

SENATE BILL No. 648

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.1-2; IC 6-2.5; IC 8-1.8.

Synopsis: Electric utility restructuring. Provides for a choice of an electricity supply company by retail electricity customers after December 31, 2000. Provides for capped electricity rates and charges for retail customers from July 1, 1999, through December 31, 2005, at the levels of the rates and charges in effect on June 30, 1999. Requires an electric utility to file a restructuring plan with the Indiana utility regulatory commission before October 1, 1999. Requires the commission to approve, reject, or modify the plan before October 1, 2000. Provides that a utility's formula for sharing net stranded costs among customers and shareholders may not result in rates and charges greater than the rates and charges in effect on June 30, 1999. Provides for the separation of an electric utility company's production and
(Continued next page)

Effective: Upon passage; July 1, 1999.

Mills

January 22, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.

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Digest Continued

market functions from its transmission and distribution functions. Requires the commission to adopt a code of conduct for utility companies. Provides other details for implementation of the restructuring. Provides that gross income from producing, transmitting, furnishing, wholesaling, or retailing electrical energy is taxed at a rate of 0.3% rather than 1.2%. Provides that the Indiana sales and use tax is applicable to the sale of electric power by any person.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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SENATE BILL No. 648



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

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

- 1 SECTION 1. IC 6-2.1-2-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. The receipt of gross
- 3 income from the following is subject to the rate of tax prescribed in
- 4 section 3(a) of this chapter:
- 5 (1) Wholesale sales.
- 6 (2) Display advertising, including outdoor painted and poster
- 7 display advertising and radio and television media advertising,
- 8 but not including any sale or rental of tangible property or any
- 9 personal professional service rendered in connection with such
- 10 advertising.
- 11 (3) The business of dry cleaning and laundering, excluding the
- 12 operation of coin operated laundry and dry cleaning equipment.
- 13 (4) Selling at retail.
- 14 (5) The business of softening and conditioning water, including
- 15 the exchange of water softening and conditioning tanks in the



1 ordinary course of business, but not including the preparation of
 2 customer's plumbing and other work incident to installing such
 3 tanks in the first instance.

4 (6) The renting or furnishing for periods of less than thirty (30)
 5 days any rooms, lodgings, or any other accommodations,
 6 including booths, display spaces, and banquet facilities that are
 7 located in a place where rooms, lodgings, or any other
 8 accommodations are regularly furnished for a consideration. ~~and~~

9 (7) The business of commercial printing that results in printed
 10 materials, excluding the business of photocopying.

11 **(8) Producing, transmitting, furnishing, wholesaling, or**
 12 **retailing electrical energy.**

13 SECTION 2. IC 6-2.1-2-5 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The receipt of gross
 15 income from the following is subject to the rate of taxation prescribed
 16 in section 3(b) of this chapter:

17 ~~(1) producing, transmitting, furnishing, wholesaling, or retailing~~
 18 ~~electrical energy;~~

19 ~~(2)~~ (1) Producing, transporting, furnishing, wholesaling, or
 20 retailing artificial gas, natural gas, or a mixture of natural and
 21 artificial gas.

22 ~~(3)~~ (2) Operating a steam or electric railway, streetcar line, motor
 23 vehicle, steam or motorboat, or any other vehicle for the
 24 transportation of freight, express, or passengers for hire.

25 ~~(4)~~ (3) Operating a pipeline for the transportation of any
 26 commodity for hire.

27 ~~(5)~~ (4) Operating a telephone or telegraph line.

28 ~~(6)~~ (5) Operating a water or sewerage system.

29 ~~(7)~~ (6) Operating any other utility which is not described in this
 30 section.

31 ~~(8)~~ (7) Activities described in IC 6-2.1-1-3, IC 6-2.1-1-4,
 32 IC 6-2.1-1-4.5, IC 6-2.1-1-5, IC 6-2.1-1-6, IC 6-2.1-1-7,
 33 IC 6-2.1-1-8, or IC 6-2.1-1-9 that are taxable on a gross earnings
 34 basis.

35 ~~(9)~~ (8) Any activity which is not described in section 4 of this
 36 chapter, including the provision of services of any character, sales
 37 of real estate, rentals (except rentals described in section 4(6) of
 38 this chapter), the performance of contracts, and the investment of
 39 capital.

40 SECTION 3. IC 6-2.5-1-5 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) "Gross retail
 42 income" means the total gross receipts, of any kind or character,



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1 received in a retail transaction, except that part of the gross receipts
2 attributable to:

- 3 (1) the value of any tangible personal property received in a like
4 kind exchange in the retail transaction; or
5 (2) the receipts received in a retail transaction which constitute
6 interest, finance charges, or insurance premiums on either a
7 promissory note or an installment sales contract.

8 **(b) For purposes of this section, "public utility" includes a**
9 **person authorized under Indiana law to furnish electrical energy.**
10 A public utility's or a power subsidiary's gross retail income includes
11 all gross retail income received by the public utility or power
12 subsidiary, including any minimum charge, flat charge, membership
13 fee, or any other form of charge or billing.

14 SECTION 4. IC 6-2.5-4-5 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) As used in this
16 section, a "power subsidiary" means a corporation ~~which that:~~

- 17 (1) is owned or controlled by one (1) or more ~~public utilities~~
18 **persons** that furnish or sell electrical energy, natural or artificial
19 gas, water, steam, or steam heat; and ~~which~~
20 (2) produces power exclusively for the use of those ~~public~~
21 **utilities: persons.**

22 (b) A power subsidiary or a person ~~engaged as a public utility~~ is a
23 retail merchant making a retail transaction when the subsidiary or
24 person furnishes or sells electrical energy, natural or artificial gas,
25 water, steam, or steam heating service to a person for commercial or
26 domestic consumption.

