

State of Arizona
House of Representatives
Forty-third Legislature
Second Regular Session
1998

HOUSE BILL 2663

AN ACT

AMENDING TITLE 9, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-520; AMENDING SECTIONS 10-2051, 10-2052, 10-2057, 10-2060, 10-2062, 10-2064 AND 10-2068, ARIZONA REVISED STATUTES; REPEALING SECTIONS 10-2071 AND 10-2072, ARIZONA REVISED STATUTES; AMENDING SECTIONS 10-2081, 10-2121, 10-2122, 10-2127, 10-2128, 10-2130, 10-2131 AND 10-2134, ARIZONA REVISED STATUTES; REPEALING SECTION 10-2137, ARIZONA REVISED STATUTES; AMENDING SECTION 10-2138, ARIZONA REVISED STATUTES; AMENDING TITLE 30, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 6; AMENDING TITLE 40, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 40-113; AMENDING SECTIONS 40-201, 40-202 AND 40-204, ARIZONA REVISED STATUTES; AMENDING TITLE 40, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 40-207, 40-208 AND 40-209; AMENDING SECTIONS 40-286, 40-360.02, 42-5155, 42-5161 AND 42-6103, ARIZONA REVISED STATUTES; AMENDING SECTION 42-5010, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 1, SECTION 161; AMENDING SECTION 42-5063, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 1, SECTION 166; AMENDING SECTION 42-5151, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 1, SECTION 172; RELATING TO ELECTRIC POWER.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 9, chapter 5, article 2, Arizona Revised Statutes,
3 is amended by adding section 9-520, to read:

4 9-520. Provision of electric generation services; competition;
5 definitions

6 A. A CITY OR TOWN THAT PROVIDES ELECTRIC DISTRIBUTION SERVICE SHALL
7 NOT SELL ELECTRIC GENERATION SERVICE OUTSIDE OF ITS SERVICE TERRITORY AS
8 CONSTITUTED ON JANUARY 1, 1998, OR AS LATER AMENDED BY MUTUAL AGREEMENT,

1 UNLESS THE CITY OR TOWN HAS AGREED TO ALLOW OTHER ELECTRICITY SUPPLIERS TO
2 MAKE SALES OF ELECTRIC GENERATION SERVICE WITHIN ITS SERVICE TERRITORY.

3 B. NOTWITHSTANDING SECTION 9-516, SUBSECTION A, A CITY OR TOWN THAT
4 PROVIDES ELECTRIC DISTRIBUTION SERVICE MAY SELL ELECTRIC GENERATION SERVICE
5 OUTSIDE OF ITS SERVICE TERRITORY IF THE CITY OR TOWN MEETS THE REQUIREMENTS
6 OF SUBSECTION A OF THIS SECTION.

7 C. IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "ELECTRIC DISTRIBUTION SERVICE" MEANS THE DISTRIBUTION OF
9 ELECTRICITY TO RETAIL CUSTOMERS THROUGH THE USE OF ELECTRIC DISTRIBUTION
10 FACILITIES.

11 2. "ELECTRIC GENERATION SERVICE" MEANS THE PROVISION OF ELECTRICITY
12 FOR SALE TO RETAIL ELECTRIC CUSTOMERS BUT DOES NOT INCLUDE ELECTRIC
13 DISTRIBUTION OR TRANSMISSION SERVICES.

14 3. "ELECTRIC TRANSMISSION SERVICE" MEANS THE TRANSMISSION OF
15 ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS OR TO ELECTRIC DISTRIBUTION
16 FACILITIES AND THAT IS SO CLASSIFIED BY THE FEDERAL ENERGY REGULATORY
17 COMMISSION OR, TO THE EXTENT PERMITTED BY LAW, SO CLASSIFIED BY THE ARIZONA
18 CORPORATION COMMISSION.

19 4. "ELECTRICITY SUPPLIER" MEANS A PERSON, WHETHER ACTING IN A
20 PRINCIPAL, AGENT OR OTHER CAPACITY, WHO OFFERS TO SELL ELECTRICITY TO A
21 RETAIL ELECTRIC CUSTOMER IN THIS STATE.

22 5. "SERVICE TERRITORY" MEANS THE GEOGRAPHIC AREA IN WHICH A PUBLIC
23 POWER ENTITY OR PUBLIC SERVICE CORPORATION OWNS, OPERATES, CONTROLS OR
24 MAINTAINS ELECTRIC DISTRIBUTION FACILITIES AND THAT ADDITIONAL AREA IN WHICH
25 THE PUBLIC POWER ENTITY OR PUBLIC SERVICE CORPORATION HAS AGREED TO EXTEND
26 ELECTRIC DISTRIBUTION FACILITIES, WHETHER ESTABLISHED BY A CERTIFICATE OF
27 CONVENIENCE AND NECESSITY, BY OFFICIAL ACTION BY A PUBLIC POWER ENTITY OR BY
28 CONTRACT OR AGREEMENT.

29 Sec. 2. Section 10-2051, Arizona Revised Statutes, is amended to read:
30 10-2051. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Cooperative" means a corporation THAT IS organized under this
33 article or ~~which~~ THAT becomes subject to this article in the manner provided
34 ~~therein~~ IN THIS ARTICLE.

35 2. "Person" means a natural person, firm, association, corporation,
36 business trust, partnership, federal agency, state or political subdivision
37 or agency thereof or any body politic.

38 ~~3. "Rural area" means an area of this state not included within the~~
39 ~~boundaries of a city or town having a population in excess of twenty-five~~
40 ~~hundred inhabitants, and the term includes both the farm and non-farm~~
41 ~~population thereof.~~

1 Sec. 3. Section 10-2052, Arizona Revised Statutes, is amended to read:

2 10-2052. Purpose

3 A. Cooperative nonprofit membership corporations may be organized
4 under this article for ANY OF the ~~purpose of~~ FOLLOWING PURPOSES:

5 1. Supplying, PURCHASING, MARKETING, SELLING, TRANSMITTING OR
6 DISTRIBUTING electric energy to persons ~~in rural areas~~ and promoting and
7 extending the use of electric energy ~~in such areas~~.

8 2. PROVIDING BILLING, METERING, COMMUNICATIONS AND OTHER SERVICES
9 RELATED OR INCIDENTAL TO SUPPLYING, PROVIDING OR TRANSMITTING ELECTRIC
10 ENERGY, WHETHER OR NOT THE COOPERATIVE IS ITSELF SUPPLYING OR TRANSMITTING
11 THAT ENERGY.

12 ~~2-~~ 3. Engaging in activities designed to promote economic development
13 of rural areas as described in section 10-2057.

14 4. ENGAGING IN ACTIVITIES FOR ANY LAWFUL PURPOSE.

15 B. In a rural area where there is no telephone service, a cooperative
16 which is supplying electric energy in the area may enter into a cooperative
17 agreement with the existing holder of a certificate of convenience and
18 necessity for telephone service in the general area to supply telephone
19 service in the same area.

20 C. Generation and transmission cooperatives as defined in article 4
21 of this chapter are subject to article 4 OF THIS CHAPTER and not to this
22 article.

23 Sec. 4. Section 10-2057, Arizona Revised Statutes, is amended to read:

24 10-2057. Powers of electric cooperative

25 A. A cooperative organized under this article may:

26 1. Sue and be sued in its corporate name.

27 ~~2. Provide for existence for a period of twenty-five years with the~~
28 ~~privilege of extension as provided by law.~~

29 2. HAVE PERPETUAL EXISTENCE.

30 3. Adopt and alter a corporate seal.

31 ~~4. Generate, manufacture, purchase, acquire, accumulate and transmit~~
32 ~~electric energy, and distribute, sell, supply and dispose of electric energy~~
33 ~~to its members.~~

34 4. TO COMPETE MORE EFFECTIVELY WITH OTHER ENTITIES IN THE ELECTRIC
35 ENERGY MARKET, ENGAGE IN THE GENERATION, MANUFACTURE, PURCHASE, ACQUISITION,
36 ACCUMULATION, TRANSMISSION, MARKETING, SALE, DISTRIBUTION, SUPPLY AND
37 DISPOSITION OF ELECTRIC ENERGY, EITHER INDIVIDUALLY OR JOINTLY IN
38 COLLABORATION WITH OTHER CORPORATIONS THAT HAVE LOANS MADE OR GUARANTEED BY
39 THE UNITED STATES THROUGH THE ADMINISTRATOR OF THE RURAL UTILITIES SERVICE
40 OR THAT ARE NONPROFIT MEMBERS OF THE CORPORATION.

41 5. Assist persons to whom electric energy is or will be supplied by
42 the cooperative in wiring their premises and in acquiring and installing

1 electrical and plumbing appliances, equipment, fixtures and apparatus by
2 means of financing.

3 6. Assist persons to whom electric energy is or will be supplied by
4 the cooperative in constructing, equipping, maintaining and operating
5 electric cold storage or processing plants by means of financing.

6 7. Construct, purchase, lease or otherwise acquire, and equip,
7 maintain and operate, and sell, assign, convey, lease, mortgage, pledge or
8 otherwise dispose of or encumber, ~~—~~ electric transmission and distribution
9 lines or systems, electric generating plants, lands, buildings, structures,
10 dams, plants and equipment, and any other real or personal property, tangible
11 or intangible, ~~which~~ THAT is deemed necessary, convenient or appropriate to
12 accomplish ~~the~~ ANY purpose for which the cooperative is organized OR THAT IT
13 ELECTS TO UNDERTAKE.

14 8. Purchase, lease or otherwise acquire, and use, and exercise and
15 sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber,
16 franchises, rights, privileges, licenses and easements.

17 9. Borrow money and otherwise contract indebtedness, and issue notes,
18 bonds and other evidences of indebtedness, and secure the payment thereof by
19 mortgage, pledge or deed of trust of, or any other encumbrance upon, any or
20 all of its presently owned or after-acquired real or personal property,
21 assets, franchises or revenues.

22 10. Construct, maintain and operate electric transmission and
23 distribution lines along, upon, under and across publicly owned lands and
24 public thoroughfares, including, without limitation, all roads, highways,
25 streets, alleys, bridges and causeways, and acquire for such purposes
26 franchises, licenses, permits, easements, rights-of-way and all similar
27 rights and privileges relating to such purposes.

28 11. Exercise the power of eminent domain in the manner and to the
29 extent provided by the laws of this state for the exercise of such power by
30 other corporations constructing or operating electric transmission and
31 distribution lines or systems.

32 12. Become a member of other cooperatives or corporations or own stock
33 ~~therein~~ IN THOSE COOPERATIVES OR CORPORATIONS OR OTHERWISE FINANCIALLY
34 PARTICIPATE AND INVEST IN THOSE COOPERATIVES OR CORPORATIONS.

35 13. Conduct its business and exercise its powers within or without this
36 state.

37 14. Adopt, amend and repeal bylaws.

38 15. Do and perform other acts and things and have and exercise other
39 powers ~~which~~ THAT may be necessary, convenient or appropriate to accomplish
40 the purpose for which the cooperative is organized OR TO CARRY OUT ITS
41 BUSINESS AND AFFAIRS.

42 16. Subject to any limitation imposed by federal law, invest its own
43 monies, make loans or guarantees or participate in rural community

1 infrastructure projects, in job creation activities and in other activities
2 to promote economic development in rural areas if the rural development
3 activities are approved by the rural ~~electrification administration~~ UTILITIES
4 SERVICE.

5 B. The authority granted in subsection A, paragraph 16 shall be used
6 only for economic development in rural areas, and the electric cooperative
7 shall not use monies intended for rural economic development to purchase or
8 acquire electrical works or electrical facilities, whether real or personal
9 property, or both, by the exercise of the right of eminent domain or
10 condemnation nor shall such monies be used to purchase, construct, lease or
11 acquire any electrical works or electrical facilities or make any extensions
12 or additions designed to serve areas or territories already being lawfully
13 served. In subsection A, paragraph 16 and this subsection:

14 1. "Economic development" includes project feasibility studies,
15 start-up costs, incubator projects and other reasonable expenses for the
16 purpose of fostering rural economic development.

17 2. "Invest" means to commit monies in order to earn a financial return
18 on assets which are not expected to be used or useful in furnishing electric
19 service. The total amount which the electric cooperative invests, loans or
20 uses as a guarantee is limited to those monies authorized under federal law
21 for rural development programs.

22 3. "Job creation activities" includes activities such as providing
23 technical, financial and managerial assistance.

24 4. "Rural community infrastructure projects" includes projects such
25 as water and waste systems and garbage collection services.

26 C. BEGINNING ON JANUARY 1, 1999 THE INDEMNIFICATION OF MEMBERS,
27 DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF A COOPERATIVE SHALL BE IN
28 ACCORDANCE WITH CHAPTER 31, ARTICLE 5 OF THIS TITLE.

29 Sec. 5. Section 10-2060, Arizona Revised Statutes, is amended to read:
30 10-2060. Members in cooperative

31 Each incorporator of a cooperative shall be a member ~~thereof~~ OF THE
32 COOPERATIVE, but no other person may become a member unless ~~he~~ THE PERSON
33 agrees to use electric energy or other services furnished by the cooperative
34 ~~when they are made available through its facilities. Any member of a~~
35 ~~cooperative, other than a member which is itself a cooperative, who agrees~~
36 ~~to use electric energy ceases to be a member if he does not use electric~~
37 ~~energy supplied by the cooperative within six months after it is made~~
38 ~~available to him, or if electric energy is not made available to him by the~~
39 ~~cooperative within two years after he becomes a member, or such lesser period~~
40 ~~as the by-laws of the cooperative may provide~~ AS THE COOPERATIVE ESTABLISHES
41 IN ITS BYLAWS. A husband and wife may hold a joint membership in a
42 cooperative. Membership in a cooperative is not transferable, except as
43 provided in the ~~by-laws~~ BYLAWS. The ~~by-laws~~ BYLAWS may prescribe additional

H.B. 2663

1 qualifications, ~~and~~ limitations, ~~in respect to~~ CLASSIFICATIONS AND RIGHTS
2 CONCERNING membership.

1 delivery of mortgages or deeds of trust pledging or encumbering any or all
2 of the property, assets, rights, privileges, licenses, franchises and permits
3 of the cooperative, whether acquired or to be acquired, and wherever
4 situated, as well as the revenues therefrom, all upon such terms and
5 conditions as the board of directors determines, to secure any indebtedness
6 of the cooperative. ~~to the United States or any agency or instrumentality~~
7 ~~thereof, or to any person, association or corporation licensed, chartered or~~
8 ~~regulated by the United States, a state or any department or agency of~~
9 ~~either.~~ Any such mortgages or deeds of trust shall be exempt from the
10 mortgage recording tax.

