 **electric transmission or distribution rate order issued by the**
 21 **commission after June 30, 2004.**

22 **(c) The commission shall determine the manner and timing of**
 23 **the recovery through retail electric rates of the AFUDC accrual**
 24 **and depreciation expense deferral (together with carrying costs) in**
 25 **the utility company's first general retail electric transmission or**
 26 **distribution rate order issued by the commission after June 30,**
 27 **2004.**

28 **Chapter 9. Miscellaneous Provisions**

29 **Sec. 1. (a) To the extent not inconsistent with this article, this**
 30 **article shall be construed as compatible with any federal law that**
 31 **also addresses the subject matter of this article.**

32 **(b) This article is not intended to affect the applicability of the**
 33 **following federal laws:**

34 **(1) The Sherman Act (15 U.S.C. 1 et seq.).**

35 **(2) The Wilson Act (15 U.S.C. 8 and 9).**

36 **(3) The Clayton Act (15 U.S.C. 12 et seq.).**

37 **(4) The Act of June 19, 1936, Chapter 592 (15 U.S.C. 13, 13a,**
 38 **and 21a).**

39 **(5) The Federal Trade Commission Act (15 U.S.C. 14 et seq.).**

40 **(6) Any other law regulating trade or commerce.**

41 **(c) This article does not affect the applicability of the following**
 42 **state laws:**



1 (1) IC 24-1-1 through IC 24-1-4.

2 (2) Any other law regulating trade or commerce other than a
3 law regulating public utilities.

4 Sec. 2. Neither this article nor any other law vests the
5 commission with jurisdiction with respect to complaints relating to
6 unfair competition, antitrust behavior, or other marketplace
7 activities alleged to be contrary to law.

8 Sec. 3. Neither this article nor any other law vests the
9 commission with jurisdiction with respect to claims arising under
10 the laws listed in section 1 of this chapter.

11 Sec. 4. This article does not require the exhaustion of
12 administrative remedies available through the commission before
13 the commencement of an action seeking relief with respect to a
14 claim arising under the laws listed in section 1 of this chapter.

15 Sec. 5. A utility company's recovery of its transition costs is
16 limited to that expressly provided under this article.

17 Sec. 6. A retail electric customer or other person (other than a
18 party to a particular retail electric service contract) is not entitled
19 to relief under a complaint, a petition, an application, a motion, a
20 claim, a charge, a cause of action, a crossclaim, a counterclaim, or
21 any similar pleading or action before the commission or before an
22 Indiana court, based upon an allegation or assertion that at any
23 time before July 1, 2004, the rates, charges, terms, or conditions of
24 the retail electric service contract are unjust, unreasonable,
25 preferential, or discriminatory.

26 Sec. 7. (a) The procedures set forth in IC 8-1-2-62 through
27 IC 8-1-2-67, together with the commission's rules of practice and
28 procedure, apply to a public hearing held under this article. The
29 commission shall liberally construe intervention status at all public
30 hearings held under IC 8-1.8-5-4 and IC 8-1.8-7-6 to assure broad
31 public participation in those hearings.

32 (b) The commission may adopt rules under IC 4-22-2 to
33 implement this article, but the absence of such rules does not affect
34 the authority of the commission under this article.

35 Sec. 8. A person that is adversely affected by a final decision,
36 ruling, or order of the commission under this article may appeal
37 the decision, ruling, or order under IC 8-1-3, under the same terms
38 and conditions that govern appeals from final decisions, rulings, or
39 orders of the commission under IC 8-1-2.

40 Sec. 9. (a) If the commission fails to issue an order by the
41 deadline date determined under this article, the commission shall,
42 within five (5) days after that date, submit to the governor and the



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1 regulatory flexibility committee established under IC 8-1-2.5-9 and
2 IC 8-1-2.6-4 a written explanation of the reasons for the delay and
3 the date when the commission expects to issue an order.

4 (b) If, before June 30, 2004, the commission fails, by the
5 deadline date determined under this article, to issue an order either
6 approving or disapproving a utility company's proposed rates,
7 charges, terms, and conditions of retail electric service, then the
8 utility company may place its proposed rates, charges, terms, and
9 conditions of retail electric service into effect twenty-one (21) days
10 after the deadline, subject to adjustment and refund to conform the
11 rates, charges, terms, and conditions with those ultimately
12 approved by the commission under this article. An adjustment or
13 refund relates back to the date that the utility company first places
14 into effect the rates, charges, terms, and conditions. The
15 commission shall also determine the rate of interest to be applied
16 to an amount refunded to the utility company's retail electric
17 customers because of the commission's delay in issuing the order.

18 (c) Notwithstanding any other law, if the commission fails to
19 issue an order by the deadline date determined under this article,
20 the utility company or any party to the proceeding may bring an
21 action for mandate under IC 34-1-58 to compel the commission to
22 issue the order. However, notwithstanding IC 34-1-58 or any other
23 law, the action for mandate must be filed in the court of appeals.

24 (d) Notwithstanding any other law, if the commission fails to
25 adopt a rule by the deadline date determined under this article, a
26 person adversely affected may bring an action for mandate under
27 IC 34-1-58 to compel the commission to adopt the rule. However,
28 notwithstanding IC 34-1-58 or any other law, the action for
29 mandate must be filed in the court of appeals.

30 **Sec. 10.** The commission shall determine the manner and extent
31 to which the information contained in an application by an
32 electricity supply company for commission certification under this
33 article and the materials filed with the commission concerning the
34 application, or in a retail electric service contract and any filings
35 with the commission and evidence concerning the contract, are
36 entitled to confidential treatment and not subject to public
37 disclosure without adequate confidentiality protections.

38 **Sec. 11. (a)** The regulatory flexibility committee established
39 under IC 8-1-2.5-9 and IC 8-1-2.6-4 to monitor changes in the
40 energy industry and the telephone industry, respectively, shall also
41 monitor the restructuring of the Indiana electric industry under
42 this article.

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1 **(b) The regulatory flexibility committee shall meet on the call of**
 2 **the co-chairs to study and monitor the general restructuring of the**
 3 **Indiana electric industry. The committee shall, with the approval**
 4 **of the commission, retain independent consultants that the**
 5 **committee considers appropriate to assist the committee in its**
 6 **review and study. The expenses for such consultants shall be paid**
 7 **for with funds from the public utility fees assessed under IC 8-1-6.**

8 **(c) Each member of the committee is entitled to receive the same**
 9 **per diem, mileage, and travel allowances paid to individuals who**
 10 **serve as legislative members of interim study committees**
 11 **established by the legislative council.**

12 **Sec. 12. A utility company that violates a final commission order**
 13 **issued under this article commits a Class B infraction.**

14 SECTION 2. IC 8-1-2-4.1 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 16 OCTOBER 1, 1999]: **Sec. 4.1. The provisions of section 4 of this**
 17 **chapter that require a public utility to furnish reasonably adequate**
 18 **service and facilities do not apply to the extent that the service and**
 19 **facilities are provided by a utility company, an electricity**
 20 **generating company, or an electricity supply company.**

21 SECTION 3. IC 8-1-2-15.1 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 1998]: **Sec. 15.1. Section 15 of this chapter does not apply to a**
 24 **public utility that does all of the following:**

25 **(1) Consent irrevocably to the jurisdiction of the courts of the**
 26 **state and service of process in Indiana, including service of**
 27 **summonses and subpoenas, for a civil or criminal proceeding**
 28 **arising out of, or relating to, in any manner, its activities as a**
 29 **public utility, by filing with the commission and the secretary**
 30 **of state a document providing such irrevocable consent.**

31 **(2) Designate an agent authorized to receive service of process**
 32 **in Indiana by filing with the commission and the secretary of**
 33 **state, a document initially designating the agent and by**
 34 **similarly filing such other documents as may be periodically**
 35 **required to update the designated agent.**

36 **(3) Agree to make available in Indiana, at reasonable times**
 37 **and places, the books and records and officers and employees**
 38 **of the public utility, to the extent required by the courts of the**
 39 **state or the commission, or both.**

40 SECTION 4. IC 8-1-2-22.1 IS ADDED TO THE INDIANA CODE
 41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 1998]: **Sec. 22.1. Section 22 of this chapter does not restrict the**



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1 holding, administration, or use of the balance in the depreciation
 2 fund relating to particular public utility property by a utility
 3 company, an electricity generating company, or an electricity
 4 supply company in either of the following cases:

5 (1) In the case of the sale or transfer of the public utility
 6 property to the utility company, electricity generating
 7 company, or electricity supply company, if the property is to
 8 be used by the company in the production or sale of electricity
 9 under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.