27 (c) Notwithstanding subsection (b), a power subsidiary or a person
28 ~~engaged as a public utility~~ is not a retail merchant making a retail
29 transaction when **any of the following apply:**

- 30 (1) The power subsidiary or person provides, installs, constructs,
31 services, or removes tangible personal property which is used in
32 connection with the furnishing of the services or commodities
33 listed in subsection (b).
34 (2) The power subsidiary or person sells the services or
35 commodities listed in subsection (b) to another ~~public utility~~
36 **person** or power subsidiary described in this section or a person
37 described in section 6 of this chapter. ~~or~~
38 (3) The power subsidiary or person sells the services or
39 commodities listed in subsection (b) to a person for use in
40 manufacturing, mining, production, refining, oil extraction,
41 mineral extraction, irrigation, agriculture, or horticulture.
42 However, this exclusion for sales of the services and commodities



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1 only applies if the services are consumed as an essential and
 2 integral part of an integrated process that produces tangible
 3 personal property and those sales are separately metered for the
 4 excepted uses listed in this subdivision, or if those sales are not
 5 separately metered but are predominately used by the purchaser
 6 for the excepted uses listed in this subdivision.

7 SECTION 5. IC 6-2.5-4-14 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 1999]: **Sec. 14. (a) A person is a retail merchant making a retail
 10 transaction when the person furnishes electrical energy.**

11 **(b) Notwithstanding subsection (a), a person is not a retail
 12 merchant making a retail transaction when the person provides,
 13 installs, constructs, services, or removes tangible personal property
 14 that is used in connection with the furnishing of electrical energy.**

15 SECTION 6. IC 8-1.8 IS ADDED TO THE INDIANA CODE AS A
 16 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
 17 PASSAGE]:

18 **ARTICLE 1.8. CUSTOMER CHOICE OF ELECTRICITY
 19 SUPPLY COMPANIES**

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

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

22 **(1) That the cost, availability, safety, and reliability of
 23 electricity are important factors in the standard of living and
 24 overall well-being of the citizens of Indiana.**

25 **(2) That the availability of safe, reliable, and competitively
 26 priced electricity is essential to the health and general welfare
 27 of the citizens of Indiana, the vitality of the economy of
 28 Indiana, the profitability and competitiveness of the goods
 29 and services produced within Indiana, and the creation of new
 30 jobs and economic growth within Indiana.**

31 **(3) That the reasonable regulation of retail electricity service
 32 within Indiana is a proper and legitimate exercise of the
 33 power of the state.**

34 **(4) That the orderly unbundling, partial deregulation, and
 35 restructuring of the retail electric utility industry within
 36 Indiana are also proper and legitimate exercises of the power
 37 of the state.**

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

40 **(1) That traditional regulation of the prices, facilities, services,
 41 and practices of Indiana retail electric utilities was intended
 42 to serve as a substitute for competition where retail electricity**

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1 customers had no competitive choices reasonably available to
2 them.

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

7 **Sec. 3.** The general assembly declares that this article and
8 IC 8-1-2.5 provide for a just and reasonable transition from
9 regulation to competition for the supply of electricity for retail
10 electricity customers located within Indiana by appropriately
11 balancing the interests of the various stakeholders while retaining
12 regulation over the transmission and distribution of electricity.

13 **Sec. 4.** Based upon all of the legislative findings and declarations
14 of policy set forth in this chapter, together with all of the other
15 provisions of this article and all of the other provisions cited in this
16 chapter, the general assembly makes the following ultimate
17 findings and declarations of policy:

18 (1) That, for all of the reasons expressed in these findings and
19 declarations, the respective rates, charges, terms, and
20 conditions of retail electricity service for all classes of
21 customers of each utility company during the period from
22 July 1, 1999, to December 31, 2005, that result from this
23 article constitute just and reasonable rates, charges, terms,
24 and conditions of retail electricity service for the utility
25 company and result in an appropriate balancing of interests.

26 (2) That, for all the reasons expressed in these findings and
27 declarations, the respective rates, charges, terms, and
28 conditions of retail electricity service for all classes of
29 customers of each utility company during the period from
30 July 1, 1999, to December 31, 2005, that result from this
31 article provide the utility company with sufficient return on
32 its investment.

33 **Sec. 5.** If a utility company is also a gas utility (as defined in
34 IC 8-1-2-87), sewage disposal company (as defined in IC 8-1-2-89),
35 telephone company (as defined in IC 8-1-2-88), or water utility (as
36 defined in IC 8-1-2-61.6), the utility company is not subject to this
37 article with respect to its gas, sewage disposal, telephone, or water
38 services, operations, functions, customers, rates, charges, terms,
39 and conditions.

40 **Sec. 6.** The other provisions of this title shall be construed to
41 give full effect to this article.

42 **Chapter 2. Definitions of General Applicability**



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Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Affiliate" means, with respect to a utility corporation, any of the following:

(1) A corporation or person owning or holding directly or indirectly ten percent (10%) or more of the voting capital stock of the utility corporation.

(2) A corporation or person in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(3) A corporation ten percent (10%) or more of whose voting capital stock is owned by any person or corporation owning ten percent (10%) or more of the voting capital stock of the utility corporation or by any person or corporation in any such chain of successive ownership of ten percent (10%) or more of voting capital stock.