11 B. A cooperative may not ~~otherwise~~ sell, ~~mortgage~~, lease or otherwise
12 dispose of ~~or encumber~~ all or a substantial portion of its property unless
13 the sale, ~~mortgage~~, lease or other disposition ~~or encumbrance~~ is authorized
14 by the affirmative vote of not less than a majority of ~~all members of the~~
15 ~~cooperative, but notwithstanding any other provision of this article, or any~~
16 ~~other provision of law, the board of directors may, upon the authorization~~
17 ~~of a majority of~~ those members of the cooperative present at the meeting of
18 the members. ~~thereof, sell, lease or otherwise dispose of all or a~~
19 ~~substantial portion of its property to another cooperative doing business in~~
20 ~~this state pursuant to this article, or to the holders of any notes, bonds~~
21 ~~or other evidences of indebtedness issued to the United States or any agency~~
22 ~~or instrumentality thereof.~~

23 Sec. 9. Repeal

24 Sections 10-2071 and 10-2072, Arizona Revised Statutes, are repealed.

25 Sec. 10. Section 10-2081, Arizona Revised Statutes, is amended to
26 read:

27 10-2081. Exemption from antitrust statutes

28 The provisions of title 44, chapter 10, article 1 ~~shall DO~~ not apply
29 to any conduct or activity of a cooperative organized pursuant to this
30 article, ~~which IF THE~~ conduct or activity is approved by a statute of this
31 state or of the United States or by the corporation commission or an
32 administrative agency of this state or of the United States ~~having THAT HAS~~
33 jurisdiction of the subject matter. ~~THIS SECTION DOES NOT APPLY TO THE~~
34 ~~PROVISION OF COMPETITIVE ELECTRIC GENERATION SERVICE AND OTHER SERVICES.~~

35 Sec. 11. Section 10-2121, Arizona Revised Statutes, is amended to
36 read:

37 10-2121. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Electric utility" means any corporation, governmental agency,
40 political subdivision or other entity or combination of such entities which
41 produces, generates, purchases, sells, transmits or distributes electricity
42 to another electric utility or to a user of electricity.

1 2. "Generation and transmission cooperative" means a corporation
2 organized under this article or ~~which~~ THAT becomes subject to this article
3 as provided in this article.

4 3. "Person" means a natural person, FIRM, ASSOCIATION, CORPORATION,
5 BUSINESS TRUST OR PARTNERSHIP OR ANY AGENCY OR POLITICAL SUBDIVISION OF THE
6 UNITED STATES OR OF THIS STATE OR ANY OTHER POLITICAL BODY.

7 Sec. 12. Section 10-2122, Arizona Revised Statutes, is amended to
8 read:

9 10-2122. Purpose

10 Nonprofit electric generation and transmission cooperative corporations
11 may be organized under this article for the purpose of:

12 1. Producing and generating, PURCHASING, MARKETING OR SELLING electric
13 energy ~~and~~ OR transmitting such energy to other electric utilities OR
14 PERSONS.

15 2. PROVIDING SERVICES RELATING TO PRODUCING AND GENERATING,
16 PURCHASING, MARKETING OR SELLING ELECTRIC ENERGY OR TRANSMITTING THIS ENERGY
17 TO OTHER ELECTRIC UTILITIES OR PERSONS OR SERVICES RELATING TO ANY OTHER
18 LAWFUL PURPOSE.

19 Sec. 13. Section 10-2127, Arizona Revised Statutes, is amended to
20 read:

21 10-2127. Powers of a generation and transmission cooperative

22 A. A generation and transmission cooperative may:

23 1. Sue and be sued and complain and defend in its corporate name.

24 2. Have perpetual existence by its corporate name.

25 3. Adopt a corporate seal and alter the seal at its pleasure, and use
26 the seal by causing it, or a facsimile of it, to be impressed or affixed or
27 in any other manner reproduced, but failure to have or to affix a corporate
28 seal does not affect the validity of any instrument or any action taken in
29 pursuance of in reliance on the seal.

30 4. Own, operate, lease or control plants, property and facilities for
31 the generation or transmission, sale or furnishing of electricity for light,
32 heat or power or other uses, and generate, manufacture, purchase, acquire,
33 accumulate and transmit electric energy, ~~and sell, supply and dispose.~~

34 5. TO COMPETE MORE EFFECTIVELY WITH OTHER ENTITIES IN THE ELECTRIC
35 ENERGY MARKET, ENGAGE IN, INDIVIDUALLY OR JOINTLY IN COLLABORATION WITH OTHER
36 CORPORATIONS THAT HAVE LOANS MADE OR GUARANTEED BY THE UNITED STATES THROUGH
37 THE ADMINISTRATOR OF THE RURAL UTILITIES SERVICE OR THAT ARE NONPROFIT
38 MEMBERS OF THE CORPORATION, THE ACQUISITION, PURCHASE, MARKETING, SALE,
39 SUPPLY AND DISPOSITION of electric energy to or for its members, ~~AND~~
40 PERSONS, ENTITIES, governmental agencies and political subdivisions and other
41 electric utilities.

42 ~~5.~~ 6. Purchase, take, receive, subscribe for or otherwise acquire,
43 own, hold, vote, exercise rights arising out of the ownership or possession,

1 use, employ, sell, assign, transfer, convey, mortgage, lend, pledge,
2 hypothecate or otherwise use and deal in and with shares, rights, memberships
3 or other interests in, or notes, bonds, debentures, mortgages, passbooks,
4 certificates of deposit or other obligations of other domestic or foreign
5 corporations, associations, partnerships, limited partnerships or
6 individuals, or direct or indirect obligations or securities of individuals,
7 associations, cooperatives, partnerships, corporations or of the United
8 States or of any other government, state, territory, governmental district
9 or municipality or of any instrumentality thereof.

10 ~~6-~~ 7. Construct, purchase, take, receive, lease as lessee or
11 otherwise acquire, and own, hold, improve, use, equip, maintain and operate,
12 and sell, assign, transfer, convey, exchange, lease as lessor, mortgage,
13 pledge or otherwise dispose of or encumber electric transmission lines and
14 systems, electric generating plants, lands, buildings, structures, dams,
15 plants and equipment, and any and all kinds and classes of real or personal
16 property, tangible or intangible, ~~which~~ THAT are deemed necessary, convenient
17 or appropriate to accomplish the purpose for which the generation and
18 transmission cooperative is organized OR THAT IT ELECTS TO UNDERTAKE.

19 ~~7-~~ 8. Purchase or otherwise acquire, and own, hold, use and exercise
20 and sell, assign, transfer, convey, mortgage, pledge, hypothecate or
21 otherwise dispose of or encumber franchises, rights, privileges, licenses,
22 rights-of-way and easements.

23 ~~8-~~ 9. Make contracts and guarantees and incur liabilities, borrow
24 money and otherwise contract indebtedness, and issue its notes, bonds and
25 other evidence of indebtedness, and secure the payment of any indebtedness
26 by mortgage, pledge, deed of trust, assignment, security agreement or any
27 other hypothecation or encumbrance on any or all of its real or personal
28 property, assets, franchises, revenue or income.

29 ~~9-~~ 10. Construct, maintain and operate electric transmission lines
30 along, on, under and across publicly owned lands and public thoroughfares,
31 including all roads, highways, streets, alleys, bridges and causeways, and
32 acquire for such purposes franchises, licenses, permits, easements,
33 rights-of-way, and all similar rights and privileges relating to such
34 purposes.

35 ~~10-~~ 11. Exercise the power of eminent domain in the manner and to the
36 extent provided by the laws of this state for the exercise of such power by
37 other corporations constructing or operating electric transmission lines or
38 systems.

39 ~~11-~~ 12. Become a member of other cooperative organizations or
40 corporations or own stock in ~~such~~ OR OTHERWISE FINANCIALLY PARTICIPATE AND
41 INVEST IN THOSE other organizations or corporations.

1 ~~C. Each class A member is entitled to designate two representatives~~
2 ~~to serve as voting delegates for that member. Class B members are entitled~~
3 ~~to designate one representative for every three class B members or fraction~~
4 ~~of members to serve as a voting delegate for those members. The bylaws may~~
5 ~~provide for grouping of class B members for such appointment. The number of~~
6 ~~delegates for which other classifications of members are entitled to~~
7 ~~designate shall be as stated in the bylaws.~~

8 C. THE BYLAWS SHALL PROVIDE THE NUMBER OF VOTING DELEGATES THAT EACH
9 MEMBER MAY DESIGNATE. THE BYLAWS MAY PROVIDE THAT EACH CLASSIFICATION OF
10 MEMBERS MAY DESIGNATE A DIFFERENT NUMBER OF VOTING DELEGATES.

11 D. Members are entitled to vote as members only through their duly
12 designated voting delegate. A reference in this article to approval or votes
13 by members refers to the members approving or voting through their voting
14 delegates.

15 E. A member is not liable or responsible for any debts of the
16 generation and transmission cooperative, and the property of the members is
17 not subject to execution for such debts, unless the member otherwise agrees.

18 Sec. 15. Section 10-2130, Arizona Revised Statutes, is amended to
19 read:

20 10-2130. Board of directors; term; compensation; quorum

21 A. A board of directors shall manage the business of a generation and
22 transmission cooperative. The directors named in the articles of
23 incorporation, consolidation, merger or conversion hold office until ~~the next~~
24 ~~annual meeting of the members and until their~~ THE DIRECTORS' successors are
25 elected and qualify. ~~At each annual meeting or, in case of failure to hold~~
26 ~~the annual meeting as specified in the bylaws, at a special meeting called~~
27 ~~for that purpose, the members, through their voting delegates, shall elect~~
28 ~~directors to hold office until the next annual meeting of the members, except~~
29 ~~as otherwise provided in this article.~~ The bylaws may SHALL prescribe the
30 number AND TERMS of directors, ~~but there shall not be less than two directors~~
31 ~~for every class A member which puts the names of at least two directoral~~
32 ~~candidates into nomination, or one director for every three class B members~~
33 ~~or fraction of members~~ AND THE MANNER OF ELECTING THE DIRECTORS. Each
34 director shall hold office for the term for which ~~he~~ THE DIRECTOR is elected
35 and until ~~his~~ THE DIRECTOR'S successor is elected and qualifies.

36 ~~B. Instead of electing all the directors annually, the bylaws may~~
37 ~~provide that one-half of them, or a number as near to one-half as possible,~~
38 ~~are elected to serve until the next annual meeting of the members and that~~
39 ~~the remaining directors are elected to serve until the second annual meeting.~~
40 ~~Thereafter, as terms expire, the members, through their voting delegates,~~
41 ~~shall elect successors to serve until the second succeeding annual meeting~~
42 ~~after their election.~~

1 ~~C. Instead of electing the directors as provided in subsection A or~~
2 ~~B, the bylaws may also provide that one-third of the directors, or a number~~
3 ~~as near to one-third as possible, be elected at each annual meeting to serve~~
4 ~~for a term of three years.~~

5 ~~D.~~ B. The bylaws shall prescribe the number of directors as provided
6 in subsection A, ~~their~~ THE DIRECTORS' qualifications other than those
7 prescribed in this article, the manner of holding meetings of the board of
8 directors and of electing successors to directors who resign or die or who
9 are otherwise incapable of acting. The bylaws may also provide for the
10 removal of directors from office and for the election of ~~their~~ THE DIRECTORS'
11 successors.

12 ~~E.~~ C. UNLESS THE BYLAWS PROVIDE OTHERWISE, THE directors shall not
13 receive salaries for ~~their~~ services as directors and, except in emergencies,
14 shall not be employed by the generation and transmission cooperative in any
15 capacity involving compensation without the approval of the members. The
16 bylaws may, ~~however, prescribe a fixed~~ ALLOW A PAYMENT OF A fee and MAY
17 provide that expenses of attendance are allowed to each director for
18 attendance at each meeting of the board of directors.

19 ~~F.~~ D. A majority of the board of directors constitutes a quorum.

20 ~~G.~~ E. Any action which may be taken at a meeting may be taken without
21 a meeting if a writing stating and approving the action taken is signed prior
22 to the action being taken by the number of directors normally required to
23 approve the action at a meeting. This prior consent has the same force and
24 effect as a vote at a meeting.

25 ~~H.~~ F. The board of directors may exercise all the powers of a
26 cooperative not conferred ~~upon by~~ ON the members by this article, or its
27 articles of incorporation or bylaws.

28 G. ANY PERSON WHO SERVES AS A DIRECTOR OR WHO SERVES ON A BOARD OR
29 COUNCIL IN AN ADVISORY CAPACITY TO THE COOPERATIVE OR BOARD OF DIRECTORS OF
30 A COOPERATIVE IS IMMUNE FROM CIVIL LIABILITY AND IS NOT SUBJECT TO A SUIT
31 DIRECTLY OR BY WAY OF CONTRIBUTION FOR ANY ACT OR OMISSION THAT RESULTS IN
32 DAMAGE OR INJURY IF THAT PERSON WAS ACTING IN GOOD FAITH AND WITHIN THE SCOPE
33 OF THAT PERSON'S OFFICIAL CAPACITY AND THE DAMAGE OR INJURY WAS NOT CAUSED
34 BY THE WILFUL OR GROSSLY NEGLIGENT CONDUCT OF THAT PERSON. NOTHING IN THIS
35 SUBSECTION LIMITS OR MODIFIES IN ANY MANNER THE DUTIES OR LIABILITIES OF A
36 DIRECTOR OR PERSON WHO SERVES IN AN ADVISORY CAPACITY TO THE COOPERATIVE OR
37 THE COOPERATIVE'S MEMBERS. FOR THE PURPOSES OF THIS SUBSECTION, "OFFICIAL
38 CAPACITY" MEANS ANY DECISION, ACT OR EVENT UNDERTAKEN BY THE COOPERATIVE IN
39 FURTHERANCE OF THE PURPOSES FOR WHICH THAT COOPERATIVE IS ORGANIZED OR
40 OPERATING.

41 Sec. 16. Section 10-2131, Arizona Revised Statutes, is amended to
42 read:

43 10-2131. Officers of a generation and transmission cooperative

1 The officers of a generation and transmission cooperative consist of
2 a president, vice-president, secretary and treasurer, who are elected
3 annually by and from the board of directors. ~~IF STATED IN THE BYLAWS, THE~~
4 ~~OFFICERS OF THE COOPERATIVE DO NOT NEED TO BE MEMBERS OF THE BOARD OF~~
5 ~~DIRECTORS. UNLESS THE BYLAWS PROVIDE OTHERWISE,~~ if a person holding any
6 office ceases to be a director, ~~he~~ ~~THE PERSON~~ ceases to hold the office. The
7 offices of secretary and treasurer may be held by the same person. The board
8 of directors may also elect or appoint such other officers, agents or
9 employees it deems necessary or advisable and shall prescribe their powers
10 and duties. An officer may be removed from office and ~~his~~ ~~THE OFFICER'S~~
11 successor ~~MAY BE~~ elected in the manner prescribed in the bylaws.