10 (2) In the case of the continued ownership, operation,
 11 management, or control of the public utility property by a
 12 utility company, if the property is to be used by the utility
 13 company in the production or sale of electricity under
 14 IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.

15 SECTION 5. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 1999]: **Sec. 42.1.** (a) Section 42(b), 42(c), and 42(d) of this chapter
 18 does not apply to the production or sale of electricity by a utility
 19 company under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.

20 (b) Sections 42.3 and 42.5 of this chapter do not apply to utility
 21 companies or to the production or sale of electricity by a utility
 22 company under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.

23 SECTION 6. IC 8-1-2-48.1 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 1998]: **Sec. 48.1.** Section 48(c) of this chapter does not apply to
 26 the production or sale of electricity by a utility company under
 27 IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.

28 SECTION 7. IC 8-1-2-49.1 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 30 OCTOBER 1, 1998]: **Sec. 49.1.** (a) The provisions of section 49(2) of
 31 this chapter that:

32 (1) follow section 49(2)(g) of this chapter; and

33 (2) require certain contracts to be filed with the commission;
 34 do not apply to a contract for the production or sale of electricity
 35 by a utility company, an electricity generating company, or an
 36 electricity supply company under IC 8-1-13.1, IC 8-1.5-6, or
 37 IC 8-1.8. Those contracts are governed by the code of conduct
 38 adopted under IC 8-1.8.

39 (b) The provisions of section 49 of this chapter (other than those
 40 described in subsection (a)) apply to a utility company only if, and
 41 only to the extent that, the utility company is at least one (1) of the
 42 following:



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- 1 **(1) An electricity distribution utility.**
 2 **(2) An electricity transmission utility.**
 3 **(3) A gas utility company (as defined in section 87 of this**
 4 **chapter).**
 5 **(4) A sewage disposal company (as defined in section 89 of this**
 6 **chapter).**
 7 **(5) A telephone company (as defined in section 88 of this**
 8 **chapter).**
 9 **(6) A water utility company (as defined in section 61.6 of this**
 10 **chapter).**

11 SECTION 8. IC 8-1-2-75.6 IS ADDED TO THE INDIANA CODE
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 1999]: **Sec. 75.6. (a) A utility company may issue stocks, bonds,**
 14 **commercial paper, or other evidences of indebtedness without the**
 15 **approval of the commission.**

16 **(b) A utility company is exempt from sections 76 through 80 of**
 17 **this chapter; however, a utility company may elect, by filing with**
 18 **the commission a document indicating the scope and duration of its**
 19 **election, to be covered by sections 76 through 80 of this chapter.**

20 SECTION 9. IC 8-1-2-83.1 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 1998]: **Sec. 83.1. (a) Section 83(a) of this chapter does not apply**
 23 **to the following:**

- 24 **(1) A sale, assignment, transfer, lease, or encumbrance by a**
 25 **utility company of any of its franchise, facilities, works, or**
 26 **system for the production or sale of electricity to another**
 27 **utility company or to an electricity generating company or**
 28 **electricity supply company.**
 29 **(2) A contract by a utility company, electricity transmission**
 30 **utility, or electricity distribution utility for the operation of**
 31 **any part of its works or system by an independent system**
 32 **operator.**

33 **(b) Section 83(b) and 83(d) of this chapter does not apply to a**
 34 **purchase, an acquisition, an assignment, a transfer, or other**
 35 **change of ownership that occurs under IC 8-1-13.1, IC 8-1.5-6, or**
 36 **IC 8-1.8.**

37 SECTION 10. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 1998]: **Sec. 84.1. Section 84(a) through 84(g) of this chapter does**
 40 **not apply to a merger, a union, a consolidation, a purchase, an**
 41 **acquisition, a sale, a conveyance, a transfer, a lease, an**
 42 **encumbrance that occurs, or a contract that is entered into, under**



1 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8 with respect to property, plant,**
 2 **or business that is used by a utility company, an electricity**
 3 **generating company, or an electricity supply company in the**
 4 **production or sale of electricity under IC 8-1-13.1, IC 8-1.5-6, or**
 5 **IC 8-1.8. Such mergers, unions, consolidations, purchases,**
 6 **acquisitions, sales, conveyances, transfers, leases, encumbrances,**
 7 **and contracts are governed by IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.**

8 SECTION 11. IC 8-1-2-91 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 91. No license, permit,
 10 or franchise to own, operate, manage, or control any plant or equipment
 11 of any public utility ~~shall~~ **may** be hereafter granted or transferred
 12 except to a corporation, **company, partnership, or limited liability**
 13 **company** duly organized under the laws of the state of Indiana, **or**
 14 **admitted to do business in Indiana** or to a citizen of ~~such state:~~
 15 **Indiana.**

16 SECTION 12. IC 8-1-2-121 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 121. (a)
 18 Notwithstanding any other provision of law, from December 1 through
 19 March 15 of any year, no electric or gas utility, including a municipally
 20 owned, privately owned, or cooperatively owned utility, shall terminate
 21 residential electric or gas service for persons who are eligible for and
 22 have applied for assistance under IC 12-14-11 **or IC 12-14-11.1.** The
 23 commission shall implement procedures to ensure that electric or gas
 24 utility service is continued while eligibility for such persons is being
 25 determined.

26 (b) Any electric or gas utility, including a municipally owned,
 27 privately owned, or cooperatively owned utility, shall provide any
 28 residential customer whose account is delinquent an opportunity to
 29 enter into a reasonable amortization agreement with such company to
 30 pay the delinquent account. Such an amortization agreement must
 31 provide the customer with adequate opportunity to apply for and
 32 receive the benefits of any available public assistance program. An
 33 amortization agreement is subject to amendment on the customer's
 34 request if there is a change in the customer's financial circumstances.

35 (c) The commission may establish a reasonable rate of interest
 36 which a utility may charge on the unpaid balance of a customer's
 37 delinquent bill that may not exceed the rate established by the
 38 commission under section 34.5 of this chapter.

39 (d) The commission shall adopt rules under IC 4-22-2 to carry out
 40 the provisions of this section.

41 (e) This section does not prohibit an electric or gas utility from
 42 terminating residential utility service upon a request of a customer or

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1 under the following circumstances:

2 (1) If a condition dangerous or hazardous to life, physical safety,
3 or property exists.

4 (2) Upon order by any court, the commission, or other duly
5 authorized public authority.

6 (3) If fraudulent or unauthorized use of electricity or gas is
7 detected and the utility has reasonable grounds to believe the
8 affected customer is responsible for such use.

9 (4) If the utility's regulating or measuring equipment has been
10 tampered with and the utility has reasonable grounds to believe
11 that the affected customer is responsible for such tampering.

12 SECTION 13. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 1999]: **Sec. 128. This chapter does not apply to the production or
15 sale of electricity by a local district corporation, a general district
16 corporation, a utility company, an electricity supply company, or
17 an electricity generating company under IC 8-1-13.1, IC 8-1.5-6, or
18 IC 8-1.8.**

19 SECTION 14. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 1999]: **Sec. 31. This chapter does not apply to the production or
22 sale of electricity by a municipally owned utility, a joint agency, a
23 utility company, an electricity supply company, or an electricity
24 generating company under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.**

25 SECTION 15. IC 8-1-2.3-2.1 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 1998]: **Sec. 2.1. (a) The definitions in this
28 section apply after June 30, 2004, notwithstanding section 2 of this
29 chapter.**

30 (b) As used in this chapter, "electricity supplier" means a public
31 utility, a local district rural electric membership corporation, or a
32 municipally owned utility that provides retail electric service to the
33 public.