(4) A person who is an officer or director of the utility corporation or of any corporation in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(5) A corporation that has one (1) or more officers or one (1) or more directors in common with the utility corporation.

(6) A corporation or person that the commission determines as a matter of fact, after investigation and hearing, is actually exercising any substantial influence over the policies and actions of the utility corporation even though the influence is not based upon stockholding, stockholders, directors, or officers to the extent specified in this section.

(7) A person or corporation that the commission determines as a matter of fact, after investigation and hearing, is actually exercising substantial influence as described in subdivision (6) over the policies and actions of the utility corporation in conjunction with one (1) or more other corporations or persons with which or whom the person or corporation is related in any of the following ways:

(A) By ownership.

(B) By blood relationship.

(C) By concerted action such that together they are affiliated with the utility corporation within the meaning of this section even though not one (1) of them alone is considered an affiliate under this section.

However, the commission may not consider that a person or

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1 corporation described under this subdivision is an affiliate
2 under this section if the person or corporation has not had
3 transactions or dealings other than the holding of stock and
4 the receipt of dividends on stock with the utility corporation
5 during the preceding two (2) year period.

6 **Sec. 3. "Aggregator"** means a person that is engaged in the
7 business of:

- 8 (1) combining the electricity loads of retail electricity
9 customers (referred to as a "demand-side aggregator"); or
10 (2) combining electricity supply for sale to retail electricity
11 customers (referred to as a "supply-side aggregator").

12 **Sec. 4. "Ancillary services"** means services that are necessary
13 to support the movement of electricity loads while maintaining the
14 reliable operation of an electric transmission and distribution
15 system.

16 **Sec. 5. "Auxiliary services"** means metering, billing, collection,
17 and related information services necessary to record, bill, and
18 collect for retail electricity service.

19 **Sec. 6. "Bundled electric service"** means the traditional
20 provision of production, transmission, distribution, ancillary,
21 auxiliary, and marketing services as a composite retail electricity
22 service, as provided by a utility company before the restructuring
23 of the utility company required by this article.

24 **Sec. 7. "Certified"** means holding a valid certification from the
25 commission under IC 8-1.8-6 to engage in the business of
26 supplying, or arranging for the supply of, electricity directly or
27 indirectly to the public.

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

30 **Sec. 9. "Direct access"** means, with respect to electricity
31 supplied or arranged for supply, the legal and technical ability to
32 use the distribution services and transmission services needed to
33 deliver electricity.

34 **Sec. 10. "Distribution"** means the part of the delivery of
35 electricity subject to regulation by the commission by wire by a
36 utility company from the source of supply or from a point of
37 interconnection to a delivery point for delivery to a retail
38 electricity customer.

39 **Sec. 11. "Electricity"** means electric capacity and electric
40 energy for distribution or transmission by wires. The term does not
41 include electricity transmitted solely for the purpose of
42 transmitting intelligence or information.

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1 **Sec. 12. "Electricity supply company"** means a person that is
 2 engaged in supplying or arranging for the supply of electricity
 3 directly or indirectly to the public. The term includes any person,
 4 other than a demand-side aggregator, who:

5 (1) arranges or supplies electricity directly or indirectly to the
 6 public; and

7 (2) either:

8 (A) owns or contracts plant or equipment for the
 9 production of electricity; or

10 (B) is engaged in arranging for the sale of electricity
 11 regardless of whether the person acquires legal title to the
 12 electricity.

13 **Sec. 13. "Function"** refers to the personnel, plant, equipment,
 14 facilities, systems, materials, supplies, contracts, and other
 15 resources used to provide services.

16 **Sec. 14. "General district corporation"** has the meaning set
 17 forth in IC 8-1-13-23.

18 **Sec. 15. "Incumbent electricity supply company"** means, with
 19 respect to supply of the electricity for a service location of a retail
 20 electricity customer:

21 (1) the utility company in whose retail electric assigned
 22 service area the service location is situated; or

23 (2) an affiliated electricity supply company of the utility
 24 company described in subdivision (1).

25 **Sec. 16. "Joint agency"** has the meaning set forth in
 26 IC 8-1-2.2-2.

27 **Sec. 17. "Law"** includes common law, statute, rule, or
 28 regulation having the force of law.

29 **Sec. 18. "Local district corporation"** has the meaning set forth
 30 in IC 8-1-13-23.

31 **Sec. 19. "Marketing services"** means the electricity related
 32 services that are offered by a utility company or its affiliate, other
 33 than production, transmission, distribution, ancillary services, and
 34 auxiliary services.

35 **Sec. 20. "Municipality"** has the meaning set forth in
 36 IC 8-1-2.2-2.

37 **Sec. 21. "Municipally owned utility"** has the meaning set forth
 38 in IC 8-1-2-1.

39 **Sec. 22. "Net stranded costs"** means the net, as determined by
 40 the commission, of the verifiable difference between the following:

41 (1) The book value on the effective date of this article of all
 42 prudently incurred, used and useful jurisdictional assets and

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1 obligations necessary to furnish electricity acquired or
2 entered into before the effective date of this article.

3 (2) The market values of those assets and obligations.

4 Such assets and obligations shall be limited to production assets,
5 production related regulatory assets, and purchased power
6 contracts.

7 Sec. 23. "Person" means an individual, an association, a firm, a
8 corporation, a partnership, a limited liability company, a
9 governmental entity, a trustee, a representative, a fiduciary, or a
10 receiver.