12 Sec. 17. Section 10-2134, Arizona Revised Statutes, is amended to
13 read:

14 10-2134. Disposition of property

15 A. The board of directors of a generation and transmission cooperative
16 may, without authorization by the members, authorize the execution and
17 delivery of mortgages or deeds of trust pledging or encumbering any or all
18 of the property, assets, rights, privileges, licenses, franchises and permits
19 of the generation and transmission cooperative, whether acquired or to be
20 acquired, and wherever situated, as well as their revenues, all upon terms
21 and conditions as the board of directors determines, to secure any
22 indebtedness of the generation and transmission cooperative. ~~to the United~~
23 ~~States or any agency or instrumentality of the United States, or to any~~
24 ~~person, association or corporation licensed, chartered or regulated by the~~
25 ~~United States, a state, the District of Columbia or any department or agency~~
26 ~~of the United States, a state or the District of Columbia.~~ Any such
27 mortgages or deeds of trust are exempt from the mortgage recording tax.

28 B. A generation and transmission cooperative may not ~~otherwise~~ sell,
29 ~~mortgage~~ LEASE or otherwise dispose of ~~or encumber~~ all or a substantial
30 portion of its property unless the sale, ~~mortgage,~~ lease or other disposition
31 ~~or encumbrance~~ is authorized by the affirmative vote of not less than a
32 majority of ~~all members of the generation and transmission cooperative,~~
33 ~~acting through their voting delegates, but notwithstanding any other~~
34 ~~provision of this article, or any other statute, the board of directors may,~~
35 ~~on the authorization of a majority of~~ those members of the generation and
36 transmission cooperative, acting through their voting delegates, present at
37 a meeting of the members. ~~, sell, lease or otherwise dispose of all or a~~
38 ~~substantial portion of its property to another cooperative doing business in~~
39 ~~this state pursuant to this article, or to the holders of any notes, bonds~~
40 ~~or other evidences of indebtedness issued to the United States or any agency~~
41 ~~or instrumentality of the United States.~~

42 Sec. 18. Repeal

43 Section 10-2137, Arizona Revised Statutes, is repealed.

1 5. "COMMISSION" MEANS THE ARIZONA CORPORATION COMMISSION.

2 6. "ELECTRIC DISTRIBUTION FACILITIES" MEANS ALL PROPERTY USED IN
3 CONNECTION WITH THE DISTRIBUTION OF ELECTRICITY FROM AN ELECTRIC GENERATING
4 PLANT TO RETAIL ELECTRIC CUSTOMERS EXCEPT ELECTRIC TRANSMISSION FACILITIES.

5 7. "ELECTRIC DISTRIBUTION SERVICE" MEANS THE DISTRIBUTION OF
6 ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS THROUGH THE USE OF ELECTRIC
7 DISTRIBUTION FACILITIES.

8 8. "ELECTRIC DISTRIBUTION UTILITY" MEANS A PUBLIC SERVICE CORPORATION
9 OR PUBLIC POWER ENTITY THAT OPERATES, CONTROLS OR MAINTAINS ELECTRIC
10 DISTRIBUTION FACILITIES.

11 9. "ELECTRIC GENERATION PLANT" MEANS ALL PROPERTY USED IN CONNECTION
12 WITH THE GENERATION FOR SALE OF ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS BUT
13 EXCLUDING ANY SERVICES PROVIDED BY ELECTRIC TRANSMISSION FACILITIES OR
14 ELECTRIC DISTRIBUTION FACILITIES.

15 10. "ELECTRIC GENERATION SERVICE" MEANS THE PROVISION OF ELECTRICITY
16 FOR SALE TO RETAIL ELECTRIC CUSTOMERS BUT DOES NOT INCLUDE ELECTRIC
17 DISTRIBUTION OR TRANSMISSION SERVICE OR GENERATION THAT IS NECESSARY FOR THE
18 RELIABLE OPERATION OF THE ELECTRIC DISTRIBUTION OR TRANSMISSION SYSTEM.

19 11. "ELECTRIC TRANSMISSION FACILITIES" MEANS ALL PROPERTY SO CLASSIFIED
20 BY THE FEDERAL ENERGY REGULATORY COMMISSION, OR TO THE EXTENT PERMITTED BY
21 LAW, SO CLASSIFIED BY THE ARIZONA CORPORATION COMMISSION.

22 12. "ELECTRIC TRANSMISSION SERVICE" MEANS THE TRANSMISSION OF
23 ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS OR TO ELECTRIC DISTRIBUTION
24 FACILITIES AND THAT IS SO CLASSIFIED BY THE FEDERAL ENERGY REGULATORY
25 COMMISSION OR, TO THE EXTENT PERMITTED BY LAW, SO CLASSIFIED BY THE ARIZONA
26 CORPORATION COMMISSION.

27 13. "ELECTRICITY" MEANS ELECTRIC ENERGY, ELECTRIC CAPACITY OR ELECTRIC
28 CAPACITY AND ENERGY.

29 14. "ELECTRICITY SUPPLIER" MEANS A PERSON, WHETHER ACTING IN A
30 PRINCIPAL, AGENT OR OTHER CAPACITY, THAT OFFERS TO SELL ELECTRICITY TO A
31 RETAIL ELECTRIC CUSTOMER IN THIS STATE.

32 15. "OTHER SERVICES" MEANS METERING, METER READING, BILLING AND
33 COLLECTING SERVICES.

34 16. "PUBLIC POWER ENTITY":

35 (a) MEANS ANY MUNICIPAL CORPORATION, CITY, TOWN OR OTHER POLITICAL
36 SUBDIVISION THAT IS ORGANIZED UNDER STATE LAW, THAT GENERATES, TRANSMITS,
37 DISTRIBUTES OR OTHERWISE PROVIDES ELECTRICITY AND THAT IS NOT A PUBLIC
38 SERVICE CORPORATION.

39 (b) DOES NOT INCLUDE:

40 (i) A CITY OR TOWN WITH A POPULATION OF LESS THAN SEVENTY-FIVE
41 THOUSAND PERSONS ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS
42 THAT DOES NOT ELECT BY OFFICIAL ACTION TO SELL ELECTRIC GENERATION SERVICE
43 IN THE SERVICE TERRITORY OF ANOTHER ELECTRICITY SUPPLIER.

1 (ii) A POWER DISTRICT, ELECTRICAL DISTRICT, IRRIGATION AND WATER
2 CONSERVATION DISTRICT OR MULTI-COUNTY WATER CONSERVATION DISTRICT ESTABLISHED
3 PURSUANT TO TITLE 48, CHAPTER 11, 12, 19 OR 22.

4 (iii) THE ARIZONA POWER AUTHORITY.

5 (iv) A CITY OR TOWN WITH A POPULATION OF SEVENTY-FIVE THOUSAND PERSONS
6 OR GREATER ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS THAT
7 ELECTS BY OFFICIAL ACTION NOT TO SELL ELECTRIC GENERATION SERVICE IN THE
8 SERVICE TERRITORY OF ANOTHER ELECTRICITY SUPPLIER.

9 17. "RETAIL ELECTRIC CUSTOMER" MEANS A PERSON THAT PURCHASES
10 ELECTRICITY FOR THAT PERSON'S OWN USE, INCLUDING USE IN THAT PERSON'S TRADE
11 OR BUSINESS, AND NOT FOR RESALE, REDISTRIBUTION OR RETRANSMISSION.

12 18. "SERVICE TERRITORY" MEANS THE GEOGRAPHIC AREA IN WHICH A PUBLIC
13 POWER ENTITY OR PUBLIC SERVICE CORPORATION OWNS, OPERATES, CONTROLS OR
14 MAINTAINS EITHER ELECTRIC DISTRIBUTION FACILITIES OR NATURAL GAS DISTRIBUTION
15 FACILITIES AND THAT ADDITIONAL AREA IN WHICH THE PUBLIC POWER ENTITY OR
16 PUBLIC SERVICE CORPORATION HAS AGREED TO EXTEND ELECTRIC DISTRIBUTION
17 FACILITIES OR NATURAL GAS DISTRIBUTION FACILITIES, WHETHER ESTABLISHED BY A
18 CERTIFICATE OF CONVENIENCE AND NECESSITY, BY OFFICIAL ACTION BY A PUBLIC
19 POWER ENTITY OR BY CONTRACT OR AGREEMENT.

20 30-802. Electric competition; terms and conditions;
21 determination; public notice

22 A. PUBLIC POWER ENTITIES SHALL DETERMINE TERMS AND CONDITIONS FOR
23 COMPETITION IN THE RETAIL SALE OF ELECTRIC GENERATION SERVICE CONSISTENT WITH
24 THE PROVISIONS OF THIS CHAPTER. PUBLIC POWER ENTITIES AND THE COMMISSION
25 SHALL COORDINATE THEIR EFFORTS IN THE TRANSITION TO COMPETITION IN ELECTRIC
26 GENERATION SERVICE TO PROMOTE CONSISTENT STATEWIDE APPLICATION OF THEIR
27 RESPECTIVE RULES, PROCEDURES AND ORDERS.

28 B. WHEN DETERMINING TERMS AND CONDITIONS FOR CUSTOMER SELECTION,
29 COMPLAINT RESOLUTION, CONSUMER PROTECTION, STRANDED COSTS, DISTRIBUTION
30 SERVICE RATES AND CHARGES, SYSTEM BENEFIT CHARGES, AND OTHER RELATED MATTERS
31 AS DETERMINED IN THE REASONABLE DISCRETION OF THE GOVERNING BODY OF THE
32 PUBLIC POWER ENTITY, THE GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL AT
33 A MINIMUM:

34 1. PROVIDE PUBLIC NOTICE OF PROPOSED TERMS AND CONDITIONS STATING
35 THAT:

36 (a) THE PUBLIC POWER ENTITY IS ADOPTING TERMS AND CONDITIONS FOR
37 COMPETITION IN THE RETAIL SALE OF ELECTRIC GENERATION SERVICE.

38 (b) THE INFORMATION IN PARAGRAPH 2 OF THIS SUBSECTION SHALL BE
39 AVAILABLE FOR INSPECTION.

40 (c) THE GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL HOLD A SPECIAL
41 MEETING AS REQUIRED BY PARAGRAPH 3 OF THIS SECTION AND SHALL INCLUDE A
42 STATEMENT PROVIDING THE DATE, TIME AND PLACE OF THE MEETING.

1 2. PROVIDE THAT FOR A PERIOD BEGINNING WITH THE PUBLIC NOTICE AND
2 UNTIL TEN DAYS AFTER THE CLOSE OF THE MEETING PRESCRIBED IN PARAGRAPH 3 OF
3 THIS SECTION, THE PUBLIC POWER ENTITY SHALL MAKE AVAILABLE TO INTERESTED
4 PARTIES AT ITS MAIN OFFICE PERTINENT INFORMATION, INCLUDING:

- 5 (a) MANAGEMENT'S RECOMMENDATIONS FOR PROPOSED TERMS AND CONDITIONS.
6 (b) RELEVANT FINANCIAL AND OTHER INFORMATION ON WHICH THE MANAGEMENT
7 PROPOSAL IS BASED. THE PUBLIC POWER ENTITY SHALL TIMELY SUPPLEMENT THE
8 INFORMATION THAT IS REASONABLY REQUESTED BY ANY INTERESTED PERSON AND SHALL
9 ANSWER REASONABLE QUESTIONS POSED BY ANY INTERESTED PERSON.
10 (c) CURRENT TERMS AND CONDITIONS, IF ANY.
11 (d) REPORTS OF CONSULTANTS, IF ANY.

12 3. PROVIDE THAT INTERESTED PERSONS MAY FILE WRITTEN COMMENTS WITH THE
13 PUBLIC POWER ENTITY AT ANY TIME DURING THE PERIOD PRESCRIBED IN PARAGRAPH 2
14 OF THIS SUBSECTION. A MEETING OF THE GOVERNING BODY OF THE PUBLIC POWER
15 ENTITY SHALL BE HELD NO EARLIER THAN THIRTY DAYS AND NO LATER THAN NINETY
16 DAYS AFTER THE PUBLIC NOTICE REFERRED TO IN PARAGRAPH 2 OF THIS SUBSECTION.
17 AT THE MEETING, THE GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL:

- 18 (a) AFFORD REPRESENTATIVES OF MANAGEMENT OF THE PUBLIC POWER ENTITY
19 AN OPPORTUNITY TO EXPLAIN THE PROPOSED TERMS AND CONDITIONS AND THE CRITERIA
20 FOR THE TERMS AND CONDITIONS AND ANSWER QUESTIONS.
21 (b) AFFORD ANY CONSULTANTS RETAINED BY THE PUBLIC POWER ENTITIES AN
22 OPPORTUNITY TO COMMENT ON THE PROPOSED TERMS AND CONDITIONS.
23 (c) AFFORD INTERESTED PERSONS A REASONABLE OPPORTUNITY TO SUBMIT
24 WRITTEN COMMENTS AND QUESTIONS OR MAKE ORAL PRESENTATIONS OF VIEWS, COMMENTS
25 AND QUESTIONS.

26 4. FOLLOWING REVIEW OF THE INFORMATION AND COMMENTS GATHERED IN THE
27 COURSE OF THE PROCEDURES DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION THE
28 GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL MAKE ITS DECISION ON THE
29 PROPOSED TERMS AND CONDITIONS.

30 C. ALL FINAL DECISIONS OF THE GOVERNING BODY OF THE PUBLIC POWER
31 ENTITY REGARDING TERMS AND CONDITIONS FOR CUSTOMER SELECTION, COMPLAINT
32 RESOLUTION, CONSUMER PROTECTION, STRANDED COSTS, TRANSMISSION AND
33 DISTRIBUTION SERVICE RATES AND CHARGES, SYSTEM BENEFIT CHARGES AND OTHER
34 RELATED MATTERS AS DETERMINED IN THE REASONABLE DISCRETION OF THE GOVERNING
35 BODY OF THE PUBLIC POWER ENTITY SHALL:

- 36 1. BE IN WRITING.
37 2. STATE THE FACTUAL AND LEGAL BASIS FOR THE DECISION.
38 3. STATE THE EFFECTIVE DATE OF THE DECISION, IF ANY.

39 30-803. Competition in retail supply of electricity; open
40 markets

41 A. PUBLIC POWER ENTITIES MAY PARTICIPATE IN RETAIL ELECTRIC
42 COMPETITION STATEWIDE AND SHALL OPEN THE SERVICE TERRITORY CURRENTLY SERVED
43 BY THEM TO COMPETITION IN THE SALE OF ELECTRIC GENERATION SERVICE NOT LATER

1 THAN DECEMBER 31, 1998 FOR AT LEAST TWENTY PER CENT OF THE 1995 RETAIL LOAD
2 AT LEAST FIFTEEN PER CENT OF WHICH SHALL BE RESERVED FOR CUSTOMERS IN THE
3 RESIDENTIAL CUSTOMER CLASS AND SHALL OPEN THEIR ENTIRE SERVICE TERRITORY TO
4 COMPETITION NOT LATER THAN DECEMBER 31, 2000 TO ELECTRICITY SUPPLIERS
5 CERTIFICATED BY THE COMMISSION PURSUANT TO SECTION 40-207 AND TO PROVIDERS
6 OF OTHER SERVICES.