34 (c) As used in this chapter, "retail electric service" means
35 electric service provided directly or indirectly to the public for
36 ultimate consumption, but does not include either the wholesale
37 electric service furnished by an electricity supplier to another
38 electricity supplier or the production or sale of electricity directly
39 or indirectly to a customer for ultimate consumption by a utility
40 company, a municipally owned utility, a local district corporation,
41 an electricity generating company, or an electricity supply
42 company under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.



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1 SECTION 16. IC 8-1-2.3-4 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. ~~Service Area Rights.~~

3 (a) As long as an electricity supplier continues to provide adequate
 4 retail service, it ~~shall have~~ **has** the sole right to ~~furnish~~ **provide** retail
 5 electric service to each present and future consumer within the
 6 boundaries of its assigned service area, and no other electricity supplier
 7 ~~shall may~~ render or extend retail electric service within its assigned
 8 service area unless the electricity supplier with the sole right consents
 9 thereto in writing and the commission approves. This subsection does
 10 not prevent the commission from exercising its authority under
 11 IC 8-1-2-69.

12 **(b) An electricity supplier's sole right under subsection (a) to**
 13 **provide retail electric service to each present and future consumer**
 14 **within the boundaries of its assigned service area does not preclude**
 15 **an ultimate consumer, having the right under IC 8-1-13.1,**
 16 **IC 8-1.5-6, or IC 8-1.8 to choose the supplier of the electricity for**
 17 **the electric service to the consumer, from exercising that right and**
 18 **choosing, instead of the electricity supplier, an electricity**
 19 **generating company or an electricity supply company, or both, as**
 20 **the supplier of the electricity for electric service to the consumer**
 21 **under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8 for any period after**
 22 **September 30, 1999. However, after September 30, 1999, an**
 23 **electricity supplier's sole right to provide retail electric service to**
 24 **each present and future consumer within the boundaries of its**
 25 **assigned service area refers only to the electricity supplier's**
 26 **exclusive right, within its assigned service area, to be the electric**
 27 **transmission utility or electric distribution utility, or both, for all**
 28 **electricity for each present and future consumer within the**
 29 **boundaries of its assigned service area.**

30 ~~(b)~~ (c) If an electricity supplier unlawfully renders or extends retail
 31 electric service within the assigned service area of another electricity
 32 supplier, the electricity supplier ~~which that~~ has the sole right to furnish
 33 retail electric service in that assigned service area may bring an action
 34 in the circuit or superior court of the county where ~~such the~~ assigned
 35 service area is located to enjoin the other electricity supplier from
 36 rendering or extending such unlawful retail electric service.

37 (d) If a violation **as described in subsection (c)** is proved, the
 38 violator shall pay to the aggrieved electricity supplier the gross
 39 revenues derived by the violator from the sale of electric service within
 40 the assigned service area of the aggrieved electricity supplier, all
 41 witness fees, court costs, and reasonable attorney's fees incurred in any
 42 litigation brought to enforce this section. Payment of damages, fees,



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1 and costs does not entitle a violator to furnish retail electric service in
 2 ~~such~~ the assigned service area. All such actions or proceedings must
 3 be brought within three (3) years after the violation occurs.

4 SECTION 17. IC 8-1-2.3-7 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 6 OCTOBER 1, 1998]: **Sec. 7. A transfer of all or a part of the**
 7 **assigned service area of an electricity supplier that is required**
 8 **under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8 is not considered an**
 9 **assignment (as described in section 3 of this chapter) nor a change**
 10 **(as described in section 6 of this chapter) and is governed by**
 11 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.**

12 SECTION 18. IC 8-1-2.4-6 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 1998]: **Sec. 6. (a) The requirements imposed by this chapter**
 15 **apply only if and to the extent that the federal Public Utility**
 16 **Regulatory Policies Act, 16 U.S.C. 2601 et seq., remains in effect.**

17 (b) A contract:

18 (1) that was entered into under this chapter before July 1,
 19 1998;

20 (2) by an electric utility subject to the restructuring provisions
 21 of IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8; and

22 (3) that remains in effect on June 30, 1998;

23 remains in effect after June 30, 1998, in accordance with its terms
 24 and conditions, but the obligations of the electric utility under the
 25 contract shall be transferred to the applicable affiliated electricity
 26 transmission utility or affiliated electricity distribution utility, or
 27 both, after the restructuring of the organization of the electric
 28 utility under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8. The commission
 29 shall resolve any question of interpretation or application
 30 concerning such a transfer of obligations of the electric utility.

31 (c) A contract that is entered into under this chapter after June
 32 30, 1998, by an electric utility must include provisions providing
 33 for either the termination or the unwinding of the contract if the
 34 electric utility is required by IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8 to
 35 restructure its organization and electric tariff.

36 SECTION 19. IC 8-1-2.5-2, AS ADDED BY P.L.108-1995,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 1998]: **Sec. 2. (a) As used in this chapter, "energy utility"**
 39 **means a public utility or a municipally owned utility within the**
 40 **meaning of IC 8-1-2-1, or a local district corporation or a general**
 41 **district corporation within the meaning of IC 8-1-13-23, that is**
 42 **engaged in the production, transmission, delivery, or furnishing**



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1 **distribution** of heat, light, or power.

2 **(b) This chapter does not apply to the production or sale of**
 3 **electricity under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8 by a utility**
 4 **company, a municipally owned utility, a local district corporation,**
 5 **an electricity generating company, or an electricity supply**
 6 **company.**

7 SECTION 20. IC 8-1-5-2 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 1999]: **Sec. 2. (a) This section applies notwithstanding any other**
 10 **statute or rule of the state.**

11 **(b) A mortgage that:**

12 **(1) has been subject to section 1(a) of this chapter; and**

13 **(2) later becomes subject to the restructuring provisions of**
 14 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8;**

15 **remains subject to section 1(a) of this chapter after any required**
 16 **restructuring of the mortgagor under IC 8-1-13.1, IC 8-1.5-6, or**
 17 **IC 8-1.8, unless the mortgagor expressly provides otherwise, under**
 18 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8, in a filing in every county**
 19 **where the mortgage is recorded.**

20 **(c) If:**

21 **(1) after-acquired property has been covered by a mortgage**
 22 **as described in section 1(c) of this chapter; and**

23 **(2) the mortgage later becomes subject to the restructuring**
 24 **provisions of IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8;**

25 **the after-acquired property remains covered by the mortgage**
 26 **under section 1(c) of this chapter after any required restructuring**
 27 **of the mortgagor under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8, unless**
 28 **the mortgagor expressly provides otherwise, under IC 8-1-13.1,**
 29 **IC 8-1.5-6, or IC 8-1.8, in a filing in every county where the**
 30 **mortgage is recorded.**

31 SECTION 21. IC 8-1-6-3.2 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 1998]: **Sec. 3.2. After June 30, 2004, as used in this chapter,**
 34 **"gross revenue":**

35 **(1) has the meaning set forth in section 3 of this chapter;**

36 **(2) does not include revenue derived by a utility company, an**
 37 **electricity generating company, or an electricity supply**
 38 **company from the production or sale of electricity under**
 39 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8; and**

40 **(3) does include revenue derived by a utility company from**
 41 **the transmission or distribution of electricity to the public.**

42 SECTION 22. IC 8-1-7.5 IS ADDED TO THE INDIANA CODE



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1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 1999]:

3 **Chapter 7.5. Electric Line Facility Certificates**

4 **Sec. 1. The general assembly declares that, to promote safe,**
5 **adequate, efficient, and economical electric service within Indiana,**
6 **the public interest requires:**

7 (1) that the commission be authorized to issue a certificate of
8 public convenience and necessity for the construction or
9 upgrading of electric line facilities; and

10 (2) that such a certificate constitute conclusive evidence as to
11 the need for, the location of, and the use of the facilities for
12 purposes of any eminent domain proceedings instituted by the
13 utility with respect to the facilities.