11 Sec. 24. "Production" means the generation of electricity.

12 Sec. 25. "Regulatory asset" means a cost of a utility company
13 that has been recorded as an asset on the financial statements of
14 the utility company solely because sufficient assurance of the utility
15 company's recovery for the asset has been supplied by regulation,
16 thereby permitting the recording of the asset under the Financial
17 Accounting Standards Board's Statement of Financial Accounting
18 Standards No. 71.

19 Sec. 26. "Retail" means sale or delivery to an ultimate consumer
20 or user. The term does not include sale or delivery for resale.

21 Sec. 27. "Retail electric assigned service area" means the
22 designated geographic area under IC 8-1-2.3 within the boundaries
23 of which a utility company or its successors or assigns is authorized
24 to furnish all retail distribution and transmission services.

25 Sec. 28. "Transmission" means the part of delivery of electricity
26 that is subject to regulation by a federal utility agency or agencies
27 by wire by a utility company from the source of supply, or from a
28 point of interconnection, to a delivery point for subsequent
29 delivery.

30 Sec. 29. "Unbundled electric service" means the provision of
31 retail electricity service as separately priced and separately
32 provided services.

33 Sec. 30. "Utility" and "public utility" have the meaning set forth
34 in IC 8-1-2-1. The terms do not include a joint agency,
35 municipality, municipally owned utility, local district corporation,
36 or general district corporation.

37 Sec. 31. "Utility company" means a utility that has a retail
38 electric assigned service area. Unless the context indicates
39 otherwise, after the restructuring of a utility company under
40 IC 8-1.8-5, the term includes the utility company's affiliated
41 transmission utility and distribution utility, if any, resulting from
42 the restructuring of the utility company.



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1 **Sec. 32. "Wholesale" means sale or delivery to a person for**
 2 **resale or delivery to another person.**

3 **Chapter 3. Customer Right to Choose**

4 **Sec. 1. (a) After December 31, 2000, each retail electricity**
 5 **customer shall have the opportunity and right to purchase**
 6 **electricity from any electricity supply company that the customer**
 7 **chooses or from any electricity supply company selected by a**
 8 **demand-side aggregator chosen by the customer.**

9 **(b) The commission shall adopt rules prescribing the method by**
 10 **which customers and demand-side aggregators choose under this**
 11 **section.**

12 **Sec. 2. (a) After December 31, 2000, the production and the**
 13 **marketing of electricity may not be subject to utility regulation by**
 14 **the state other than as provided in this article.**

15 **(b) Local district corporations and general district corporations**
 16 **are not regulated under this article but are regulated under**
 17 **IC 8-1-13.**

18 **(c) Joint agencies, municipalities, and municipally owned**
 19 **utilities are not regulated under this article but are regulated**
 20 **under IC 8-1-2.2.**

21 **Sec. 3. (a) From January 1, 2001, through December 31, 2005,**
 22 **a utility company shall with respect to production services furnish**
 23 **reasonably adequate service and facilities to retail electricity**
 24 **customers located in the utility company's retail electric assigned**
 25 **service area who are not otherwise furnished by another utility**
 26 **company or electricity supply company.**

27 **(b) After December 31, 2005, a utility company is not obligated**
 28 **under subsection (a) except as provided in this article.**

29 **Sec. 4. (a) Except as otherwise provided in this article, the**
 30 **commission shall regulate under IC 8-1-2 the operation in Indiana**
 31 **of persons who provide distribution or transmission services. A**
 32 **utility company shall connect a retail electricity customer located**
 33 **within the utility company's retail electricity assigned service area**
 34 **to those facilities of the utility company that are used for the**
 35 **distribution or transmission of electricity. A utility shall extend**
 36 **necessary electric line facilities in accordance with rules adopted**
 37 **by the commission.**

38 **(b) To assure reliable transmission and distribution within**
 39 **Indiana for customers who are served by the interconnected**
 40 **electricity transmission system within Indiana, the commission**
 41 **may require a utility company to be a member of an independent**
 42 **transmission system operator organization certified by the Federal**



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1 Energy Regulatory Commission for all or part of the
 2 interconnected electricity transmission system located within
 3 Indiana if the commission finds, after notice and hearing, that such
 4 membership would be in the public interest. The commission may,
 5 after notice and hearing, establish minimum standards and
 6 operation criteria to be met by an independent transmission system
 7 operator organization operating in Indiana.

8 **Sec. 5.** After December 31, 2005, the rates and charges for a
 9 transmission utility or distribution utility offered to each class of
 10 its retail electricity customers must be designed to the maximum
 11 extent practicable to reflect the costs of providing service to each
 12 class.

13 **Chapter 4. Capped Rates for Customers**

14 **Sec. 1. (a)** From July 1, 1999, through December 31, 2005, a
 15 utility company's rates and charges to retail electricity customers
 16 may not be greater than the utility company's rates and charges in
 17 effect on June 30, 1999.

18 (b) IC 8-1-2-42(d) does not apply to a utility company's retail
 19 electricity service after June 30, 1999. The commission shall
 20 determine with respect to each utility company the amount and
 21 timing of any refunds or undercollections associated with the
 22 reconciliation under IC 8-1-2-42(d).

23 **Sec. 2.** From July 1, 1999, through December 31, 2005, the
 24 terms, conditions, and rate design of each utility company may not
 25 be changed, except as otherwise provided in this article. Subject to
 26 the approval of the commission, a utility company may offer new
 27 retail electricity tariffs under which retail electricity customers
 28 may elect to receive electricity.