7 B. PUBLIC POWER ENTITIES SHALL MAINTAIN THEIR EXISTING SERVICE
8 TERRITORIES FOR ELECTRIC DISTRIBUTION SERVICE. PUBLIC POWER ENTITIES SHALL
9 NOT PROVIDE ELECTRIC DISTRIBUTION SERVICES IN THE SERVICE TERRITORIES OF
10 OTHER ELECTRIC DISTRIBUTION UTILITIES IN THIS STATE.

11 C. ELECTRIC DISTRIBUTION UTILITIES SHALL CONTINUE TO PROVIDE OTHER
12 SERVICES FOR THE SERVICE TERRITORIES THEY SERVE AS FOLLOWS:

13 1. BEGINNING ON DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, BILLING
14 AND COLLECTION SERVICES SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE
15 RETAIL ELECTRIC CUSTOMERS WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE
16 COMPETITIVE ELECTRIC GENERATION SERVICE. AFTER DECEMBER 31, 2000 BILLING AND
17 COLLECTION SERVICES FOR COMPETITIVE ELECTRIC GENERATION SERVICES SHALL BE
18 PROVIDED ON A COMPETITIVE BASIS FOR ALL RETAIL ELECTRIC CUSTOMERS THAT HAVE
19 COMPETITIVE ELECTRIC GENERATION SERVICE.

20 2. BEGINNING ON DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, METERING
21 SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE RETAIL ELECTRIC CUSTOMERS
22 WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE COMPETITIVE ELECTRIC
23 GENERATION SERVICE. AFTER DECEMBER 31, 2000 METERING SHALL BE PROVIDED ON
24 A COMPETITIVE BASIS FOR ALL RETAIL ELECTRIC CUSTOMERS THAT HAVE COMPETITIVE
25 ELECTRIC GENERATION SERVICE. ALL METERS SHALL MEET OR EXCEED EXISTING
26 STANDARDS FOR SAFETY, RELIABILITY AND ACCURACY.

27 3. BEGINNING ON DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, METER
28 READING SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE RETAIL ELECTRIC
29 CUSTOMERS WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE COMPETITIVE ELECTRIC
30 GENERATION SERVICE. AFTER DECEMBER 31, 2000 METER READING SHALL BE PROVIDED
31 ON A COMPETITIVE BASIS FOR ALL RETAIL ELECTRIC CUSTOMERS THAT HAVE
32 COMPETITIVE ELECTRIC GENERATION SERVICE.

33 D. PUBLIC POWER ENTITIES SHALL PROVIDE FOR BUY-THROUGH SERVICE TO ANY
34 ELECTRIC CONSUMER ON REQUEST AT NO ADDITIONAL CHARGE OTHER THAN CHARGES FOR
35 REQUIRED TRANSMISSION, DISTRIBUTION OR ANCILLARY SERVICES FROM AND AFTER
36 JANUARY 1, 2001.

37 E. PUBLIC POWER ENTITIES SHALL ALLOW THE AGGREGATION OF LOADS BY
38 MULTIPLE CUSTOMERS.

39 F. THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL ADOPT A CODE OF
40 CONDUCT TO PREVENT ANTICOMPETITIVE ACTIVITIES THAT MAY RESULT FROM THE PUBLIC
41 POWER ENTITY PROVIDING BOTH COMPETITIVE AND NONCOMPETITIVE SERVICES TO RETAIL
42 ELECTRIC CUSTOMERS. THE CODE OF CONDUCT SHALL ADDRESS AT LEAST THE FOLLOWING
43 ISSUES:

1 1. POLICIES FOR ALLOCATING COSTS BETWEEN NONCOMPETITIVE AND
2 COMPETITIVE ACTIVITIES TO AVOID CROSS-SUBSIDIZATION.

3 2. POLICIES TO PREVENT EMPLOYEES PROVIDING NONCOMPETITIVE SERVICES
4 FROM DIRECTING RETAIL ELECTRIC CUSTOMERS TO THE PUBLIC POWER ENTITY'S
5 COMPETITIVE SERVICES.

6 3. POLICIES TO PREVENT EMPLOYEES FROM TRANSFERRING PROPRIETARY
7 INFORMATION GAINED IN THE PERFORMANCE OF NONCOMPETITIVE SERVICES TO EMPLOYEES
8 ENGAGED IN PERFORMING COMPETITIVE SERVICES WITHOUT THE CONSENT OF THE RETAIL
9 ELECTRIC CUSTOMER.

10 4. POLICIES TO PROVIDE RETAIL ELECTRIC CUSTOMERS WITH COMPLETE AND
11 ACCURATE DISCLOSURE OF WHICH SERVICES ARE COMPETITIVE AND WHICH SERVICES ARE
12 NONCOMPETITIVE.

13 5. POLICIES TO PROHIBIT PREFERENTIAL TREATMENT WHEN PROVIDING
14 NONCOMPETITIVE SERVICES BASED ON A RETAIL ELECTRIC CUSTOMER'S PROVIDER OF
15 COMPETITIVE SERVICES.

16 G. THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL HAVE AN ANNUAL
17 INDEPENDENT AUDIT PERFORMED TO ENSURE COMPLIANCE WITH THE PROCESS AND
18 PROCEDURES ESTABLISHED IN THE CODE OF CONDUCT PURSUANT TO SUBSECTION F OF
19 THIS SECTION. THE RESULTS OF THE AUDIT SHALL BE MADE AVAILABLE TO THE
20 PUBLIC.

21 H. THE GOVERNING BODY OF A PUBLIC POWER ENTITY SHALL PROVIDE A
22 DISPUTE RESOLUTION PROCESS INCLUDING NONBINDING THIRD PARTY ARBITRATORS OR
23 MEDIATORS FOR CUSTOMERS AND INTERESTED PARTIES FILING A COMPLAINT REGARDING
24 ACTIVITIES THAT ARE GOVERNED BY THE POLICIES ESTABLISHED PURSUANT TO
25 SUBSECTION F OF THIS SECTION. KNOWINGLY AND INTENTIONALLY VIOLATING THE
26 PROVISIONS OF THIS SECTION SHALL RESULT IN THE SAME CIVIL PENALTIES THAT
27 APPLY TO PUBLIC SERVICE CORPORATIONS FOR SIMILAR VIOLATIONS.

28 I. THE PROVISIONS OF SUBSECTION B OF THIS SECTION AND THE ADVISABILITY
29 OF THE EXCLUSIONS IN SECTION 30-801, PARAGRAPH 16, SUBDIVISION (b), ITEM (iv)
30 ARE SUBJECT TO LEGISLATIVE REVIEW IN 2008. THE REVIEW SHALL INCLUDE
31 RECOMMENDATIONS ON WHETHER PUBLIC POWER ENTITIES SHOULD RETAIN THEIR THEN
32 EXISTING DISTRIBUTION SERVICE TERRITORIES.

33 30-804. Distribution service areas; alteration

34 THIS CHAPTER DOES NOT ALTER THE EXISTING SYSTEM OF DETERMINING ELECTRIC
35 DISTRIBUTION SERVICE TERRITORIES THROUGH CERTIFICATES OF CONVENIENCE AND
36 NECESSITY, OFFICIAL ACTIONS OF PUBLIC POWER ENTITIES OR CONTRACTS OR
37 AGREEMENTS AMONG ELECTRIC DISTRIBUTION UTILITIES OR THE MANNER OF SETTING AND
38 REGULATING ELECTRIC DISTRIBUTION SERVICE PRICES.

39 30-805. Distribution prices; conditions

40 A. PUBLIC POWER ENTITIES SHALL:

41 1. ESTABLISH UNBUNDLED ANCILLARY ELECTRIC TRANSMISSION AND
42 DISTRIBUTION AND OTHER SERVICE PRICES AND TERMS AND CONDITIONS THAT ARE
43 NONDISCRIMINATORY AND THAT REFLECT THE JUST AND REASONABLE PRICE FOR

1 PROVIDING THE SERVICE. EXCEPT AS PROVIDED IN PARAGRAPH 3, PUBLIC POWER
2 ENTITIES SHALL NOT CONSIDER THE PROFITS OR LOSSES ASSOCIATED WITH ELECTRIC
3 GENERATION SERVICE IN ESTABLISHING ELECTRIC DISTRIBUTION SERVICE PRICES.

4 2. ADOPT REASONABLE TERMS AND CONDITIONS GOVERNING THE ELECTRIC
5 DISTRIBUTION UTILITY'S OBLIGATION TO PROVIDE ELECTRIC DISTRIBUTION AND OTHER
6 SERVICES.

7 3. ESTABLISH A TEMPORARY SURCHARGE ON ELECTRIC DISTRIBUTION SERVICE
8 PRICES TO PAY FOR ALL OR A PORTION OF THE UNMITIGATED STRANDED COSTS OF
9 ELECTRIC GENERATION SERVICE, IF ANY, THAT WERE INCURRED AS A DIRECT RESULT
10 OF COMPETITION AMONG ELECTRICITY SUPPLIERS, THAT WERE INCURRED BY PUBLIC
11 POWER ENTITIES TO SERVE THEIR CUSTOMERS IN THIS STATE BEFORE DECEMBER 26,
12 1996 AND THAT MAY NOT BE RECOVERABLE IN A COMPETITIVE ELECTRIC GENERATION
13 SERVICE MARKET. UNMITIGATED STRANDED COSTS MAY INCLUDE EMPLOYEE SEVERANCE
14 COSTS NECESSITATED BY ELECTRIC COMPETITION INCLUDING UNEMPLOYMENT
15 COMPENSATION, TRAINING AND SEVERANCE BENEFITS. A PUBLIC POWER ENTITY'S
16 STRANDED COST RECOVERY SHALL BE DETERMINED BASED ON THE CONSIDERATION OF AT
17 LEAST THE FOLLOWING FACTORS:

18 (a) THE IMPACT OF STRANDED COST RECOVERY ON THE EFFECTIVENESS OF
19 COMPETITION.

20 (b) THE IMPACT OF STRANDED COST RECOVERY ON CUSTOMERS OF A PUBLIC
21 POWER ENTITY WHO DO NOT PARTICIPATE IN THE COMPETITIVE MARKET.

22 (c) THE IMPACT, IF ANY, ON THE PUBLIC POWER ENTITY'S ABILITY TO MEET
23 DEBT OBLIGATIONS.

24 (d) THE IMPACT OF STRANDED COST RECOVERY ON PRICES PAID BY CONSUMERS
25 WHO PARTICIPATE IN THE COMPETITIVE MARKET.

26 (e) THE DEGREE TO WHICH THE PUBLIC POWER ENTITY HAS MITIGATED OR
27 OFFSET STRANDED COSTS AND THE COSTS ASSOCIATED WITH MITIGATING STRANDED
28 COSTS.

29 (f) THE DEGREE TO WHICH SOME ASSETS HAVE VALUES IN EXCESS OF THEIR
30 BOOK VALUES.

31 (g) APPROPRIATE TREATMENT OF NEGATIVE STRANDED COSTS.

32 (h) THE TIME PERIOD DURING WHICH THESE STRANDED COST CHARGES MAY BE
33 RECOVERED. THE GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL LIMIT THE
34 APPLICATION OF THESE CHARGES TO A SPECIFIED TIME PERIOD.

35 (i) THE EASE OF DETERMINING THE AMOUNT OF STRANDED COSTS.

36 (j) THE APPLICABILITY OF STRANDED COSTS TO INTERRUPTIBLE CUSTOMERS.

37 (k) THE AMOUNT OF ELECTRICITY GENERATED BY RENEWABLE GENERATING
38 RESOURCES OWNED BY THE PUBLIC POWER ENTITY.

39 (l) ALLOWANCES THAT HAVE BEEN PROVIDED FOR THE RECOVERY OF STRANDED
40 COSTS TO OTHER ELECTRICITY SUPPLIERS IN THIS STATE INCLUDING WHETHER ONE
41 HUNDRED PER CENT OF REGULATORY ASSETS ARE RECOVERED THROUGH THE STRANDED COST
42 SURCHARGE.

1 B. THE IMPOSITION OF A TEMPORARY SURCHARGE ON ELECTRIC DISTRIBUTION
2 SERVICE PRICES PURSUANT TO SUBSECTION A, PARAGRAPH 3 SHALL NOT CAUSE THE
3 RATES FOR STANDARD OFFER SERVICE TO EXCEED THE RATES THAT WERE IN EFFECT ON
4 DECEMBER 30, 1998. THE SURCHARGE SHALL NOT CONTINUE PAST DECEMBER 31, 2004.

5 C. UNMITIGATED STRANDED COSTS SHALL BE ALLOCATED AMONG CUSTOMER
6 CLASSES IN A MANNER CONSISTENT WITH THE SPECIFIC PUBLIC POWER ENTITY'S
7 CURRENT RATE TREATMENT OF THE STRANDED ASSET, IN ORDER TO EFFECT A RECOVERY
8 OF UNMITIGATED STRANDED COSTS THAT IS IN SUBSTANTIALLY THE SAME PROPORTION
9 AS THE RECOVERY OF SIMILAR COSTS FROM CUSTOMERS OR CUSTOMER CLASSES UNDER
10 CURRENT RATES.

11 D. ANY REDUCTION IN ELECTRICITY PURCHASES FROM A PUBLIC POWER ENTITY
12 RESULTING FROM SELF-GENERATION, DEMAND SIDE MANAGEMENT OR OTHER DEMAND
13 REDUCTION ATTRIBUTABLE TO ANY CAUSE OTHER THAN THE RETAIL ACCESS PROVISIONS
14 OF THIS CHAPTER SHALL NOT BE USED TO CALCULATE OR RECOVER ANY STRANDED COST
15 FROM A CUSTOMER.

16 E. PUBLIC POWER ENTITIES SHALL ALLOW ANY PROVIDER OF ELECTRIC
17 GENERATION SERVICE ACCESS TO THE ELECTRIC POWER TRANSMISSION AND DISTRIBUTION
18 FACILITIES OF PUBLIC POWER ENTITIES UNDER RATES AND TERMS AND CONDITIONS OF
19 SERVICE THAT ARE NONDISCRIMINATORY, COST BASED, JUST AND REASONABLE AND
20 COMPARABLE TO THE RATES CHARGED FOR THE PUBLIC POWER ENTITY'S OWN USE OF THE
21 SAME FACILITIES.

22 F. THE PUBLIC POWER ENTITY SHALL PARTICIPATE IN AND SUPPORT AN
23 INDEPENDENT SYSTEM OPERATOR, AN INDEPENDENT SYSTEM ADMINISTRATOR OR OTHER
24 EFFORTS TO COORDINATE SCHEDULING OF GENERATION OR TRANSMISSION WITHIN THE
25 STATE OR REGION.

26 G. THE PUBLIC POWER ENTITY SHALL REDUCE THE PRICE FOR BUNDLED SERVICE
27 FOR ELECTRIC RETAIL CUSTOMERS WHO ARE UNABLE TO CHOOSE COMPETITIVE ELECTRIC
28 GENERATION BY AT LEAST TEN PER CENT OVER A MAXIMUM OF A TEN YEAR PERIOD. THE
29 TEN YEAR PERIOD SHALL BEGIN ON ANY DATE BETWEEN JANUARY 1, 1991 AND THE
30 EFFECTIVE DATE OF THIS CHAPTER. EACH PUBLIC POWER ENTITY SHALL REPORT ITS
31 BEGINNING EFFECTIVE DATE FOR THE TEN YEAR PERIOD AND THE PROPOSED
32 APPORTIONMENT AMONG ITS CUSTOMER CLASSES TO THE JOINT LEGISLATIVE BUDGET
33 COMMITTEE BY DECEMBER 31, 1998.