14 **Sec. 2. (a) As used in this chapter, "electric line facilities" means**
15 **either general electric line facilities or major electric line facilities**
16 **within Indiana, including all poles, towers, structures, substations,**
17 **conductors, wires, transformers, switches, protective devices,**
18 **communications facilities and equipment, and other apparatus and**
19 **equipment associated with the transmission or distribution of**
20 **electricity.**

21 (b) As used in this chapter, "general electric line facilities"
22 means those electric line facilities functionally serving to transmit
23 or distribute electricity directly or indirectly to the public at an
24 operating voltage of less than two hundred thousand (200,000)
25 volts either:

26 (1) from the source of supply or from a point of
27 interconnection to a transmission center, a distribution center,
28 a point of interconnection, or a delivery point for sale; or

29 (2) from a transmission or distribution center point on the
30 transmission system to a delivery point for sale to the
31 customer.

32 (c) As used in this chapter, "major electric line facilities" means
33 those electric line facilities functionally serving to transmit or
34 distribute electricity directly or indirectly to the public at an
35 operating voltage of at least two hundred thousand (200,000) volts
36 either:

37 (1) from the source of supply or from a point of
38 interconnection to a transmission center, a distribution center,
39 a point of interconnection, or a delivery point for sale; or

40 (2) from a transmission or a distribution center point on the
41 transmission system to a delivery point for sale to the
42 customer.



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1 (d) Electric line facilities shall be treated as major electric line
 2 facilities from any point where the electricity is at a voltage of at
 3 least two hundred thousand (200,000) volts to the point where
 4 electricity is transformed to less than two hundred thousand
 5 (200,000) volts, and treated as general electric line facilities at any
 6 point where the electricity is less than two hundred thousand
 7 (200,000) volts.

8 (e) As used in this chapter, "upgrading" refers to the upgrading,
 9 replacement, reconstruction, or expansion of electric line facilities.

10 Sec. 3. As used in this chapter, "utility" means a person (as
 11 defined in IC 8-1.8-2) that owns, operates, manages, or controls
 12 any electric line facilities within Indiana.

13 Sec. 4. Except as provided in section 16 of this chapter, a utility
 14 may not begin the initial ground breaking or other initial site
 15 preparations for the construction of major electric line facilities
 16 constituting an integrated line of at least ten (10) miles in length
 17 within Indiana without first obtaining from the commission a
 18 certificate that public convenience and necessity requires, or will
 19 require, the construction.

20 Sec. 5. Before a utility begins the initial ground breaking or
 21 other initial site preparations for the:

- 22 (1) construction of major electric line facilities constituting an
- 23 integrated line of less than ten (10) miles in length within
- 24 Indiana;
- 25 (2) construction of general electric line facilities constituting
- 26 an integrated line of any length within Indiana; or
- 27 (3) upgrading of electric line facilities;

28 the utility may voluntarily request that the commission issue a
 29 certificate that public convenience and necessity requires, or will
 30 require, the construction or upgrading.

31 Sec. 6. (a) A utility petitioning for a certificate under section 4
 32 or 5 of this chapter shall publish notice to the public of the request
 33 in a newspaper of general circulation:

- 34 (1) in any county within Indiana in which the utility renders
- 35 electric service; and
- 36 (2) in any county within Indiana in which the electric line
- 37 facilities are, or are to be, located.

38 (b) The utility shall also provide notice of the request by:

- 39 (1) mailing a copy of the notice by United States mail, postage
- 40 prepaid, return receipt requested; or
- 41 (2) personal delivery;

42 to each person against whom the utility may need to commence



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1 eminent domain proceedings under IC 32-11-1, in conjunction with
2 IC 32-11-3, with respect to the electric line facilities.

3 **Sec. 7. (a)** The commission shall hold a public hearing in any
4 proceeding commenced by a utility requesting a certificate under
5 this chapter. A person provided notice under section 6(b) of this
6 chapter shall, upon timely petition to the commission, be granted
7 intervenor party status in the proceeding.

8 (b) Intervenor parties, consistent with the commission's
9 procedural orders, if any, and the commission's rules of practice
10 and procedure, have the right to appear and participate in the
11 proceeding, including the right to:

- 12 (1) present arguments;
- 13 (2) offer the testimony of witnesses;
- 14 (3) cross-examine witnesses; and
- 15 (4) submit motions, briefs, and proposed orders.

16 (c) The commission shall hold at least one (1) additional public
17 hearing in a municipality located in the general vicinity, as
18 determined by the commission, of the location or the proposed
19 location of the electric line facilities for the purpose of receiving the
20 comments of the public concerning the request.

21 **Sec. 8.** In support of its request, the utility shall submit an
22 estimate of the cost and schedule for the construction or upgrading
23 of the applicable electric line facilities in such detail as the
24 commission may require.

25 **Sec. 9.** The commission shall determine, based upon the evidence
26 admitted at the public hearings held under section 7 of this
27 chapter, whether the public convenience and necessity requires, or
28 will require, the construction or upgrading of the electric line
29 facilities. The utility may establish the requisite public need for the
30 electric line facilities by demonstrating, to the satisfaction of the
31 commission, that the facilities are needed, or will be needed, for the
32 transmission or distribution, or both, of electricity for ultimate
33 consumption within or outside Indiana, or both. To determine
34 whether the utility has sufficiently established the requisite public
35 need for the facilities, the commission shall consider whether the
36 construction or upgrading of the electric line facilities is consistent
37 with the then current electric line facilities expansion plan of any
38 applicable independent transmission system operator as referred
39 to in IC 8-1.8-5-11.

40 **Sec. 10.** A certificate shall be issued under this chapter if the
41 commission:

- 42 (1) approves the estimated cost and schedule for the

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1 construction or upgrading of the electric line facilities, or only
 2 to the extent that the commission approves the estimated cost
 3 and schedule;

4 (2) finds that the construction or upgrading will be consistent
 5 with the then current electric line facilities expansion plan of
 6 any applicable independent transmission system operator;

7 (3) finds that the public convenience and necessity requires, or
 8 will require, the construction or upgrading; and

9 (4) finds that the utility's decision regarding the location of
 10 the electric line facilities, including the route, the width of the
 11 route and the site of any substation, is not arbitrary,
 12 capricious, illegal or fraudulent.

13 **Sec. 11. (a) The commission shall issue an order either denying
 14 or granting a certificate under this chapter within two hundred
 15 seventy (270) days after the utility requests the certificate.**

16 **(b) If the commission has not, as of the deadline date determined
 17 under subsection (a), issued an order either denying or granting
 18 the certificate, the commission shall, within five (5) days after that
 19 date, submit to both the governor and the regulatory flexibility
 20 committee, established under IC 8-1-2.5-9 and IC 8-1-2.6-4, a
 21 written explanation of the reasons for the delay and the date when
 22 the commission expects to issue an order.**

23 **(c) Notwithstanding any other law or rule, if the commission
 24 fails to issue an order when required by this section, either denying
 25 or granting the certificate, the requesting utility may bring an
 26 action for mandate under IC 34-1-58 to compel the commission to
 27 issue the respective order. However, notwithstanding IC 34-1-58 or
 28 any other law or rule, the action for mandate must be filed in the
 29 court of appeals.**

30 **Sec. 12. (a) Except as provided in section 16 of this chapter,
 31 before a utility may commence any eminent domain proceedings
 32 under IC 32-11-1, in conjunction with IC 32-11-3, with respect to
 33 the construction of major electric line facilities constituting an
 34 integrated line of at least ten (10) miles in length within Indiana,
 35 either:**

36 **(1) the utility must have received from the commission an
 37 order granting the utility a certificate under this chapter for
 38 the construction of the facilities; or**

39 **(2) the commission must have failed to issue an order granting
 40 or denying the certificate by the deadline date determined
 41 under section 11 of this chapter.**

42 **(b) An order issued by the commission granting a utility a**

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1 certificate under this chapter or a statement in a supporting
 2 affidavit attached to the utility's complaint that the commission has
 3 failed to issue its order by the deadline date determined under
 4 section 11 of this chapter may be relied upon by the utility for the
 5 commencement of eminent domain proceedings under IC 32-11-1,
 6 in conjunction with IC 32-11-3, regarding the electric line facilities
 7 for which a certificate was granted or requested unless and until:

8 (1) the order granting the certificate is reversed upon appeal
 9 without any further appeal, reconsideration, or rehearing of
 10 the reversal; or

11 (2) the commission issues an order denying the certificate.