29 **Chapter 5. Restructuring Plans by Utility Companies**

30 **Sec. 1. (a)** Before October 1, 1999, a utility company shall file
 31 with the commission the utility company's restructuring plan to
 32 implement customer choice as provided for in this article. The
 33 utility company shall publish a notice of the filing of the
 34 restructuring plan in a newspaper of general circulation published
 35 in any county in which the utility company provides service.

36 (b) A restructuring plan filed by a utility company must include
 37 the following:

38 (1) Proposed separation of the rates and charges for bundled
 39 electric service into rates and charges for production,
 40 transmission, distribution, ancillary, auxiliary, and marketing
 41 services.

42 (2) A specification of each auxiliary and ancillary service,



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1 including billing and metering, and a designation with respect
2 to each specification as to whether:

3 (A) retail electricity customers in the utility company's
4 retail electric assigned service area are required to
5 purchase the service; and

6 (B) the utility company will be the exclusive provider of the
7 service.

8 (3) Proposed nondiscriminatory direct access transmission
9 and distribution tariffs universally applicable under
10 comparability standards to all users.

11 (4) A proposed formula for sharing any net stranded costs
12 between retail electricity customers and the utility company's
13 shareholders.

14 (5) A proposed plan for retraining and outplacement services
15 for any employees that may be displaced as a result of the
16 transition from the regulation of the production of electricity
17 to competition.

18 (c) After notice and hearing, the commission shall, before
19 October 1, 2000, issue an order with respect to a restructuring plan
20 for each utility company. The order may approve or reject the plan
21 as filed or approve the plan as modified by the commission. The
22 formula approved for sharing net stranded costs may not result in
23 rates and charges greater than the rates and charges in effect on
24 June 30, 1999. The commission's order shall remain in effect
25 notwithstanding any appeal of the order under IC 8-1-3.

26 (d) In determining net stranded costs and the sharing between
27 retail electricity customers and shareholders, the commission shall
28 take into account the following:

29 (1) The extent to which the utility was legally required to
30 incur the specific costs.

31 (2) The extent to which the market value of the assets and
32 obligations of the utility exceeds the book value of the assets
33 and obligations.

34 (3) The effectiveness of a utility's efforts to increase the
35 market value and realize the market value of any assets and
36 to decrease the costs of any obligations.

37 (4) The extent to which rates previously established by the
38 commission have compensated shareholders for the risk of not
39 recovering the costs of assets and obligations.

40 (5) If the utility had the discretion to determine whether to
41 incur or mitigate the costs, the conduct of the utility with
42 respect to the costs of the assets and obligations as compared

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- 1 with other utilities and businesses with similar obligations and
- 2 risks.
- 3 (e) The commission shall do the following in an order approving
- 4 a utility company's restructuring plan:
- 5 (1) Make a finding as to a reasonable total amount of net
- 6 stranded costs, if any.
- 7 (2) Based on the provisions of this article and upon fairness
- 8 and reasonableness, find the amount to be collected from
- 9 retail electricity customers of a utility company.
- 10 (f) This subsection applies if a utility company proposes a
- 11 formula that would require retail electricity customers to pay for
- 12 some or all net stranded costs alleged. If the commission finds that:
- 13 (1) there are no stranded costs; and
- 14 (2) the market value of the prudently incurred used and useful
- 15 jurisdictional assets and obligations is greater than the book
- 16 value of those assets and obligations;
- 17 the commission shall order a reduction in the utility company's
- 18 rates and charges for the period January 1, 2001, through
- 19 December 31, 2005, to reflect the findings.
- 20 (g) To collect the stranded costs amount from retail electricity
- 21 customers, the commission shall determine a per kilowatt hour
- 22 stranded cost amount to be paid by each of the utility company's
- 23 retail electricity customers within its retail electric assigned service
- 24 area on amounts of electricity delivered by the utility company to
- 25 any such customer without regard to whether the utility company
- 26 is the electricity supply company chosen by the customer. The rates
- 27 and charges for a utility company's production approved as part
- 28 of the restructuring plan under this chapter shall be considered as
- 29 including the per kilowatt hour stranded costs amount, and
- 30 whenever the utility company provides production in its retail
- 31 electric assigned service area, such inclusion shall be credited
- 32 toward the amount of net stranded costs to be collected from retail
- 33 electricity customers.
- 34 (h) The total amount of net stranded costs that the commission
- 35 finds is to be collected from retail electricity customers may only
- 36 be included in rates and charges until the earlier of the following:
- 37 (1) Collection of that total.
- 38 (2) December 31, 2005.
- 39 If the total is collected before December 31, 2005, the commission
- 40 shall order a reduction in the utility company's rates and charges
- 41 from the time the share is collected until December 31, 2005.
- 42 (i) If a utility proposes a formula that either does not claim

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1 stranded costs or does not seek to collect any stranded costs from
 2 retail electricity customers, the commission may not order a
 3 reduction in the company's rates and charges in effect between
 4 January 1, 2001, and December 31, 2005.

5 **Sec. 2.** Upon application and after notice and hearing, the
 6 commission shall determine and order accounting and other
 7 provisions or changes, or both, for a utility company consistent
 8 with the requirements of the Financial Accounting Standards
 9 Board's Statement of Financial Accounting Standards, as may be
 10 necessary during the period from January 1, 2001, through June
 11 30, 2005, to allow the utility company to be compensated for its net
 12 stranded costs under this chapter.

13 **Sec. 3.** The commission may approve only those unbundled rates
 14 and charges that it finds are fair and reasonable, and the total of
 15 the unbundled rates and charges for each rate class may not be
 16 greater than the bundled rates and charges for that class on June
 17 30, 1999.