34 30-806. Consumer protection; rules; confidentiality; unlawful
35 practice

36 A. PUBLIC POWER ENTITIES SHALL ADOPT RULES AND PROCEDURES TO PROTECT
37 THE PUBLIC AGAINST DECEPTIVE, UNFAIR AND ABUSIVE BUSINESS PRACTICES. PUBLIC
38 POWER ENTITIES AND THE COMMISSION SHALL COORDINATE THEIR RESPECTIVE RULES AND
39 PROCEDURES TO PROMOTE CONSISTENT IMPLEMENTATION STATEWIDE. THE RULES AND
40 PROCEDURES ADOPTED BY PUBLIC POWER ENTITIES SHALL ADDRESS AT LEAST:

- 41 1. DECEPTIVE, UNFAIR AND ABUSIVE BUSINESS PRACTICES INCLUDING DEPOSIT
42 REQUIREMENTS AND RECONNECTION FEES.
- 43 2. INTRUSIVE AND ABUSIVE MARKETING PRACTICES.
- 44 3. DECEPTIVE OR UNTRUE ADVERTISING PRACTICES.

1 4. PROVIDING AN OMBUDSMAN OFFICE TO INVESTIGATE COMPLAINTS REGARDING
2 THE SUBSIDIZATION OF COMPETITIVE SERVICES BY ANY PRICE OR CHARGE FOR
3 NONCOMPETITIVE ELECTRIC SERVICE.

4 5. PRACTICES PROHIBITED UNDER SECTION 30-809, SUBSECTION C.

5 6. IF A PUBLIC POWER ENTITY FORMS AN AFFILIATE FOR THE PURPOSES OF
6 PROVIDING SERVICES THAT REQUIRE A LICENSED CONTRACTOR OR HAS EMPLOYEES
7 PERFORM THESE SERVICES, INCLUDING ELECTRICAL, HEATING, VENTILATION, AIR
8 CONDITIONING, PLUMBING OR CONSTRUCTION SERVICES, THE PUBLIC POWER ENTITY
9 SHALL NOT ADVERTISE THESE SERVICES IN THEIR BILLING STATEMENT OR IN OTHER
10 MAILINGS DONE BY THE ELECTRIC DISTRIBUTION UTILITY.

11 B. THE RULES ALSO SHALL REQUIRE A SEPARATE AUTHORIZATION PURSUANT TO
12 SUBSECTION C OF THIS SECTION TO CHANGE ELECTRICITY SUPPLIER AND PLAIN
13 LANGUAGE IN ADVERTISING AND BILLING USING UNIFORM WORDS AND PHRASES THAT HAVE
14 THE SAME MEANINGS SO THAT CUSTOMERS CAN MAKE ACCURATE COMPARISONS.

15 C. A SEPARATE WRITTEN AND DATED AUTHORIZATION FROM THE RETAIL ELECTRIC
16 CUSTOMER IS REQUIRED FOR A CHANGE IN A RETAIL ELECTRICITY SUPPLIER SUBJECT
17 TO THE FOLLOWING:

18 1. THE AUTHORIZATION SHALL NOT CONTAIN ANY INDUCEMENTS.

19 2. THE AUTHORIZATION SHALL BE IN LEGIBLE PRINT WITH CLEAR AND PLAIN
20 LANGUAGE CONFIRMING THE RATES, TERMS, CONDITIONS AND NATURE OF THE SERVICE
21 TO BE PROVIDED.

22 3. THE AUTHORIZATION SHALL NOT STATE OR SUGGEST THAT THE CUSTOMER TAKE
23 ACTION TO RETAIN THE CUSTOMER'S CURRENT ELECTRICITY SUPPLIER.

24 4. AN ELECTRICITY SUPPLIER THAT SUBMITS OR EXECUTES A CHANGE IN A
25 RETAIL ELECTRICITY CUSTOMER'S ELECTRICITY SUPPLIER IN VIOLATION OF THIS
26 SUBSECTION SHALL REFUND TO THE RETAIL ELECTRICITY CUSTOMER THE ENTIRE AMOUNT
27 OF THE CUSTOMER'S ELECTRICITY CHARGES ATTRIBUTABLE TO ELECTRIC GENERATION
28 SERVICE FROM THE ELECTRICITY SUPPLIER FOR THREE MONTHS, OR THE PERIOD OF THE
29 UNAUTHORIZED SERVICE, WHICHEVER IS LESS.

30 5. THE AUTHORIZATION SHALL BE IN THE SAME LANGUAGE AS ANY PROMOTIONAL
31 OR INDUCEMENT MATERIALS PROVIDED TO THE RETAIL ELECTRIC CUSTOMER.

32 6. NO BOX OR CONTAINER MAY BE USED TO COLLECT ENTRIES FOR SWEEPSTAKES
33 OR A CONTEST THAT, AT THE SAME TIME, IS USED TO COLLECT AUTHORIZATION BY A
34 RETAIL ELECTRIC CUSTOMER TO CHANGE THEIR ELECTRICITY SUPPLIER OR TO SUBSCRIBE
35 TO OTHER SERVICES.

36 D. NOTWITHSTANDING ANY OTHER LAW, CUSTOMER INFORMATION, ACCOUNT
37 INFORMATION AND RELATED PROPRIETARY INFORMATION ARE CONFIDENTIAL UNLESS
38 SPECIFICALLY WAIVED BY THE CUSTOMER IN WRITING. PUBLIC POWER ENTITIES AND
39 ELECTRICITY SUPPLIERS AND PROVIDERS OF OTHER SERVICES SHALL ADOPT REASONABLE
40 RULES AND PROCEDURES TO ENSURE CONFIDENTIALITY.

41 E. IF A PUBLIC POWER ENTITY EMPLOYS THE SERVICES OF A CONTRACTOR FOR
42 INTERIOR HOUSEHOLD ENERGY SERVICE, EITHER DIRECTLY OR THROUGH ANY AFFILIATE,
43 THE CONTRACTOR AND ANY SUBCONTRACTORS SHALL BE LICENSED BY THE REGISTRAR OF
44 CONTRACTORS AND SHALL COMPLY WITH ALL MUNICIPAL PERMIT AND INSPECTION

1 STANDARDS AND APPLICABLE LIFE SAFETY CODES. FOR THE PURPOSES OF THIS
2 SUBSECTION, "CONTRACTOR" HAS THE SAME MEANING AS IN SECTION 32-1101.

3 F. A PUBLIC POWER ENTITY THAT HAS A SERVICE TERRITORY IN THIS STATE
4 THROUGH CERTIFICATES OF CONVENIENCE AND NECESSITY, RESOLUTIONS OF PUBLIC
5 POWER ENTITIES OR CONTRACTS OR AGREEMENTS AMONG UTILITIES SHALL ACT AS THE
6 SUPPLIER OF LAST RESORT FOR ELECTRIC GENERATION SERVICE FOR EVERY RETAIL
7 ELECTRIC CUSTOMER WITHIN ITS SERVICE TERRITORY WHOSE ANNUAL USAGE IS ONE
8 HUNDRED THOUSAND KILOWATT HOURS OR LESS IF OTHER ELECTRICITY SUPPLIERS ARE
9 UNWILLING OR ARE UNABLE TO SUPPLY ELECTRIC GENERATION SERVICE AND WHOSE
10 ELECTRIC GENERATION SERVICE HAS BEEN DISCONTINUED THROUGH NO FAULT OF THE
11 RETAIL ELECTRIC CUSTOMER. PUBLIC POWER ENTITIES THAT PROVIDE ELECTRIC
12 DISTRIBUTION SERVICES ARE ENTITLED TO RECOVER JUST AND REASONABLE COSTS FOR
13 SUPPLYING ELECTRIC GENERATION SERVICE UNDER THIS SUBSECTION THROUGH A
14 DISTRIBUTION CHARGE ON RETAIL CUSTOMERS WHOSE ANNUAL USAGE IS ONE HUNDRED
15 THOUSAND KILOWATT HOURS OR LESS. PUBLIC POWER ENTITIES AND THE COMMISSION
16 SHALL COORDINATE THEIR RESPECTIVE RULES AND PROCEDURES TO PROVIDE STATEWIDE
17 UNIFORMITY.

18 G. THE PROVISIONS OF SUBSECTION F OF THIS SECTION ARE SUBJECT TO
19 LEGISLATIVE REVIEW BY THE AUDITOR GENERAL IN 2008. THE REVIEW SHALL INCLUDE
20 RECOMMENDATIONS ON WHETHER ELECTRIC DISTRIBUTION UTILITIES SHALL REMAIN THE
21 PROVIDER OF LAST RESORT OR IF OTHER ELECTRICITY SUPPLIERS SHOULD BID TO BE
22 THE PROVIDER OF LAST RESORT.

23 H. FAILURE OF A PUBLIC POWER ENTITY TO COMPLY WITH THE RULES ADOPTED
24 PURSUANT TO SUBSECTIONS A AND B OF THIS SECTION OR THE PROCEDURES LISTED IN
25 SUBSECTION C OF THIS SECTION IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION
26 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION
27 AS PRESCRIBED BY TITLE 44, CHAPTER 10, ARTICLE 7.

28 30-807. Consumer outreach and education

29 A. PUBLIC POWER ENTITIES SHALL BE RESPONSIBLE FOR ENSURING AND
30 OVERSEEING A COMPREHENSIVE PUBLIC EDUCATION PROGRAM REGARDING ELECTRIC
31 GENERATION SERVICE COMPETITION. PUBLIC POWER ENTITIES AND THE COMMISSION
32 SHALL COORDINATE THEIR RESPECTIVE RULES AND PROCEDURES FOR PUBLIC EDUCATION
33 PROGRAMS TO PROMOTE CONSISTENT IMPLEMENTATION STATEWIDE. THE PROGRAM SHALL
34 BE DESIGNED TO DO THE FOLLOWING:

35 1. EDUCATE RETAIL ELECTRIC CUSTOMERS ABOUT THE CHANGES IN THE ELECTRIC
36 INDUSTRY.

37 2. PROVIDE RETAIL ELECTRIC CUSTOMERS WITH ACCURATE AND UNBIASED
38 INFORMATION SO THAT RETAIL ELECTRIC CUSTOMERS MAY MAKE INFORMED CHOICES WHEN
39 PARTICIPATING IN THE COMPETITIVE ELECTRIC GENERATION SERVICE MARKET.

40 3. ENCOURAGE PUBLIC PARTICIPATION IN THE DECISION MAKING PROCESS
41 RELATING TO ESTABLISHING A COMPETITIVE ELECTRIC INDUSTRY.

42 B. PUBLIC POWER ENTITIES SHALL WORK WITH INTERESTED PARTIES INCLUDING
43 COMMUNITY BASED CONSUMER ADVOCATE ORGANIZATIONS TO DEVELOP AND IMPLEMENT AN
44 OUTREACH AND EDUCATION PLAN. THIS PLAN SHALL INCLUDE:

1 1. THE DISSEMINATION OF INFORMATION BY MEANS OF INTERACTIVE
2 APPROACHES, AS WELL AS BROCHURES OR OTHER WRITTEN MATERIALS AND A VARIETY OF
3 MASS MEDIA OUTLETS.

4 2. AN EXPLANATION IN CLEAR AND PLAIN LANGUAGE OF THE BASIC CONCEPTS
5 OF COMPETITIVE ELECTRIC GENERATION SERVICE INCLUDING THE FOLLOWING ISSUES:

6 (a) THE EFFECTS OF COMPETITIVE ELECTRIC GENERATION SERVICE ON RETAIL
7 ELECTRIC CUSTOMERS AND CONSUMER PROGRAMS.

8 (b) THE BASIC RESPONSIBILITIES AND RISKS RETAIL ELECTRIC CUSTOMERS
9 ASSUME WITH COMPETITIVE ELECTRIC GENERATION SERVICE.

10 (c) THE BASIC CRITERIA FOR SELECTING A RETAIL ELECTRICITY SUPPLIER OR
11 PROVIDER OF OTHER SERVICES.

12 (d) WHERE THE RETAIL ELECTRIC CUSTOMER CAN FIND INFORMATION ON
13 CONSUMER PROTECTION, CUSTOMER COMPLAINTS AND DISPUTE RESOLUTION PROGRAMS.

14 (e) THE RESOURCES AVAILABLE FOR ADDITIONAL INFORMATION INCLUDING
15 LISTING A TOLL FREE TELEPHONE NUMBER.

16 3. PUBLICIZED PUBLIC FORUMS CONDUCTED IN SEVERAL GEOGRAPHICAL AREAS
17 OF THIS STATE TO OBTAIN PUBLIC INPUT AND PROVIDE OPPORTUNITIES FOR EXCHANGE
18 OF QUESTIONS AND ANSWERS.

19 4. TARGETED EFFORTS TO REACH RURAL, LOW INCOME, ELDERLY, NONENGLISH
20 SPEAKING, DISABLED, MINORITIES AND AT RISK POPULATIONS.

21 30-808. Electric retail competition information;
22 confidentiality

23 NOTWITHSTANDING ANY OTHER LAW, RECORDS AND PROCEEDINGS RELATING TO
24 COMPETITIVE ACTIVITY, INCLUDING TRADE SECRETS OR PRIVILEGED OR CONFIDENTIAL
25 COMMERCIAL OR FINANCIAL INFORMATION, IF DISCLOSURE OF THE INFORMATION COULD
26 GIVE A MATERIAL ADVANTAGE TO COMPETITORS, ARE NOT OPEN TO PUBLIC INSPECTION
27 AND SHALL NOT BE MADE PUBLIC EXCEPT BY ORDER OF THE PUBLIC POWER ENTITY'S
28 GOVERNING BODY, THE ELECTRICITY SUPPLIER OR THE PROVIDER OF OTHER SERVICES.
29 THE INFORMATION PROTECTED AS CONFIDENTIAL UNDER THIS SECTION IS ANY
30 INFORMATION THAT IS SIMILAR TO THE INFORMATION THAT WOULD BE CONFIDENTIAL
31 UNDER SECTION 40-204 IF REPORTED BY A PUBLIC SERVICE CORPORATION TO THE
32 COMMISSION. THE PUBLIC POWER ENTITY SHALL MAKE AVAILABLE TO ANY REQUESTING
33 PARTY ALL INFORMATION NECESSARY TO DEMONSTRATE COMPLIANCE WITH SECTION
34 30-806. DETERMINATIONS MADE BY PUBLIC POWER ENTITIES UNDER THIS SECTION MAY
35 BE CHALLENGED PURSUANT TO THE PROCEDURES PRESCRIBED IN SECTION 39-121.02.