12 **Sec. 13. (a)** As between the commission and local zoning, land
 13 use, and building agencies, boards, or authorities, or similar local
 14 agencies, boards, or authorities, the commission has plenary
 15 authority over utilities with respect to electric line facilities,
 16 including the siting, routing, design, configuration, construction,
 17 location, and use of electric line facilities proposed to be
 18 constructed or upgraded by a utility.

19 (b) Any issues related to the siting, routing, design,
 20 configuration, construction, location, use, or any combination
 21 thereof, of electric line facilities for which a certificate is requested
 22 by the utility under this chapter shall be resolved by the
 23 commission in proceedings under this chapter.

24 (c) Any issues related to the siting, routing, design,
 25 configuration, construction, location, or use, or any combination
 26 thereof, of electric line facilities not included within the scope of
 27 subsection (b) shall be resolved by the commission in proceedings
 28 under IC 8-1-2-54.

29 (d) A local zoning, land use, or building rule, regulation, law, or
 30 ordinance, or other similar local rule, regulation, law, or ordinance
 31 is void if it purports to regulate the commission or the utility with
 32 respect to the utility's electric line facilities, regardless of the
 33 nature of the proceeding.

34 **Sec. 14. (a)** A certified copy of the order issued by the
 35 commission granting a certificate under this chapter to a utility
 36 constitutes, for purposes of any eminent domain proceedings
 37 commenced by the utility under IC 32-11-1, in conjunction with
 38 IC 32-11-3, with respect to the facilities, conclusive determinations:

39 (1) of the public need for the electric line facilities;

40 (2) that the location of the electric line facilities, including the
 41 route, the width of the route, and the site of any substation, is
 42 not arbitrary, capricious, illegal, or fraudulent;



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1 (3) of a reasonable and necessary use of the electric line
2 facilities by the utility; and

3 (4) that the construction or upgrading of the electric line
4 facilities is needed for a proper public purpose.

5 (b) These conclusive determinations preclude any party under
6 IC 32-11-1-5 from raising, at any eminent domain proceedings
7 commenced by the utility with respect to the electric line facilities,
8 any objection based upon, or relating to, the need, location, route
9 selection, or use, or any combination thereof, of the electric line
10 facilities.

11 Sec. 15. (a) If the commission has not issued its order by the
12 deadline date determined under section 11 of this chapter, the
13 requesting utility is entitled to rebuttable presumptions:

14 (1) that there is a public need for the electric line facilities;

15 (2) that the location of the electric line facilities, including the
16 route, the width of the route, and the site of any substation, is
17 not arbitrary, capricious, illegal, or fraudulent;

18 (3) that the use of the electric line facilities by the utility is
19 reasonable and necessary; and

20 (4) that the construction or upgrading of the electric line
21 facilities is needed for a proper public purpose.

22 (b) These presumptions operate to shift the burden to any
23 applicable party under IC 32-11-1-5 of going forward with
24 substantial evidence sufficient to rebut the presumptions in any
25 eminent domain proceedings commenced by the utility with respect
26 to the electric line facilities. The utility may assert the rebuttable
27 presumptions in any eminent domain proceedings by submitting a
28 statement in a supporting affidavit that the commission has failed
29 to issue its order by the deadline date determined under section 11
30 of this chapter.

31 Sec. 16. If a certificate, siting, or preapproval statute or
32 regulation is enacted by the United States Congress or adopted by
33 a federal agency which provides for preemptive or nonpreemptive
34 federal certificate, siting, or preapproval jurisdiction over a
35 utility's construction or upgrading of electric line facilities that
36 would otherwise be covered by this chapter, then:

37 (1) if the statute or regulation preempts the jurisdiction of the
38 commission under this chapter, the determinations made
39 under the federal law or regulation with respect to the utility
40 and the electric line facilities constitute conclusive
41 determinations for purposes of any eminent domain
42 proceedings commenced by the utility under Indiana law with

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1 respect to the electric line facilities to the same extent as
 2 would similar determinations made by the commission under
 3 this chapter; and

4 (2) if the statute or regulation does not preempt the
 5 jurisdiction of the commission under this chapter, the utility
 6 may elect whether to use this chapter or the federal statute or
 7 regulation with respect to the electric line facilities and the
 8 determinations made by the commission or the federal agency
 9 or court, whichever is applicable, with respect to the utility
 10 and the electric line facilities constitute conclusive
 11 determinations for purposes of any eminent domain
 12 proceedings commenced by the utility under Indiana law with
 13 respect to the electric line facilities to the same extent as
 14 would similar determinations made by the commission under
 15 this chapter in the absence of the federal statute or regulation.

16 **Sec. 17. (a)** The procedures set forth in IC 8-1-2-62 through
 17 IC 8-1-2-67, together with the commission's rules of practice and
 18 procedure, apply to a public hearing held under this chapter.

19 (b) The commission may adopt rules under IC 4-22-2 to
 20 implement this chapter, but the absence of such rules does not
 21 affect the authority of the commission under this chapter.

22 **Sec. 18.** A person or an entity that is adversely affected by a
 23 final decision, ruling, or order of the commission under this
 24 chapter may appeal the decision, ruling, or order under IC 8-1-3,
 25 under the same terms and conditions that govern appeals from
 26 final decisions, rulings, or orders of the commission under IC 8-1-2.

27 **Sec. 19.** A utility that violates a final commission order issued
 28 under this chapter commits a Class B infraction.

29 SECTION 23. IC 8-1-8-4 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 1999]: **Sec. 4.** This chapter does not apply to the production or
 32 sale of electricity by a utility company, an electricity supply
 33 company, or an electricity generating company under IC 8-1-13.1,
 34 IC 8-1.5-6, or IC 8-1.8.

35 SECTION 24. IC 8-1-8.5-9 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 1999]: **Sec. 9.** This chapter does not apply to the production or
 38 sale of electricity by a utility company, an electricity supply
 39 company, or an electricity generating company under IC 8-1-13.1,
 40 IC 8-1.5-6, or IC 8-1.8.