18 **Sec. 4.** The commission may approve a direct access tariff only
 19 if it finds that the tariff offers to provide services to all on the same
 20 or comparable basis and under the same or comparable rates,
 21 charges, terms, and conditions.

22 **Sec. 5. (a)** The commission may approve a specification and
 23 designation made in section 1(b)(2) of this chapter only if it finds
 24 that the specification is fair and reasonable and consistent with the
 25 provisions of this article.

26 (b) Ancillary and auxiliary services that are exclusively
 27 provided by a utility company shall be provided on a
 28 nondiscriminatory basis and at rates, charges, terms, and
 29 conditions that are the same as those provided to itself or to an
 30 affiliate.

31 (c) An interested party may at any time file with the commission
 32 a complaint that an ancillary or auxiliary service provided
 33 exclusively by a utility company should not be provided exclusively
 34 by the utility company, and the commission may, after notice and
 35 hearing, find that it would be fair and reasonable and consistent
 36 with this article to terminate the exclusive provision and allow for
 37 competition with respect to the ancillary or auxiliary service.

38 **Sec. 6.** The commission may approve a restructuring plan only
 39 if it finds that the proposed plan for retraining and outplacement
 40 services for any employee who may be displaced as a result of the
 41 transition from the regulation of the production of electricity to
 42 competition is fair and reasonable.



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1 **Chapter 6. Customer Protections**

2 **Sec. 1. (a) As used in this section "default electricity supply**
 3 **company" means the electricity supply company that is designated**
 4 **by the commission under subsection (c) to be the supplier of**
 5 **electricity for a service location of a retail electricity customer who**
 6 **either does not:**

7 **(1) exercise the choice allowed for that location under**
 8 **IC 8-1.8-3; or**

9 **(2) have an electricity supply company for that location.**

10 **(b) The incumbent electricity supply company shall be**
 11 **designated by the commission under subsection (c) as the initial**
 12 **default electricity supply company for its retail electric assigned**
 13 **service area until January 1, 2006, and until that date, the rates**
 14 **and charges of an incumbent electricity supply company shall be**
 15 **those required under IC 8-1.8-4.**

16 **(c) The commission shall, by order and under rules adopted**
 17 **under IC 4-22-2, determine the default electricity supply**
 18 **companies and designate the territories where they will serve**
 19 **beginning January 1, 2006. The commission shall determine the**
 20 **companies and designate the territories not later than twelve (12)**
 21 **months before the determinations and designations take effect.**

22 **(d) In making its determinations and designations under this**
 23 **chapter, the commission, in accordance with the rules adopted**
 24 **under subsection (e), shall use a bidding procedure in its selection**
 25 **process to assure that those served by the default electricity supply**
 26 **company receive reliable electricity at competitive rates and**
 27 **charges.**

28 **(e) Before July 1, 2003, the commission shall adopt rules to**
 29 **govern the proceeding and bidding required by this section. The**
 30 **rules must provide that the determinations of default electricity**
 31 **supply companies and designations of default supplier territories**
 32 **will recur not less frequently than every ten (10) years.**

33 **Sec. 2. (a) Except for an incumbent electricity supply company**
 34 **with respect to the provision of services as an incumbent, an**
 35 **electricity supply company must apply for and be certified by the**
 36 **commission before supplying electricity to retail electricity**
 37 **customers under this article.**

38 **(b) An application for certification shall be verified and**
 39 **submitted in the form prescribed by the commission, establishing**
 40 **the applicant's financial, managerial, and technical capabilities to**
 41 **carry out the responsibilities and obligations imposed upon an**
 42 **electricity supply company. The applicant may submit any**



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1 additional information or materials it desires. The commission
 2 shall determine the manner and extent to which the information
 3 contained in any filed application or concerning the application is
 4 considered confidential and not subject to public disclosure without
 5 adequate confidentiality provisions.

6 (c) An applicant shall give notice to the public of filing of its
 7 application for certification by publication in a newspaper of
 8 general circulation in Marion County, Indiana. The commission
 9 may adopt rules under IC 4-22-2 to require publication in
 10 newspapers of general circulation outside Marion County. The
 11 commission shall also provide notice of the filing to any interested
 12 person who requests notice.

13 (d) The commission shall grant the application and certify the
 14 applicant as an electricity supply company under this article if the
 15 commission finds that the applicant has, and will continue to have
 16 for the foreseeable future, the required capabilities to carry out the
 17 responsibilities and obligations of an electricity supply company.
 18 The commission shall serve a copy of its determination concerning
 19 the application on all interested persons who have requested the
 20 copy. The commission's determination is final if no request for a de
 21 novo determination under section 3 of this chapter is timely filed
 22 with the commission.

23 Sec. 3. (a) A person who is aggrieved by the commission's
 24 determination concerning certification of an electricity supply
 25 company may file a written request with the commission for a de
 26 novo determination of the application by the commission. The
 27 request must be filed within twenty (20) days after the issuance of
 28 the commission's determination.

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

34 (c) If the commission determines, based upon the evidence
 35 admitted at the public hearing, that the applicant has, and will
 36 continue to have for the foreseeable future, the financial,
 37 managerial, and technical capabilities to carry out the
 38 responsibilities and obligations of an electricity supply company,
 39 the commission shall grant the certificate. Otherwise, the
 40 commission shall deny the certificate.