36 30-809. Consumer choice

37 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, DURING THE
38 INITIAL CONSTRUCTION OF A RESIDENTIAL STRUCTURE, ELECTRIC AND NATURAL GAS
39 FACILITIES AT A MINIMUM SHALL BE INSTALLED IN AND TO THE STRUCTURE IN A
40 MANNER THAT PROVIDES THE RETAIL ENERGY CONSUMER ULTIMATELY RESIDING IN THE
41 STRUCTURE AND ALL SUBSEQUENT RETAIL ENERGY CONSUMERS RESIDING IN THE
42 STRUCTURE WITH THE CAPABILITY TO CHOOSE BETWEEN ELECTRICITY AND NATURAL GAS
43 AS AN ENERGY SOURCE FOR EACH APPLIANCE APPLICATION.

1 B. A RESIDENTIAL STRUCTURE MAY BE CONSTRUCTED WITHOUT THE INSTALLATION
2 OF ANY PARTICULAR FACILITIES IF:

3 1. THE STRUCTURE IS NOT LOCATED WITHIN THE SERVICE TERRITORY OF A
4 PUBLIC POWER ENTITY THAT FURNISHES THE ASSOCIATED ENERGY SERVICE.

5 2. UNLESS MANDATED OTHERWISE BY LAW OR GOVERNMENTAL REGULATION, THE
6 PUBLIC POWER ENTITY THAT FURNISHES THE ASSOCIATED ENERGY NOTIFIES THE
7 CONTRACTOR OR OWNER THAT THE EXTENSION OF FACILITIES TO THE STRUCTURE IS NOT
8 ECONOMICALLY FEASIBLE.

9 3. THE PUBLIC POWER ENTITY THAT FURNISHES A PARTICULAR ENERGY SERVICE
10 AND THE OWNER OR CONTRACTOR AGREE THAT THE EXTENSION OF FACILITIES TO THE
11 STRUCTURE WOULD NOT BE ECONOMICALLY FEASIBLE OR WOULD OTHERWISE BE
12 INAPPROPRIATE.

13 C. UNLESS MANDATED BY LAW OR A GENERALLY ACCEPTED INDUSTRY CODE, A
14 PERSON OR ENTITY, INCLUDING MUNICIPAL CORPORATIONS AND POLITICAL
15 SUBDIVISIONS, SHALL NOT ENGAGE IN ANY PRACTICE THAT INTERFERES WITH THE
16 OPPORTUNITY TO HAVE ELECTRIC AND NATURAL GAS FACILITIES AT A MINIMUM
17 INSTALLED IN AND TO AN EXISTING RESIDENTIAL STRUCTURE IN A MANNER THAT
18 PROVIDES THE RETAIL ENERGY CONSUMER ULTIMATELY RESIDING IN THE STRUCTURE AND
19 ALL SUBSEQUENT RETAIL ENERGY CONSUMERS RESIDING IN THE STRUCTURE WITH THE
20 CAPABILITY TO CHOOSE BETWEEN ELECTRICITY AND NATURAL GAS AS AN ENERGY SOURCE
21 FOR EACH APPLIANCE APPLICATION. THIS SUBSECTION DOES NOT APPLY TO REASONABLE
22 SALES AND MARKETING ACTIVITIES.

23 D. IF A TRENCH IS PROVIDED BY A CONTRACTOR OR A PROPERTY OWNER FOR THE
24 PURPOSE OF HAVING UTILITY FACILITIES INSTALLED TO A RESIDENTIAL STRUCTURE,
25 ELECTRIC AND NATURAL GAS FACILITIES AT A MINIMUM SHALL BE PERMITTED TO OCCUPY
26 THE TRENCH IF THE INSTALLATION OF THE FACILITIES IS COMPLETED IN COMPLIANCE
27 WITH GENERALLY ACCEPTED INDUSTRY SAFETY CODES APPLICABLE TO THE INSTALLATION.
28 EXCEPT FOR UNDERGROUND CONVERSION SERVICE AREAS PRESCRIBED BY SECTIONS 40-341
29 THROUGH 40-355 AND IMPROVEMENT DISTRICTS FOR UNDERGROUND UTILITY FACILITIES
30 PRESCRIBED BY SECTION 48-620, IF THE CONTRACTOR OR PROPERTY OWNER CONDITIONS
31 OCCUPANCY IN A TRENCH ON A REIMBURSEMENT OF COSTS ASSOCIATED WITH PROVIDING
32 THE TRENCH, THE CONTRACTOR OR PROPERTY OWNER MAY REQUIRE AN OCCUPANT TO PAY
33 A PRO RATA SHARE OF THE COSTS ASSOCIATED WITH PROVIDING THE TRENCH.

34 E. BEFORE INITIATING A COMPLAINT WITH A PUBLIC POWER ENTITY OR THE
35 COMMISSION, THE PARTIES TO A DISPUTE ARISING UNDER SUBSECTIONS A THROUGH D
36 OF THIS SECTION SHALL MEET AND IN GOOD FAITH ATTEMPT TO RESOLVE THE DISPUTE
37 THROUGH AN INFORMAL DISPUTE RESOLUTION PROCESS.

38 30-810. Application for rehearing; effect; decision

39 A. AFTER ANY FINAL ORDER OR DECISION IS MADE BY THE GOVERNING BODY OF
40 THE PUBLIC POWER ENTITY REGARDING TERMS AND CONDITIONS FOR CUSTOMER
41 SELECTION, COMPLAINT RESOLUTION, CONSUMER PROTECTION, STRANDED COSTS,
42 TRANSMISSION AND DISTRIBUTION SERVICE RATES AND CHARGES, SYSTEM BENEFIT
43 CHARGES AND OTHER RELATED MATTERS AS DETERMINED IN THE REASONABLE DISCRETION
44 OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY, OR REGARDING COMPLIANCE

1 WITH AN INTERGOVERNMENTAL AGREEMENT MADE UNDER THE PROVISIONS OF THIS
2 CHAPTER, ANY PARTY TO THE ACTION OR PROCEEDING OR THE ATTORNEY GENERAL ON
3 BEHALF OF THE STATE MAY APPLY FOR A REHEARING OF ANY MATTER DETERMINED IN THE
4 ACTION OR PROCEEDING AND SPECIFIED IN THE APPLICATION FOR REHEARING WITHIN
5 TWENTY DAYS OF ENTRY OF THE ORDER OR DECISION. UNLESS OTHERWISE ORDERED, THE
6 FILING OF THE APPLICATION DOES NOT STAY THE DECISION OF THE GOVERNING BODY
7 OF THE PUBLIC POWER ENTITY. IF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY
8 DOES NOT GRANT THE APPLICATION WITHIN TWENTY DAYS, IT IS DEEMED DENIED. IF
9 THE GOVERNING BODY OF THE PUBLIC POWER ENTITY GRANTS THE APPLICATION, THE
10 GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL PROMPTLY HEAR THE MATTER AND
11 MAKE A DETERMINATION WITHIN TWENTY DAYS AFTER FINAL SUBMISSION.

12 B. NO CLAIM ARISING FROM ANY ORDER OR DECISION OF THE GOVERNING BODY
13 OF THE PUBLIC POWER ENTITY REGARDING TERMS AND CONDITIONS FOR CUSTOMER
14 SELECTION, COMPLAINT RESOLUTION, CONSUMER PROTECTION, STRANDED COSTS,
15 TRANSMISSION AND DISTRIBUTION SERVICE RATES AND CHARGES, SYSTEM BENEFIT
16 CHARGES AND OTHER RELATED MATTERS AS DETERMINED IN THE REASONABLE DISCRETION
17 OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY OR REGARDING COMPLIANCE WITH
18 AN INTERGOVERNMENTAL AGREEMENT MADE UNDER THE PROVISION OF THIS CHAPTER SHALL
19 ACCRUE IN ANY COURT TO ANY PARTY OR THE STATE UNLESS THE PARTY OR THE STATE
20 MAKES, BEFORE THE EFFECTIVE DATE OF THE ORDER OR DECISION, APPLICATION TO THE
21 GOVERNING BODY OF THE PUBLIC POWER ENTITY FOR A REHEARING.

22 C. THE APPLICATION SHALL SET FORTH SPECIFICALLY THE GROUNDS ON WHICH
23 IT IS BASED AND A PERSON OR THE STATE SHALL NOT IN ANY COURT URGE OR RELY ON
24 ANY GROUND NOT SET FORTH IN THE APPLICATION.

25 D. AN APPLICATION FOR REHEARING DOES NOT EXCUSE ANY PERSON FROM
26 COMPLYING WITH AND OBEYING ANY ORDER OR DECISION OR ANY REQUIREMENTS OF ANY
27 ORDER OR DECISION OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY, OR
28 OPERATE IN ANY MANNER TO STAY OR POSTPONE THE ENFORCEMENT OF A DECISION,
29 EXCEPT IN CASES AND ON TERMS AS THE GOVERNING BODY OF THE PUBLIC POWER ENTITY
30 BY ORDER DIRECTS.

31 E. IF, AFTER A REHEARING AND A CONSIDERATION OF ALL THE FACTS,
32 INCLUDING THOSE ARISING SINCE THE MAKING OF THE ORDER OR DECISION, THE
33 GOVERNING BODY OF THE PUBLIC POWER ENTITY FINDS THAT THE ORIGINAL ORDER OR
34 DECISION OR ANY PART OF THE ORIGINAL ORDER OR DECISION IS IN ANY RESPECT
35 UNJUST OR UNWARRANTED OR SHOULD BE CHANGED THE GOVERNING BODY OF THE PUBLIC
36 POWER ENTITY MAY ABROGATE, CHANGE OR MODIFY THE ORDER OR DECISION, AND THE
37 ORDER OR DECISION HAS THE SAME FORCE AND EFFECT AS AN ORIGINAL ORDER OR
38 DECISION, BUT DOES NOT AFFECT ANY RIGHT OR THE ENFORCEMENT OF ANY RIGHT
39 ARISING FROM OR BY VIRTUE OF THE ORIGINAL ORDER OR DECISION, UNLESS DECIDED
40 BY THE GOVERNING BODY OF THE PUBLIC POWER ENTITY.

41 30-811. Action to set aside or modify certain orders or
42 decisions of public power entities; filing;
43 limitation; superior court

1 A. ANY PARTY IN INTEREST, OR THE ATTORNEY GENERAL ON BEHALF OF THE
2 STATE, WHO IS DISSATISFIED WITH AN ORDER OR DECISION OF THE GOVERNING BODY
3 OF THE PUBLIC POWER ENTITY REGARDING TERMS AND CONDITIONS FOR CUSTOMER
4 SELECTION, COMPLAINT RESOLUTION, CONSUMER PROTECTION, STRANDED COSTS,
5 TRANSMISSION SERVICE RATES AND CHARGES, DISTRIBUTION SERVICE RATES AND
6 CHARGES, SYSTEM BENEFIT CHARGES AND OTHER RELATED MATTERS AS DETERMINED IN
7 THE REASONABLE DISCRETION OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY
8 OR REGARDING COMPLIANCE WITH AN INTERGOVERNMENTAL AGREEMENT MADE UNDER THE
9 PROVISIONS OF THIS CHAPTER, MAY, WITHIN THIRTY DAYS AFTER A REHEARING IS
10 DENIED OR GRANTED, COMMENCE AN ACTION IN SUPERIOR COURT IN THE COUNTY IN
11 WHICH THE GOVERNING BODY OF THE PUBLIC POWER ENTITY HAS ITS OFFICE, AGAINST
12 THE GOVERNING BODY OF THE PUBLIC POWER ENTITY AS DEFENDANT, TO VACATE, SET
13 ASIDE, AFFIRM IN PART, REVERSE IN PART OR REMAND WITH INSTRUCTIONS TO THE
14 GOVERNING BODY OF THE PUBLIC POWER ENTITY THE ORDER OR DECISION ON THE GROUND
15 THAT THE VALUATION, RATE, JOINT RATE, TOLL, FARE, CHARGE OR FINDING, RULE,
16 CLASSIFICATION OR SCHEDULE, PRACTICE, DEMAND, REQUIREMENT, ACT OR SERVICE
17 PROVIDED IN THE ORDER OR DECISION IS UNLAWFUL OR THAT ANY RULE, PRACTICE, ACT
18 OR SERVICE PROVIDED IN THE ORDER OR DECISION IS UNLAWFUL, OR THAT ANY RULE,
19 PRACTICE, ACT OR SERVICE PROVIDED IN THE ORDER OR DECISION IS UNREASONABLE.
20 THE ANSWER OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY SHALL BE SERVED
21 AND FILED WITHIN TWENTY DAYS AFTER SERVICE OF THE COMPLAINT, THE ACTION SHALL
22 BE AT ISSUE AND READY FOR TRIAL ON TEN DAYS' NOTICE TO EITHER PARTY. THE
23 ACTION SHALL BE TRIED AND DETERMINED AS OTHER CIVIL ACTIONS EXCEPT AS
24 PROVIDED IN THIS SECTION.

25 B. IF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY RESCINDS THE ORDER
26 OR DECISION COMPLAINED OF, THE ACTION SHALL BE DISMISSED AND IF THE GOVERNING
27 BODY OF THE PUBLIC POWER ENTITY ALTERS, MODIFIES OR AMENDS THE ORDER OR
28 DECISION, THE ALTERED, MODIFIED OR AMENDED ORDER REPLACES THE ORIGINAL ORDER
29 COMPLAINED OF AND JUDGMENT SHALL BE GIVEN ON THE ORDER AS THOUGH MADE BY THE
30 GOVERNING BODY OF THE PUBLIC POWER ENTITY IN THE FIRST INSTANCE.

31 C. EXCEPT AS OTHERWISE PRESCRIBED BY THIS SECTION, THE TRIAL SHALL
32 CONFORM AS NEARLY AS POSSIBLE TO OTHER TRIALS IN CIVIL ACTIONS. JUDGMENT
33 SHALL BE GIVEN AFFIRMING, MODIFYING OR SETTING ASIDE THE ORIGINAL OR AMENDED
34 ORDER.

35 D. EITHER PARTY TO THE ACTION, OR THE ATTORNEY GENERAL ON BEHALF OF
36 THE STATE, WITHIN THIRTY DAYS AFTER THE JUDGMENT OF THE SUPERIOR COURT IS
37 GIVEN MAY APPEAL TO THE COURT OF APPEALS.

38 E. IN ALL TRIALS, ACTIONS AND PROCEEDINGS THE BURDEN OF PROOF IS ON
39 THE PARTY ADVERSE TO THE GOVERNING BODY OF THE PUBLIC POWER ENTITY OR SEEKING
40 TO VACATE OR SET ASIDE ANY DECISION OR ORDER OF THE GOVERNING BODY OF THE
41 PUBLIC POWER ENTITY TO SHOW THAT IT IS UNLAWFUL, THAT IT IS NOT SUPPORTED BY
42 SUBSTANTIAL EVIDENCE OR THAT THE GOVERNING BODY OF THE PUBLIC POWER ENTITY
43 ABUSED ITS DISCRETION.