41 SECTION 25. IC 8-1-8.7-11 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



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1 1, 1999]: **Sec. 11. This chapter does not apply to the production or**
 2 **sale of electricity by a utility company, an electricity supply**
 3 **company, or an electricity generating company under IC 8-1-13.1,**
 4 **IC 8-1.5-6, or IC 8-1.8.**

5 SECTION 26. IC 8-1-9-6 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 1999]: **Sec. 6. This chapter does not apply to the production or**
 8 **sale of electricity by a utility company, an electricity supply**
 9 **company, or an electricity generating company under IC 8-1-13.1,**
 10 **IC 8-1.5-6, or IC 8-1.8.**

11 SECTION 27. IC 8-1-11.1-26 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 1998]: **Sec. 26. This chapter does not**
 14 **authorize the creation of a municipally owned utility, a joint**
 15 **agency, a utility company, an electricity supply company, or an**
 16 **electricity generating company under IC 8-1-13.1, IC 8-1.5-6, or**
 17 **IC 8-1.8 for the production or sale of electricity except to the extent**
 18 **that such creation is authorized by IC 8-1-13.1, IC 8-1.5-6, or**
 19 **IC 8-1.8.**

20 SECTION 28. IC 8-1-13-44 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 1998]: **Sec. 44. (a) After September 30, 1999, the provisions of**
 23 **section 17 of this chapter requiring a corporation to furnish**
 24 **reasonably adequate service and facilities do not apply to the**
 25 **extent that the service and facilities are provided by a utility**
 26 **company, an electricity supply company, or an electricity**
 27 **generating company under IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.**

28 **(b) After June 30, 1999, section 30 of this chapter does not apply**
 29 **to the production or sale of electricity by a utility company under**
 30 **IC 8-1-13.1, IC 8-1.5-6, or IC 8-1.8.**

31 SECTION 29. IC 8-1-13.1 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 1998]:

34 **Chapter 13.1. Rural Electric Membership Corporations:**
 35 **Transition from Regulation to Competition**

36 **Sec. 1. During the transition from regulation to competition for**
 37 **the supply of electricity, a local district corporation shall be**
 38 **regulated as a utility company under IC 8-1.8, except to the extent**
 39 **that this chapter expressly provides otherwise.**

40 **Sec. 2. Subject to IC 8-1.8-3-3, from July 1, 1998, through June**
 41 **30, 2004, the rates, charges, terms, and conditions of retail electric**
 42 **service for retail electric customers located in the retail electric**



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1 assigned service area of a local district corporation shall be
2 determined under this chapter.

3 **Sec. 3. After June 30, 2004, this chapter does not apply to the**
4 **production or sale of electricity by a municipally owned utility,**
5 **joint agency, utility company, electricity supply company, or**
6 **electricity generating company.**

7 SECTION 30. IC 8-1-27-24 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 1999]: **Sec. 24. This chapter does not apply to the production or**
10 **sale of electricity by a utility company, an electricity supply**
11 **company, or an electricity generating company under IC 8-1-13.1,**
12 **IC 8-1.5-6, or IC 8-1.8.**

13 SECTION 31. IC 8-1.5-6 IS ADDED TO THE INDIANA CODE
14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 1998]:

16 **Chapter 6. Electricity Suppliers: Transition from Regulation to**
17 **Competition**

18 **Sec. 1. During the transition from regulation to competition for**
19 **the supply of electricity, a municipally owned utility shall be**
20 **regulated as a utility company under IC 8-1.8, except to the extent**
21 **that this chapter expressly provides otherwise.**

22 **Sec. 2. Subject to IC 8-1.8-3-2, from July 1, 1998, through June**
23 **30, 2004, the rates, charges, terms, and conditions of retail electric**
24 **service for retail electric customers located in the retail electric**
25 **assigned service area of a municipally owned utility shall be**
26 **determined under this chapter.**

27 **Sec. 3. After June 30, 2004, this article does not apply to the**
28 **production or sale of electricity by a municipally owned utility,**
29 **joint agency, utility company, electricity supply company, or**
30 **electricity generating company.**

31 SECTION 32. IC 12-7-2-1.5 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE OCTOBER 1, 1999]: **Sec. 1.5.**
33 **"Administrator" means the following:**

34 **(1) For purposes of IC 12-14-11.1 and IC 12-14-11.2, the**
35 **director of the division of family and children.**

36 **(2) For purposes of IC 12-24-17, has the meaning set forth in**
37 **IC 12-24-17-1.**

38 SECTION 33. IC 12-7-2-34, AS AMENDED BY P.L.2-1997,
39 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 OCTOBER 1, 1999]: **Sec. 34. "Commission" means the following:**

41 **(1) For purposes of IC 12-10-2, the meaning set forth in**
42 **IC 12-10-2-1.**

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- 1 (2) For purposes of IC 12-11-7, the meaning set forth in
 2 IC 12-11-7-1.
- 3 (3) For purposes of IC 12-12-2, the meaning set forth in
 4 IC 12-12-2-1.
- 5 (4) For purposes of IC 12-13-14, the meaning set forth in
 6 IC 12-13-14-1.
- 7 **(5) For purposes of IC 12-14-11.2, the meaning set forth in**
 8 **IC 12-14-11.2-3.**
- 9 ~~(5)~~ (6) For purposes of IC 12-14-12, the meaning set forth in
 10 IC 12-14-12-1.
- 11 ~~(6)~~ (7) For purposes of IC 12-28-1, the meaning set forth in
 12 IC 12-28-1-3.
- 13 SECTION 34. IC 12-7-2-52.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 52.5. "Customer", for**
 16 **purposes of IC 12-14-11.1, has the meaning set forth in**
 17 **IC 12-14-11.1-3.**
- 18 SECTION 35. IC 12-7-2-73.9 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 73.9. "Dwelling", for**
 21 **purposes of IC 12-14-11.1 and IC 12-14-11.2, means an individual**
 22 **residence, including a mobile home or trailer, or a room or**
 23 **combination of rooms, with facilities for living for a single**
 24 **household and constituting the primary residence of the household,**
 25 **as determined by the administrator.**
- 26 SECTION 36. IC 12-7-2-74.7 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 74.7. "Electric distribution**
 29 **service", for purposes of IC 12-14-11.1, has the meaning set forth**
 30 **in IC 12-14-11.1-4.**
- 31 SECTION 37. IC 12-7-2-74.9 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 74.9. "Eligible customer",**
 34 **for purposes of IC 12-14-11.1, has the meaning set forth in**
 35 **IC 12-14-11.1-5.**
- 36 SECTION 38. IC 12-7-2-91, AS AMENDED BY P.L.91-1996,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 OCTOBER 1, 1999]: Sec. 91. "Fund" means the following:
- 39 (1) For purposes of IC 12-12-1-9, the fund described in
 40 IC 12-12-1-9.
- 41 (2) For purposes of IC 12-13-8, the meaning set forth in
 42 IC 12-13-8-1.

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- 1 **(3) For purposes of IC 12-14-11.1 and IC 12-14-11.2, the fund**
 2 **established by IC 12-14-11.1-22.**
 3 ~~(3)~~ **(4)** For purposes of IC 12-15-20, the meaning set forth in
 4 IC 12-15-20-1.
 5 ~~(4)~~ **(5)** For purposes of IC 12-17-12, the meaning set forth in
 6 IC 12-17-12-4.
 7 ~~(5)~~ **(6)** For purposes of IC 12-18-4, the meaning set forth in
 8 IC 12-18-4-1.
 9 ~~(6)~~ **(7)** For purposes of IC 12-18-5, the meaning set forth in
 10 IC 12-18-5-1.
 11 ~~(7)~~ **(8)** For purposes of IC 12-19-3, the meaning set forth in
 12 IC 12-19-3-1.
 13 ~~(8)~~ **(9)** For purposes of IC 12-19-4, the meaning set forth in
 14 IC 12-19-4-1.
 15 ~~(9)~~ **(10)** For purposes of IC 12-19-7, the meaning set forth in
 16 IC 12-19-7-2.
 17 ~~(10)~~ **(11)** For purposes of IC 12-23-2, the meaning set forth in
 18 IC 12-23-2-1.
 19 ~~(11)~~ **(12)** For purposes of IC 12-24-6, the meaning set forth in
 20 IC 12-24-6-1.
 21 ~~(12)~~ **(13)** For purposes of IC 12-24-14, the meaning set forth in
 22 IC 12-24-14-1.
 23 ~~(13)~~ **(14)** For purposes of IC 12-30-7, the meaning set forth in
 24 IC 12-30-7-3.
- 25 SECTION 39. IC 12-7-2-107.5 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 27 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 107.5. "Home electricity",**
 28 **for purposes of IC 12-14-11.1 and IC 12-14-11.2, means electricity**
 29 **used as the principal source of heating or cooling for a dwelling.**
- 30 SECTION 40. IC 12-7-2-107.6 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 32 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 107.6. "Home electricity**
 33 **conservation measure", for purposes of IC 12-14-11.1, has the**
 34 **meaning set forth in IC 12-14-11.1-6.**
- 35 SECTION 41. IC 12-7-2-110.5, AS ADDED BY P.L.51-1996,
 36 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 OCTOBER 1, 1999]: **Sec. 110.5. "Household" means the following:**
 38 **(1) For purposes of IC 12-14-11.1 and IC 12-14-11.2, those**
 39 **individuals living together on a full-time basis in the same**
 40 **dwelling, as determined by the administrator.**
 41 **(2) For purposes of IC 12-20, means any of the following:**
 42 ~~(1)~~ **(A) An individual living alone.**



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- 1 (2) **(B)** A family related by blood.
 2 (3) **(C)** A group of individuals living together at one (1)
 3 residence as a domestic unit with mutual economic
 4 dependency.