41 Sec. 4. As a condition of certification by the commission of an
 42 electricity supply company under this chapter, the company must

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1 do all of the following:

2 (1) Consent irrevocably to the jurisdiction of Indiana courts
3 and service of process in Indiana, including service of
4 summonses and subpoenas for a civil or criminal proceeding
5 arising out of, or relating to, in any manner, its activities as an
6 electricity supply company, by filing with the commission and
7 the secretary of state a document providing the irrevocable
8 consent.

9 (2) Designate an agent authorized to receive service of process
10 in Indiana by filing with the commission and the secretary of
11 state a document initially designating the agent and by
12 similarly filing other documents as may be periodically
13 required to update the designated agent.

14 (3) Agree to make available in Indiana, at reasonable times
15 and places, the books, records, officers, and employees of the
16 company, to the extent required by any of the following:

17 (A) The commission.

18 (B) Office of the utility consumer counselor.

19 (C) Indiana courts.

20 (4) Agree to pay any lawfully due and owing Indiana state and
21 local taxes with respect to the electricity supply company's
22 activities, revenues, property (both real and personal),
23 receipts, income, or sales.

24 (5) Agree to maintain an office in Indiana.

25 (6) Agree to abide by IC 8-1-2-121 and IC 8-1-2-122 and all
26 rules adopted under those statutes.

27 **Sec. 5. (a) If the commission finds that a matter relating to an**
28 **electricity supply company should be investigated, it may, on**
29 **petition by any interested person or on its own motion, summarily**
30 **investigate the matter, with or without notice.**

31 (b) If the commission finds that sufficient grounds exist to
32 warrant a formal hearing concerning the matter investigated, it
33 shall furnish the electricity supply company, as respondent, a
34 statement notifying it of the matters under investigation. The
35 commission may set a time and place for a hearing that is not
36 sooner than twenty (20) days after notice is given.

37 (c) Notice of the time and place for the hearing shall be given to
38 the respondent and to other interested persons as the commission
39 considers necessary, and thereafter proceedings shall be conducted
40 and orders made by the commission as though a complaint had
41 been filed with the commission or the matter investigated.

42 (d) If after notice and hearing the commission determines that

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1 the respondent is not complying with the responsibilities and
 2 obligations of an electricity supply company, the commission may
 3 order such relief as the commission finds, based on the evidence, is
 4 appropriate, including the following:

5 (1) Civil penalties.

6 (2) Termination of continued certification of the electricity
 7 supply company.

8 (e) If after notice and hearing, the commission determines that
 9 the respondent has been supplying electricity without being
 10 certified, the commission shall do the following:

11 (1) Find that the respondent has violated Indiana law.

12 (2) Issue an order barring the respondent from supplying
 13 electricity in Indiana until it is granted a certificate.

14 (3) Order such relief, including imposing civil penalties, that
 15 the commission finds, based on the evidence, is appropriate.

16 Sec. 6. (a) Before December 31, 2001, the commission shall
 17 adopt rules under IC 4-22-2 for the separation of a utility
 18 company's production and marketing functions, if any, from a
 19 utility company's transmission and distribution functions, if any,
 20 to assure that a utility company does not possess a competitive
 21 advantage in production and marketing in the service territory
 22 where the transmission and distribution services of the utility
 23 company are located attributable to the utility company's provision
 24 of transmission or distribution services.

25 (b) The rules adopted by the commission shall provide for the
 26 filing by each utility company of a plan for separation. After notice
 27 and hearing, the commission shall issue an order before December
 28 31, 2002, with respect to the separation plan filed by each utility
 29 company. The order may approve or reject the plan as filed or
 30 approve the plan as modified by the commission. The commission
 31 may only approve a plan if the commission finds that under the
 32 plan, the utility company or an affiliate will not possess a
 33 competitive advantage in production and marketing in the service
 34 territory where the transmission and distribution services of the
 35 utility company are located attributable to the utility company's or
 36 an affiliate of the utility company's provision of transmission or
 37 distribution services.

38 Sec. 7. (a) The commission shall adopt rules under IC 4-22-2
 39 providing for a code of conduct and affiliate rules to ensure that
 40 any electricity supply company that is also a distribution or
 41 transmission utility does not have a competitive advantage as a
 42 result of that relationship in the service territory where the

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1 distribution or transmission services are provided. The rules shall
 2 provide for regular audits by the commission to identify wrongful
 3 exploitation of market power and unfair competition.

4 (b) The rules adopted by the commission under subsection (a)
 5 must explicitly provide for the following:

6 (1) That treatment of a nonaffiliate by a distribution or
 7 transmission utility differently from the treatment of an
 8 affiliate accords a competitive advantage in violation of this
 9 section.

10 (2) That any subsidy by a regulated activity to a nonregulated
 11 activity or affiliate in the service area where the regulated
 12 activity provides services is unlawful.

13 **Sec. 8.** A utility company may not collect or impose rates,
 14 charges, terms, or conditions for transmission or distribution for
 15 retail electricity service that discriminate based on the source of
 16 production.

17 **Sec. 9.** The commission shall develop and implement a program
 18 for educating retail electricity customers on rights of retail
 19 electricity customers under this article and providing information
 20 on the availability of remedies for retail electricity customers if
 21 needed.

22 **Chapter 7. Associated Commission Powers**

23 **Sec. 1.** The commission shall adopt rules under IC 4-22-2
 24 providing for billing and metering requirements, including the
 25 information to be included in bills issued to retail electricity
 26 customers.

27 **Sec. 2. (a)** This section does not apply to the transfer of stock of:

- 28 (1) a utility company doing business in Indiana; or
 29 (2) an entity holding a controlling interest in a utility company
 30 doing business of Indiana;

31 if a transfer of not more than ten percent (10%) of the common
 32 stock of the utility company is proposed.