1 F. EXCEPT AS PROVIDED BY THIS SECTION NO COURT OF THIS STATE SHALL
2 HAVE JURISDICTION TO ENJOIN, RESTRAIN, SUSPEND, DELAY OR REVIEW ANY ORDER OR
3 DECISION OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY OR TO ENJOIN,
4 RESTRAIN OR INTERFERE WITH THE GOVERNING BODY OF THE PUBLIC POWER ENTITY IN
5 THE PERFORMANCE OF ITS OFFICIAL DUTIES AND THE RULES, ORDERS OR DECREES FIXED
6 BY THE GOVERNING BODY OF THE PUBLIC POWER ENTITY REMAIN IN FORCE PENDING THE
7 DECISION OF THE COURTS. A WRIT OF MANDAMUS MAY BE ISSUED FROM THE SUPREME
8 COURT TO THE GOVERNING BODY OF THE PUBLIC POWER ENTITY IN CASES AUTHORIZED
9 BY LAW.

10 30-812. Action to set aside or modify certain governing body of
11 public power entity orders or decisions: limitation:
12 court of appeals

13 A. THE ATTORNEY GENERAL ON BEHALF OF THE STATE OR ANY PARTY TO A
14 PROCEEDING BEFORE THE GOVERNING BODY OF THE PUBLIC POWER ENTITY THAT IS
15 DISSATISFIED WITH ANY ORDER OR DECISION OF THE GOVERNING BODY OF THE PUBLIC
16 POWER ENTITY INVOLVING PUBLIC POWER ENTITIES AND RELATING TO RATE MAKING OR
17 RATE DESIGN PURSUANT TO SECTION 30-802 MAY FILE, WITHIN THIRTY DAYS AFTER A
18 REHEARING IS DENIED OR GRANTED, A NOTICE OF APPEAL IN THE COURT OF APPEALS
19 TO VACATE, SET ASIDE, AFFIRM IN PART, REVERSE IN PART OR REMAND WITH
20 INSTRUCTIONS TO THE GOVERNING BODY OF THE PUBLIC POWER ENTITY THE ORDER OR
21 DECISION IF THE COURT OF APPEALS DETERMINES THAT IT IS UNLAWFUL, THAT IT IS
22 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THAT THE GOVERNING BODY ABUSED ITS
23 DISCRETION.

24 B. IF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY RESCINDS THE ORDER
25 COMPLAINED OF, THE ACTION SHALL BE DISMISSED, AND IF THE GOVERNING BODY OF
26 THE PUBLIC POWER ENTITY ALTERS, MODIFIES OR AMENDS THE ORDER, THE ALTERED,
27 MODIFIED OR AMENDED ORDER SHALL REPLACE THE ORIGINAL ORDER COMPLAINED OF, AND
28 JUDGMENT SHALL BE GIVEN ON THE ORDER AS MADE BY THE GOVERNING BODY OF THE
29 PUBLIC POWER ENTITY IN THE FIRST INSTANCE.

30 C. THE APPELLATE PROCEDURE SHALL BE PURSUANT TO RULES ADOPTED BY THE
31 SUPREME COURT. THE RULES SHALL CONFORM, AS NEARLY AS POSSIBLE, TO THE MANNER
32 IN WHICH OTHER APPEALS ARE UNDERTAKEN INCLUDING INDICATING THE CONTENT OF THE
33 RECORD ON REVIEW, THE BRIEFS TO BE FILED AND THE TIME AND MANNER FOR FILING
34 THE BRIEFS, RECORD AND OTHER DOCUMENTS.

35 D. ANY PARTY TO THE ACTION, OR THE ATTORNEY GENERAL ON BEHALF OF THE
36 STATE, MAY APPEAL TO THE SUPREME COURT AS PROVIDED BY LAW.

37 E. IN ALL APPEALS TAKEN PURSUANT TO THIS SECTION, THE PARTY ADVERSE
38 TO THE GOVERNING BODY OF THE PUBLIC POWER ENTITY OR THE PARTY SEEKING TO
39 VACATE OR SET ASIDE AN ORDER OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY
40 MUST SHOW THAT THE ORDER OR DECISION IS UNLAWFUL, THAT IT IS NOT SUPPORTED
41 BY SUBSTANTIAL EVIDENCE OR THAT THE GOVERNING BODY ABUSED ITS DISCRETION.

42 F. EXCEPT AS PROVIDED BY THIS SECTION, A COURT OF THIS STATE DOES NOT
43 HAVE JURISDICTION TO ENJOIN, RESTRAIN, SUSPEND, DELAY OR REVIEW ANY ORDER OR
44 DECISION OF THE GOVERNING BODY OF THE PUBLIC POWER ENTITY INVOLVING ANY

1 PUBLIC POWER ENTITY AND RELATING TO RATE MAKING OR RATE DESIGN OR TO ENJOIN,
2 RESTRAIN OR INTERFERE WITH THE GOVERNING BODY OF THE PUBLIC POWER ENTITY IN
3 THE PERFORMANCE OF ITS OFFICIAL DUTIES AND THE RULES, ORDERS OR DECREES FIXED
4 BY THE GOVERNING BODY OF THE PUBLIC POWER ENTITY REMAIN IN FORCE PENDING THE
5 DECISION OF THE COURTS, BUT A WRIT OF MANDAMUS SHALL LIE FROM THE SUPREME
6 COURT TO THE GOVERNING BODY OF THE PUBLIC POWER ENTITY IN CASES AUTHORIZED
7 BY LAW.

8 30-813. Application of antitrust statutes

9 NOTWITHSTANDING ANY OTHER LAW, THE PROVISIONS OF TITLE 44, CHAPTER 10,
10 ARTICLE 1, APPLY TO THE PROVISIONS OF COMPETITIVE ELECTRIC GENERATION SERVICE
11 OR OTHER SERVICES BY PUBLIC POWER ENTITIES.

12 Sec. 21. Title 40, chapter 1, article 1, Arizona Revised Statutes, is
13 amended by adding section 40-113, to read:

14 40-113. Consumer outreach and education

15 A. IN ORDER TO TRANSITION TO COMPETITION FOR ELECTRIC GENERATION
16 SERVICE, THE COMMISSION'S AUTHORITY IS CONFIRMED TO DEVELOP AND OVERSEE A
17 COMPREHENSIVE PUBLIC EDUCATION PROGRAM REGARDING ELECTRIC GENERATION SERVICE
18 COMPETITION. THE PROGRAM MAY DO THE FOLLOWING:

19 1. EDUCATE RETAIL ELECTRIC CUSTOMERS ABOUT THE CHANGES IN THE ELECTRIC
20 INDUSTRY.

21 2. PROVIDE RETAIL ELECTRIC CUSTOMERS WITH ACCURATE AND UNBIASED
22 INFORMATION SO THAT RETAIL ELECTRIC CUSTOMERS MAY MAKE INFORMED CHOICES WHEN
23 PARTICIPATING IN THE COMPETITIVE ELECTRIC GENERATION SERVICE MARKET.

24 3. ENCOURAGE PUBLIC PARTICIPATION IN THE DECISION MAKING PROCESS
25 RELATING TO ESTABLISHING A COMPETITIVE ELECTRIC INDUSTRY.

26 B. THE COMMISSION MAY WORK WITH INTERESTED PARTIES, INCLUDING
27 COMMUNITY BASED CONSUMER ADVOCATE ORGANIZATIONS, TO DEVELOP AND IMPLEMENT AN
28 OUTREACH AND EDUCATION PLAN. THIS PLAN MAY INCLUDE:

29 1. THE DISSEMINATION OF INFORMATION BY INTERACTIVE APPROACHES,
30 BROCHURES OR OTHER WRITTEN MATERIALS AND MASS MEDIA OUTLETS.

31 2. AN EXPLANATION IN CLEAR AND PLAIN LANGUAGE OF THE BASIC CONCEPTS
32 OF COMPETITIVE ELECTRIC GENERATION SERVICE INCLUDING THE FOLLOWING ISSUES:

33 (a) THE EFFECTS OF COMPETITIVE ELECTRIC GENERATION SERVICE ON RETAIL
34 ELECTRIC CUSTOMERS AND CONSUMER PROGRAMS.

35 (b) THE BASIC RESPONSIBILITIES AND RISKS RETAIL ELECTRIC CUSTOMERS
36 ASSUME WITH COMPETITIVE ELECTRIC GENERATION SERVICE.

37 (c) THE BASIC CRITERIA FOR SELECTING A RETAIL ELECTRICITY SUPPLIER OR
38 PROVIDER OF OTHER SERVICES.

39 (d) WHERE THE RETAIL ELECTRIC CUSTOMER CAN FIND INFORMATION ON
40 CONSUMER PROTECTION, CUSTOMER COMPLAINTS AND DISPUTE RESOLUTION PROGRAMS.

41 (e) THE RESOURCES AVAILABLE FOR ADDITIONAL INFORMATION INCLUDING A
42 TOLL FREE TELEPHONE NUMBER.

1 3. PUBLICIZED PUBLIC FORUMS CONDUCTED IN SEVERAL GEOGRAPHICAL AREAS
2 OF THIS STATE TO OBTAIN PUBLIC INPUT AND PROVIDE OPPORTUNITIES FOR EXCHANGE
3 OF QUESTIONS AND ANSWERS.

4 4. TARGETED EFFORTS TO REACH RURAL, LOW INCOME, ELDERLY, NONENGLISH
5 SPEAKING, DISABLED, MINORITIES AND AT-RISK POPULATIONS.

6 Sec. 22. Section 40-201, Arizona Revised Statutes, is amended to read:
7 40-201. Definitions

8 In this chapter, unless the context otherwise requires:

9 1. "ANCILLARY SERVICES" MEANS THOSE SERVICES DESIGNATED AS ANCILLARY
10 SERVICES IN FEDERAL ENERGY REGULATORY COMMISSION ORDER 888 ADOPTED IN 1996
11 INCLUDING THE SERVICES NECESSARY TO SUPPORT THE TRANSMISSION OF ELECTRICITY
12 FROM RESOURCES TO LOADS WHILE MAINTAINING RELIABLE OPERATION OF THE
13 TRANSMISSION SYSTEM IN ACCORDANCE WITH GOOD UTILITY PRACTICE.

14 2. "APPLIANCE APPLICATION" MEANS CENTRAL SPACE HEATING, CLOTHES
15 DRYING, WATER HEATING AND INDOOR COOKING.

16 3. "BUNDLED SERVICE" MEANS ELECTRIC SERVICE PROVIDED AS A PACKAGE TO
17 THE CONSUMER INCLUDING ALL GENERATION, TRANSMISSION, DISTRIBUTION, ANCILLARY
18 AND OTHER SERVICES NECESSARY TO DELIVER AND MEASURE USEFUL ELECTRICITY USED
19 BY CONSUMERS.

20 ~~1-~~ 4. "Commission" means the Arizona corporation commission.

21 ~~2-~~ 5. "Common carrier" means A railroad or street railroad.

22 ~~3. "Electric plant" includes all property used in connection with the~~
23 ~~production, transmission or delivery of electricity for light, heat or power~~
24 ~~for sale.~~

25 6. "ELECTRIC DISTRIBUTION FACILITIES" MEANS ALL PROPERTY USED IN
26 CONNECTION WITH THE DISTRIBUTION OF ELECTRICITY FROM AN ELECTRIC GENERATING
27 PLANT TO RETAIL ELECTRIC CUSTOMERS EXCEPT ELECTRIC TRANSMISSION FACILITIES.

28 7. "ELECTRIC DISTRIBUTION SERVICE" MEANS THE DISTRIBUTION OF
29 ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS THROUGH THE USE OF ELECTRIC
30 DISTRIBUTION FACILITIES.

31 8. "ELECTRIC DISTRIBUTION UTILITY" MEANS A PUBLIC SERVICE CORPORATION
32 OR PUBLIC POWER ENTITY THAT OPERATES, CONTROLS OR MAINTAINS ELECTRIC
33 DISTRIBUTION FACILITIES.

34 9. "ELECTRIC GENERATION PLANT" MEANS ALL PROPERTY USED IN CONNECTION
35 WITH THE GENERATION FOR SALE OF ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS BUT
36 EXCLUDING ANY SERVICES PROVIDED BY ELECTRIC TRANSMISSION FACILITIES OR
37 ELECTRIC DISTRIBUTION FACILITIES.

38 10. "ELECTRIC GENERATION SERVICE" MEANS THE PROVISION OF ELECTRICITY
39 FOR SALE TO RETAIL ELECTRIC CUSTOMERS BUT DOES NOT INCLUDE ELECTRIC
40 DISTRIBUTION OR TRANSMISSION SERVICES AND GENERATION THAT IS NECESSARY FOR
41 THE RELIABLE OPERATION OF THE ELECTRIC DISTRIBUTION OR TRANSMISSION SYSTEM.

1 11. "ELECTRIC TRANSMISSION FACILITIES" MEANS ALL PROPERTY SO CLASSIFIED
2 BY THE FEDERAL ENERGY REGULATORY COMMISSION OR, TO THE EXTENT PERMITTED BY
3 LAW, SO CLASSIFIED BY THE ARIZONA CORPORATION COMMISSION.

4 12. "ELECTRIC TRANSMISSION SERVICE" MEANS THE TRANSMISSION OF
5 ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS OR TO ELECTRIC DISTRIBUTION
6 FACILITIES AND THAT IS SO CLASSIFIED BY THE FEDERAL ENERGY REGULATORY
7 COMMISSION OR, TO THE EXTENT PERMITTED BY LAW, SO CLASSIFIED BY THE ARIZONA
8 CORPORATION COMMISSION.

9 13. "ELECTRICITY" MEANS ELECTRIC ENERGY, ELECTRIC CAPACITY OR ELECTRIC
10 CAPACITY AND ENERGY.

11 14. "ELECTRICITY SUPPLIER" MEANS A PERSON, WHETHER ACTING IN A
12 PRINCIPAL, AGENT OR OTHER CAPACITY, THAT IS A PUBLIC SERVICE CORPORATION THAT
13 OFFERS TO SELL ELECTRICITY TO A RETAIL ELECTRIC CUSTOMER IN THIS STATE.

14 15. "FOREIGN NONPROFIT, MEMBER OWNED COOPERATIVE CORPORATION" MEANS A
15 COOPERATIVE INCORPORATED IN ANOTHER STATE IF THAT STATE HAS NOT ORDERED
16 ELECTRIC COMPETITION FOR COOPERATIVE CORPORATIONS.

17 ~~4-~~ 16. "Gas plant" includes all property used in connection with the
18 production, transmission or delivery of gas for light, heat or power for
19 sale.

20 17. "OTHER SERVICES" MEANS METERING, METER READING, BILLING AND
21 COLLECTING SERVICES.

22 ~~5-~~ 18. "Pipeline" includes all property used in transmission for
23 compensation of air, steam or fluid substances, except water, through
24 pipelines.

25 ~~6-~~ 19. "Railroad" includes every railway, other than a street
26 railroad, operated for public transportation of persons or property.