5 SECTION 42. IC 12-14-11-0.1 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE OCTOBER 1, 1999]: **Sec. 0.1. This chapter does not**
 8 **apply to a utility company operating under IC 8-1-13.1, IC 8-1.5-6,**
 9 **or IC 8-1.8.**

10 SECTION 43. IC 12-14-11.1 IS ADDED TO THE INDIANA
 11 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 12 [EFFECTIVE OCTOBER 1, 1999]:

13 **Chapter 11.1. Low Income Residential Customer Electric**
 14 **Assistance Fund**

15 **Sec. 1. It is declared that to ensure continued access to a**
 16 **subsistence level of electric service for heating purposes by low**
 17 **income residential customers within Indiana, the public interest**
 18 **requires the creation of a low income residential customer electric**
 19 **assistance fund to provide necessary electric assistance and**
 20 **efficiency funds for eligible low income residential customers.**

21 **Sec. 2. The definitions in IC 8-1.8-2 apply throughout this**
 22 **chapter.**

23 **Sec. 3. As used in this chapter, "customer" refers to an**
 24 **individual receiving electric distribution service for the individual's**
 25 **dwelling.**

26 **Sec. 4. As used in this chapter, "electric distribution service"**
 27 **means the service provided by a utility company directly associated**
 28 **with the distribution of electricity, including all services associated**
 29 **with constructing, owning, operating, and maintaining an electric**
 30 **distribution system.**

31 **Sec. 5. As used in this chapter, "eligible customer" means a**
 32 **customer who is receiving electric distribution service from a**
 33 **utility company and who is determined by the administrator to**
 34 **satisfy the eligibility criteria.**

35 **Sec. 6. As used in this chapter, "home electricity conservation**
 36 **measure" means a device, technology, or service that is installed or**
 37 **used at the dwelling of an eligible customer to reduce the amount**
 38 **of home electricity consumed by the customer for heating and**
 39 **cooling purposes at the dwelling, as determined by the**
 40 **administrator.**

41 **Sec. 7. The administrator shall do the following under this**
 42 **chapter:**



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- (1) Administer the fund for the purposes of:**
 - (A) defraying the home electricity costs for an eligible customer to provide a subsistence level of electric service for heating purposes for the dwelling of the customer; and**
 - (B) providing assistance to an eligible customer for home electricity conservation measures for the dwelling of the customer to provide a subsistence level of electric service for heating purposes for the dwelling of the customer.**
- (2) Receive and administer any money that may be made available under IC 12-14-11.2 for the purposes specified in subdivision (1).**
- (3) Determine and administer the criteria for determining eligibility for assistance under this chapter.**
- (4) Determine and administer the criteria for making disbursements under this chapter for benefits to eligible customers.**
- (5) Determine the amount of assistance under this chapter for an eligible customer for any period by applying the criteria determined under subdivisions (3) and (4).**
- (6) Determine the allocation of disbursements under this chapter between defraying home electricity costs and providing assistance with home electricity conservation measures by applying the criteria determined under subdivisions (3) and (4).**

Sec. 8. Except as provided by federal law, if an individual receives a state or federal higher education award that is paid directly to an approved institution of higher learning (as defined in IC 20-12-21-3) for that individual's benefit:

- (1) the individual is not required to report the award as income or as a resource of the individual when applying for assistance under this chapter; and**
- (2) the award may not be considered as income or a resource of the individual in determining initial or continuing eligibility for assistance under this chapter.**

Sec. 9. The administrator may require a utility company or an agency of state or local government, or may contract with another public or private agency, to do the following:

- (1) Disseminate information about the program.**
- (2) Receive or aid in the preparation of applications for assistance.**
- (3) Assist in determining eligibility for assistance.**

Sec. 10. An application for assistance under this chapter must

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1 be made on forms provided by the administrator and in
2 accordance with procedures established by the administrator.

3 **Sec. 11. The administrator shall establish procedures for**
4 **providing assistance to eligible customers. Procedures may include**
5 **the following:**

6 (1) Direct payments by cash or check to eligible customers.

7 (2) Direct vendor payments.

8 (3) Lines of credit to payees other than eligible customers.

9 (4) The use of coupons and vouchers redeemable by the state.

10 **Sec. 12. The administrator may require the following:**

11 (1) Payees other than eligible customers to accept vendor
12 payments, lines of credit, or coupons and vouchers as full or
13 partial payment for the cost of home electricity consumed by
14 eligible customers.

15 (2) An operator of residential housing units to accept vendor
16 payments or coupons and vouchers as full or partial payment
17 of rent by eligible customers making undesignated payments
18 for home electricity costs in the form of rent payments.

19 **Sec. 13. The administrator shall establish procedures for the**
20 **conduct of hearings and appeals upon request from applicants who**
21 **have been denied assistance.**

22 **Sec. 14. A recipient may not transfer or assign assistance under**
23 **this chapter except as allowed by the administrator.**

24 **Sec. 15. The administrator may recover from a recipient the**
25 **amount of assistance that the recipient is found ineligible to**
26 **receive.**

27 **Sec. 16. If a recipient obtained excessive assistance fraudulently,**
28 **the recipient shall pay a penalty equal to twenty percent (20%) of**
29 **the excessive assistance.**

30 **Sec. 17. A claim under this chapter may be recovered from the**
31 **recipient or the recipient's estate by civil action and is a preferred**
32 **claim against the estate of a recipient under IC 29-1-14-9(a)(6).**

33 **Sec. 18. A person that is a utility company, landlord, or building**
34 **operator and uses the name of an applicant or a recipient or**
35 **information contained in applications made under this chapter for**
36 **any purpose other than as specified by the administrator commits**
37 **a Class B misdemeanor.**

38 **Sec. 19. The administrator may take actions necessary to**
39 **implement this chapter, including the establishment of conditions**
40 **regulating service termination to eligible customers that the**
41 **administrator determines to be appropriate and necessary to**
42 **assure the availability of federal financial assistance.**



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1 **Sec. 20.** A person is not eligible for benefits under both this
 2 chapter and IC 12-14-11 at the same time. The total amount of
 3 benefits to which a person is eligible under this chapter and
 4 IC 12-14-11 for a particular period is the greater of the following:

5 (1) The total amount of benefits the person would have
 6 received under this chapter for the period if the person had
 7 been eligible for benefits under only this chapter during the
 8 period.

9 (2) The total amount of benefits the person would have
 10 received under IC 12-14-11 for the period if the person had
 11 been eligible for benefits under only IC 12-14-11 during the
 12 period.

13 **Sec. 21.** The division of family and children may adopt rules
 14 under IC 4-22-2 to implement this chapter, but the absence of these
 15 rules does not affect the authority of the administrator under this
 16 chapter.

17 **Sec. 22.** (a) The low income residential customer electric
 18 assistance fund is established for the purposes stated in section 7(1)
 19 of this chapter. The fund shall be administered by the division.

20 (b) The expenses of administering the fund shall be paid from
 21 money in the fund.

22 (c) The treasurer of state shall invest the money in the fund not
 23 currently needed to meet the obligations of the fund in the same
 24 manner as other public money may be invested.