33 (b) A person may not merge with, acquire through an affiliate,
 34 or otherwise directly or indirectly obtain control of a utility
 35 company doing business in Indiana or an entity that holds a
 36 controlling interest in a utility company doing business in Indiana
 37 without first:

- 38 (1) submitting to the commission an application for
 39 authorization of the proposed transaction; and
 40 (2) obtaining authorization from the commission under
 41 subsection (c).

42 A merger, an acquisition, or a change in control in violation of this

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1 section is not valid for any purpose.

2 (c) Before authorizing the merger, acquisition, or change in
3 control of a utility company doing business in Indiana, the
4 commission shall consider the effect of the proposed transaction.
5 If after notice and hearing, the commission finds that the proposed
6 merger, acquisition, or change is in the public interest, the
7 commission shall authorize the proposed transaction.

8 Sec. 3. (a) The commission shall adopt rules to encourage
9 demand-side aggregators and aggregation, particularly of the loads
10 of smaller volume customers. The rules must provide for
11 reasonable standards of metering by load shape for smaller volume
12 customers.

13 (b) A utility company may not require its retail electricity
14 customers to purchase or pay for special metering equipment when
15 measurement by load shape will reasonably reflect usage, as
16 determined by the commission.

17 Sec. 4. Not later than November 1, 2001, and each odd
18 numbered year thereafter, the commission shall report to the
19 regulatory flexibility committee established under 8-1-2.5-9 and
20 IC 8-1-2.6-4 on the commission's audits under IC 8-1.8-6-7 to
21 identify wrongful exploitation of market power and unfair
22 competition.

23 **Chapter 8. Miscellaneous Provisions**

24 Sec. 1. (a) If a person suffers a pecuniary loss as a result of a
25 violation of this article or any rules or codes of conduct adopted
26 under this article, the person may bring a civil action in an Indiana
27 trial court of jurisdiction seeking injunctive relief and, if
28 appropriate, the recovery of damages.

29 (b) The commission may hear complaints, conduct
30 investigations, and enter appropriate orders to correct and prevent
31 violations of the code of conduct adopted under IC 8-1.8-6-7. This
32 subsection does not require the exhaustion of administrative
33 remedies available through the commission before the
34 commencement of an action seeking relief under subsection (a).

35 Sec. 2. (a) To the extent not inconsistent with this article, this
36 article shall be construed as compatible with any federal law that
37 also addresses the subject matter of this article.

38 (b) This article is not intended to affect the applicability of the
39 following federal laws:

- 40 (1) The Sherman Act (15 U.S.C. 1 et seq.).
41 (2) The Wilson Act (15 U.S.C. 8 and 9).
42 (3) The Clayton Act (15 U.S.C. 12 et seq.).



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1 (4) The Act of June 19, 1936, Chapter 592 (15 U.S.C. 13, 13a,
2 and 21a).
3 (5) The Federal Trade Commission Act (15 U.S.C. 14 et seq.).
4 (6) Any other law regulating trade or commerce.
5 (c) This article does not affect the applicability of the following
6 state laws:
7 (1) IC 24-1-1 through IC 24-1-4.
8 (2) Any other law regulating trade or commerce other than a
9 law regulating public utilities.
10 Sec. 3. The commission does not by virtue of this article acquire
11 jurisdiction with respect to complaints for damages relating to
12 unfair competition, antitrust behavior, or other marketplace
13 activities alleged to be contrary to law.
14 Sec. 4. The commission does not by virtue of this article acquire
15 jurisdiction with respect to claims arising under the laws listed in
16 section 2 of this chapter.
17 Sec. 5. This article does not require the exhaustion of
18 administrative remedies available through the commission before
19 the commencement of an action seeking relief with respect to a
20 claim arising under the laws listed in section 2 of this chapter.
21 Sec. 6. The procedures set forth in IC 8-1-2, together with the
22 commission's rules of practice and procedure, apply under this
23 article. The commission shall liberally construe intervention status
24 at all public hearings held under this article to assure broad public
25 participation in those hearings.
26 Sec. 7. The commission may adopt rules under IC 4-22-2 to
27 implement this article, but the absence of such rules does not affect
28 the authority of the commission under this article.
29 Sec. 8. A person adversely affected by a final decision, ruling, or
30 order of the commission under this article may appeal the decision,
31 ruling, or order under IC 8-1-3, except as otherwise provided by
32 this article, under the same terms and conditions that govern
33 appeals from final decisions, rulings, or orders of the commission
34 under IC 8-1-2.
35 SECTION 7. [EFFECTIVE UPON PASSAGE] Not later than
36 November 1, 1999, the Indiana utility regulatory commission shall
37 report to the regulatory flexibility committee established under
38 8-1-2.5-9 and IC 8-1-2.6-4 on the commission's proposed program
39 for educating retail electricity customers about the transition from
40 the regulation of production of electricity to competition.
41 SECTION 8. [EFFECTIVE UPON PASSAGE] For purposes of:
42 (1) IC 6-2.5-1-5, as amended by this act;

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1 (2) IC 6-2.5-4-5, as amended by this act; and
2 (3) IC 6-2.5-4-14, as added by this act;
3 with respect to a transaction constituting the furnishing of
4 electrical energy, only transactions for which the charges are
5 collected upon original statements and billings dated after July 31,
6 1999, shall be considered as having occurred after June 30, 1999.
7 SECTION 9. An emergency is declared for this act.

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