25 (d) Money in the fund at the end of a state fiscal year does not
 26 revert to the state general fund.

27 (e) Money in the fund is appropriated for the purposes of this
 28 chapter.

29 SECTION 44. IC 12-14-11.2 IS ADDED TO THE INDIANA
 30 CODE AS NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 OCTOBER 1, 1999]:

32 **Chapter 11.2. Funding for Low Income Residential Customer**
 33 **Electric Assistance Fund**

34 **Sec. 1.** It is declared that to ensure continued access to a
 35 subsistence level of electric service for heating purposes by eligible
 36 low income residential customers within Indiana, the public
 37 interest requires the establishment of a sustaining funding
 38 mechanism to provide the necessary funds to be used for this
 39 purpose.

40 **Sec. 2.** The definitions in IC 8-1.8-2 apply throughout this
 41 chapter.

42 **Sec. 3.** As used in this chapter, "commission" means the Indiana

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1 utility regulatory commission.

2 **Sec. 4.** The annual funding level for the fund equals the amount
3 that is equivalent to twelve million dollars (\$12,000,000) as
4 adjusted by the administrator to compensate for any inflation or
5 deflation in the average price of home electricity consumed within
6 Indiana from the baseline of calendar year 1985 through the most
7 recent twelve (12) consecutive month period available as of the
8 calculation of the adjustment. For purposes of making this
9 adjustment, the administrator shall use the information provided
10 to the administrator by the commission with respect to the average
11 price of home electricity consumed in the baseline year and in the
12 most recent twelve (12) consecutive month period available to the
13 commission.

14 **Sec. 5.** The money to provide the annual funding level for the
15 fund for a particular period shall be composed of that portion of
16 any money made available to the state for energy and conservation
17 assistance from the federal government for the particular period
18 for providing electricity benefits plus any revenues collected by the
19 state for the particular period from the imposition of the electricity
20 surcharge under section 6 of this chapter.

21 **Sec. 6. (a)** The commission shall annually determine the amount
22 of any electricity surcharge to be imposed under this chapter on all
23 sales of electricity within Indiana to retail electric customers.

24 **(b)** Annually, after notice and hearing, the commission shall
25 determine the amount of an electricity surcharge to be imposed for
26 the upcoming period. For purposes of this subsection, any report
27 or analysis prepared by the commission staff at the request of the
28 commission concerning the electricity surcharge may be admitted
29 into evidence at the hearing, subject to cross-examination by any
30 party of the person who performed or directed its preparation.

31 **(c)** The amount of total revenues to be produced from the
32 electricity surcharge for a period must equal the difference
33 between the amount determined under section 4 of this chapter and
34 the amount available under section 5 of this chapter for the period.
35 In making this determination, the commission may rely upon
36 estimated data, as determined by the commission, with an
37 appropriate reconciliation mechanism to correct for any deviation
38 between the estimated data and the actual data. Any surplus in the
39 fund that remains at the end of a period shall be carried forward
40 to the next period and credited against the amount that would
41 otherwise be determined to be collected for that period from the
42 electricity surcharge.



1 (d) The electricity surcharge for a period shall be assessed by
2 the commission on a nonbypassable, competitively neutral basis,
3 and shall be set on a kilowatt hour basis.

4 Sec. 7. (a) The state's dedicated oil overcharge funds may be
5 used by the administrator to provide a temporary source of
6 funding for benefits under the fund in the event of:

7 (1) delays in the receipt by the state of any appropriated
8 federal money to be applied under this chapter as a source of
9 funds for the fund; or

10 (2) an overestimation of the revenues to be collected from any
11 electricity surcharge imposed under this chapter.

12 (b) The state's dedicated oil overcharge funds shall be
13 appropriately replenished upon:

14 (1) receipt by the state of the federal money; or

15 (2) receipt by the state of additional surcharge revenues under
16 the reconciliation mechanism to correct for the under
17 collection of electricity surcharge revenues.

18 Sec. 8. The commission and the administrator may each adopt
19 rules under IC 4-22-2 to implement this chapter, but the absence
20 of such rules does not affect their collective or individual authority
21 under this chapter.

22 SECTION 45. [EFFECTIVE MAY 1, 1998] (a) To encourage the
23 development and functioning of a competitive market for the
24 production and marketing of electricity within Indiana to retail
25 electric customers (as described in IC 8-1.8, as added by this act),
26 it is necessary that the provisions of the various tax laws, rules, and
27 procedures of Indiana that are, or may become, applicable to the
28 production, transmission, distribution, marketing, or sale of
29 electricity within Indiana to retail electric customers should
30 neither competitively benefit nor competitively disadvantage any
31 person providing those services or making those sales on the basis
32 of the bundled or unbundled nature of the electricity transaction,
33 the organizational structure or form of the person, the place of
34 business of the person, or the functional nature of the property
35 devoted by the person to those services or sales.

36 (b) The department of state revenue and the state board of tax
37 commissioners shall jointly study the various tax laws, rules, and
38 procedures of Indiana that are, or may become, applicable to the
39 production, transmission, distribution, marketing, or sale of
40 electricity within Indiana to retail electric customers and prepare
41 a report concerning the study and making recommendations for
42 any necessary changes in those laws, rules, and procedures in order



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1 to further the policy specified in subsection (a) and to encourage
 2 the location of electricity production facilities within Indiana. As
 3 part of the study, the department of state revenue and state board
 4 of tax commissioners shall request written comments from the
 5 public. The department of state revenue and state board of tax
 6 commissioners shall, before October 1, 1998, submit their report
 7 to the regulatory flexibility committee established under
 8 IC 8-1-2.5-9 and IC 8-1-2.6-4.

9 (c) As part of the study, the department of state revenue and the
 10 state board of tax commissioners shall consider the projected
 11 impact upon the tax revenues of the state as a result of the
 12 restructuring of utility companies (as required by this act). The
 13 report prepared as a result of the study must include
 14 recommendations for any necessary changes in the various tax
 15 laws, rules, and procedures of Indiana to offset any projected
 16 reduction in revenues as result of the restructuring of utility
 17 companies.

18 (d) This SECTION expires December 31, 1998.

19 SECTION 46. [EFFECTIVE MAY 1, 1998] (a) The Indiana utility
 20 regulatory commission shall study the requirements of this act that
 21 apply to the commission and other state agencies and the resources
 22 that they will need to perform their responsibilities under this act
 23 in a timely and adequate manner. The commission shall prepare a
 24 report concerning the study and making recommendations
 25 concerning any additional resources that may be needed.

26 (b) The Indiana utility regulatory commission shall study the
 27 Indiana Code provisions that may be affected by this act and
 28 prepare a report concerning the study and making
 29 recommendations concerning any additional statutory
 30 amendments that may be needed to implement the policies set forth
 31 in IC 8-1.8-1, as added by this act.

32 (c) The commission shall, before October 1, 1998, submit the
 33 reports required by this SECTION to the regulatory flexibility
 34 committee established under IC 8-1-2.5-9 and IC 8-1-2.6-4.

35 (d) This SECTION expires December 31, 1998.

36 SECTION 47. [EFFECTIVE MAY 1, 1998] (a) Not later than
 37 November 1, 1998, the Indiana utility regulatory commission shall
 38 report to the regulatory flexibility committee established under
 39 IC 8-1-2.5-9 and IC 8-1-2.6-4 on the commission's proposed
 40 program and budget for educating retail electric customers during
 41 the transition period, as required by IC 8-1.8-3-5 (as added by this
 42 act).



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1 **(b) This SECTION expires December 31, 1998.**
2 SECTION 48. [EFFECTIVE MAY 1, 1998] **The provisions of this**
3 **act are severable in the manner provided by IC 1-1-1-8(b).**
4 SECTION 49. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill 431, has had the same under consideration and begs leave to report the same back to the Senate WITHOUT RECOMMENDATION.

(Reference is made to Senate Bill 431 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 6, Nays 2.

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