27 20. "RETAIL ELECTRIC CUSTOMER" MEANS A PERSON WHO PURCHASES ELECTRICITY
28 FOR THAT PERSON'S OWN USE, INCLUDING USE IN THAT PERSON'S TRADE OR BUSINESS,
29 AND NOT FOR RESALE, REDISTRIBUTION OR RETRANSMISSION.

30 21. "SERVICE TERRITORY" MEANS THE GEOGRAPHIC AREA IN WHICH A PUBLIC
31 POWER ENTITY OR PUBLIC SERVICE CORPORATION OWNS, OPERATES, CONTROLS OR
32 MAINTAINS ELECTRIC DISTRIBUTION FACILITIES OR NATURAL GAS DISTRIBUTION
33 FACILITIES AND THAT ADDITIONAL AREA IN WHICH THE PUBLIC POWER ENTITY OR
34 PUBLIC SERVICE CORPORATION HAS AGREED TO EXTEND ELECTRIC DISTRIBUTION
35 FACILITIES OR NATURAL GAS DISTRIBUTION FACILITIES, WHETHER ESTABLISHED BY A
36 CERTIFICATE OF CONVENIENCE AND NECESSITY, BY OFFICIAL ACTION BY A PUBLIC
37 POWER ENTITY OR BY CONTRACT OR AGREEMENT.

38 ~~7-~~ 22. "Sewer corporation" includes every person owning, controlling,
39 operating or managing any sewage system for profit.

40 ~~8-~~ 23. "Sewerage system" includes all property used in connection
41 with the collection, treatment, purification and disposal transmission,
42 storage or treatment of sewage.

1 ~~9.~~ 24. "Street railroad" includes every railway operated along any
2 street or public way for public transportation of persons or property, but
3 does not include a commercial or interurban railway.

4 ~~10.~~ 25. "Telecommunications corporation" means a public service
5 corporation other than municipal engaged in transmitting messages or
6 furnishing public telegraph or telephone service or operating as a
7 telecommunications common carrier.

8 ~~11.~~ 26. "Telegraph line" includes all property used in connection with
9 communication by telegraph for compensation with or without the use of
10 transmission wires.

11 ~~12.~~ 27. "Telephone line" includes all property used in connection with
12 communication by telephone, for compensation, with or without the use of
13 transmission wires.

14 ~~13.~~ 28. "Transportation of persons" includes every service in
15 connection with the carriage and delivery of a person and ~~his~~ THE PERSON'S
16 baggage.

17 ~~14.~~ 29. "Transportation of property" includes every service in
18 connection with the transportation and handling of property.

19 ~~15.~~ 30. "Water system" includes all property used in connection with
20 the diversion, development, storage, distribution and sale of water for
21 beneficial uses for compensation.

1 Sec. 23. Section 40-202, Arizona Revised Statutes, is amended to read:

2 40-202. Supervising and regulating public service corporations;
3 telecommunications promotion; competitive electricity
4 market; rules; duty to comply; exemptions for
5 electric generation; unlawful practice

6 A. The commission may supervise and regulate every public service
7 corporation in the state and do all things, whether specifically designated
8 in this title or in addition thereto, necessary and convenient in the
9 exercise of such power and jurisdiction. In supervising and regulating
10 long-distance telecommunications corporations, the commission shall encourage
11 competition and growth in the telecommunications industry and promote
12 economic development and investment in new telecommunications technologies,
13 infrastructure and services. In furtherance of this policy, the commission
14 shall establish procedures and standards for identifying and regulating
15 competitive long-distance telecommunications markets. When the commission
16 determines that a long-distance telecommunications market is competitive, it
17 shall establish appropriate supervisory and regulatory treatment for
18 competitive long-distance telecommunications markets as distinguished from
19 noncompetitive telecommunications markets.

20 B. IT IS THE PUBLIC POLICY OF THIS STATE THAT A COMPETITIVE MARKET
21 SHALL EXIST IN THE SALE OF ELECTRIC GENERATION SERVICE. IN ORDER TO
22 TRANSITION TO COMPETITION FOR ELECTRIC GENERATION SERVICE, THE COMMISSION'S
23 AUTHORITY IS CONFIRMED TO:

24 1. OPEN THE SERVICE TERRITORIES OF PUBLIC SERVICE CORPORATIONS, EXCEPT
25 FOREIGN NONPROFIT, MEMBER OWNED COOPERATIVE CORPORATIONS, TO COMPETITIVE
26 ACCESS BY OTHER ELECTRICITY SUPPLIERS OR PROVIDERS OF OTHER SERVICES NOT
27 LATER THAN DECEMBER 31, 1998 FOR AT LEAST TWENTY PER CENT OF THEIR 1995
28 RETAIL LOAD, AT LEAST FIFTEEN PER CENT OF WHICH SHALL BE RESERVED FOR
29 CUSTOMERS IN THE RESIDENTIAL CUSTOMER CLASS, AND OPEN THEIR ENTIRE SERVICE
30 TERRITORY TO COMPETITION NOT LATER THAN DECEMBER 31, 2000.

31 2. ESTABLISH REASONABLE REQUIREMENTS FOR CERTIFICATING AND REGULATING
32 ELECTRICITY SUPPLIERS THAT ARE PUBLIC SERVICE CORPORATIONS.

33 3. MAINTAIN THE CURRENT SERVICE TERRITORIES OF PUBLIC SERVICE
34 CORPORATIONS AND PROHIBIT A PUBLIC SERVICE CORPORATION FROM PROVIDING
35 ELECTRIC DISTRIBUTION SERVICE IN THE SERVICE TERRITORIES OF OTHER ELECTRIC
36 DISTRIBUTION UTILITIES IN THIS STATE.

37 4. REQUIRE AN ELECTRIC DISTRIBUTION UTILITY THAT IS A PUBLIC SERVICE
38 CORPORATION AND THAT HAS BEEN GRANTED A SERVICE TERRITORY THROUGH A
39 CERTIFICATE OF CONVENIENCE AND NECESSITY OR A CONTRACT AND AGREEMENT AMONG
40 UTILITIES TO PROVIDE OTHER SERVICES FOR THE SERVICE TERRITORY THAT THE
41 ELECTRIC DISTRIBUTION UTILITY SERVES AS FOLLOWS:

42 (a) BEGINNING ON DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, BILLING
43 AND COLLECTIONS SERVICES SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE

1 RETAIL ELECTRIC CUSTOMERS WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE
2 COMPETITIVE ELECTRIC GENERATION SERVICE. AFTER DECEMBER 31, 2000 BILLING AND
3 COLLECTIONS SERVICES SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR ALL RETAIL
4 ELECTRIC CUSTOMERS THAT HAVE COMPETITIVE ELECTRIC GENERATION SERVICE.

5 (b) BEGINNING ON DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, METERING
6 SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE RETAIL ELECTRIC CUSTOMERS
7 WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE COMPETITIVE ELECTRIC
8 GENERATION SERVICE. AFTER DECEMBER 31, 2000 METERING SHALL BE PROVIDED ON
9 A COMPETITIVE BASIS FOR ALL RETAIL ELECTRIC CUSTOMERS THAT HAVE COMPETITIVE
10 ELECTRIC GENERATION SERVICE. ALL METERS SHALL MEET OR EXCEED EXISTING
11 STANDARDS FOR SAFETY, RELIABILITY AND ACCURACY.

12 (c) BY DECEMBER 31, 1998 THROUGH DECEMBER 31, 2000, METER READING
13 SHALL BE PROVIDED ON A COMPETITIVE BASIS FOR THOSE RETAIL ELECTRIC CUSTOMERS
14 WITH LOADS OF ONE MEGAWATT AND ABOVE THAT HAVE COMPETITIVE ELECTRIC
15 GENERATION SERVICE. AFTER DECEMBER 31, 2000 METER READING SHALL BE PROVIDED
16 ON A COMPETITIVE BASIS FOR ALL RETAIL ELECTRIC CUSTOMERS THAT HAVE
17 COMPETITIVE ELECTRIC GENERATION SERVICE.

18 5. REQUIRE THE ELECTRIC DISTRIBUTION UTILITY THAT IS A PUBLIC SERVICE
19 CORPORATION TO ACT AS THE SUPPLIER OF LAST RESORT FOR ELECTRIC GENERATION
20 SERVICE FOR EVERY RETAIL ELECTRIC CUSTOMER WITHIN ITS ELECTRIC DISTRIBUTION
21 SERVICE TERRITORY WHOSE ANNUAL USAGE IS ONE HUNDRED THOUSAND KILOWATT HOURS
22 OR LESS IF OTHER ELECTRICITY SUPPLIERS ARE UNWILLING OR ARE UNABLE TO SUPPLY
23 ELECTRIC GENERATION SERVICE AND WHOSE ELECTRIC GENERATION SERVICE HAS BEEN
24 DISCONTINUED THROUGH NO FAULT OF THE RETAIL ELECTRIC CUSTOMER.

25 6. PROVIDE FOR THE RECOVERY OF JUST AND REASONABLE COSTS INCURRED BY
26 THE ELECTRIC DISTRIBUTION UTILITIES THAT ARE PUBLIC SERVICE CORPORATIONS FOR
27 SUPPLYING ELECTRIC GENERATION SERVICE UNDER PARAGRAPH 5 OF THIS SUBSECTION
28 THROUGH A DISTRIBUTION CHARGE ON RETAIL CUSTOMERS WHOSE ANNUAL USAGE IS ONE
29 HUNDRED THOUSAND KILOWATT HOURS OR LESS.

30 7. INVESTIGATE COMPLAINTS REGARDING THE SUBSIDIZATION OF COMPETITIVE
31 SERVICES BY ANY REGULATED RATE OR CHARGE FOR ANY NONCOMPETITIVE ELECTRIC
32 SERVICE AND IMPOSE APPROPRIATE SANCTIONS FOR ANY SUCH SUBSIDIZATION.

33 8. EXCEPT AS PROVIDED FOR THE RECOVERY OF STRANDED COSTS, INCLUDING
34 COSTS ASSOCIATED WITH EMPLOYEE SEVERANCE INCURRED AS A DIRECT RESULT OF
35 COMPETITION AMONG ELECTRIC SUPPLIERS, AS ORDERED BY THE COMMISSION, NOT
36 CONSIDER THE PROFITS OR LOSSES ASSOCIATED WITH ELECTRIC GENERATION SERVICE
37 WHEN REGULATING ELECTRIC DISTRIBUTION SERVICE.

38 C. IN SUPERVISING AND REGULATING PUBLIC SERVICE CORPORATIONS, THE
39 COMMISSION'S AUTHORITY IS CONFIRMED TO ADOPT RULES TO:

40 1. PROTECT THE PUBLIC AGAINST DECEPTIVE, UNFAIR AND ABUSIVE BUSINESS
41 PRACTICES, PRACTICES RELATED TO DEPOSIT REQUIREMENTS AND RECONNECTION FEES,
42 INTRUSIVE AND ABUSIVE MARKETING, DECEPTIVE OR UNTRUE ADVERTISING PRACTICES
43 AND PRACTICES PROHIBITED UNDER SUBSECTION G OF THIS SECTION.

1 2. PROHIBIT A PUBLIC SERVICE CORPORATION THAT FORMS AN AFFILIATE FOR
2 THE PURPOSES OF PROVIDING SERVICES THAT REQUIRE A LICENSED CONTRACTOR OR HAS
3 EMPLOYEES PERFORM THESE SERVICES, INCLUDING BUT NOT LIMITED TO ELECTRICAL,
4 HEATING, VENTILATION, AIR CONDITIONING OR PLUMBING OR CONSTRUCTION SERVICES,
5 FROM ADVERTISING THESE SERVICES IN THEIR BILLING STATEMENT OR IN OTHER
6 MAILINGS DONE BY THE ELECTRIC DISTRIBUTION UTILITY.

7 3. PROVIDE THAT A SEPARATE AUTHORIZATION PURSUANT TO PARAGRAPH 3 OF
8 THIS SUBSECTION TO CHANGE ELECTRICITY SUPPLIER AND PLAIN LANGUAGE IN
9 ADVERTISING AND BILLING USING UNIFORM WORDS AND PHRASES THAT HAVE THE SAME
10 MEANINGS SO THAT CUSTOMERS CAN MAKE ACCURATE COMPARISONS.

11 4. PROVIDE THAT A SEPARATE WRITTEN AND DATED AUTHORIZATION IS REQUIRED
12 FOR A CHANGE IN A RETAIL ELECTRICITY SUPPLIER SUBJECT TO THE FOLLOWING:

13 (a) THE AUTHORIZATION SHALL NOT CONTAIN ANY INDUCEMENTS.

14 (b) THE AUTHORIZATION SHALL BE IN LEGIBLE PRINT WITH CLEAR AND PLAIN
15 LANGUAGE CONFIRMING THE RATES, TERMS, CONDITIONS AND NATURE OF THE SERVICE
16 TO BE PROVIDED.

17 (c) THE AUTHORIZATION SHALL NOT STATE OR SUGGEST THAT THE CUSTOMER
18 TAKE ACTION TO RETAIN THE CUSTOMER'S CURRENT ELECTRICITY SUPPLIER.

19 (d) AN ELECTRICITY SUPPLIER THAT SUBMITS OR EXECUTES A CHANGE IN A
20 RETAIL ELECTRICITY CUSTOMER'S ELECTRICITY SUPPLIER IN VIOLATION OF THIS
21 PARAGRAPH SHALL REFUND TO THE RETAIL ELECTRICITY CUSTOMER THE ENTIRE AMOUNT
22 OF THE CUSTOMER'S ELECTRICITY CHARGES ATTRIBUTABLE TO ELECTRIC GENERATION
23 SERVICE FROM THE ELECTRICITY SUPPLIER FOR THREE MONTHS, OR THE PERIOD OF THE
24 UNAUTHORIZED SERVICE, WHICHEVER IS LESS.

25 (e) THE AUTHORIZATION SHALL BE IN THE SAME LANGUAGE AS ANY PROMOTIONAL
26 OR INDUCEMENT MATERIALS PROVIDED TO THE RETAIL ELECTRIC CUSTOMER.

27 (f) NO BOX OR CONTAINER MAY BE USED TO COLLECT ENTRIES FOR SWEEPSTAKES
28 OR A CONTEST THAT, AT THE SAME TIME, IS USED TO COLLECT AUTHORIZATION BY A
29 RETAIL ELECTRIC CUSTOMER TO CHANGE THEIR ELECTRICITY SUPPLIER OR TO SUBSCRIBE
30 TO OTHER SERVICES.

31 5. PROVIDE THAT, NOTWITHSTANDING ANY OTHER LAW, THAT CUSTOMER
32 INFORMATION, ACCOUNT INFORMATION AND RELATED PROPRIETARY INFORMATION ARE
33 CONFIDENTIAL UNLESS SPECIFICALLY WAIVED BY THE CUSTOMER IN WRITING.

34 6. ENSURE THAT PUBLIC SERVICE CORPORATIONS THAT EMPLOY THE SERVICES
35 OF A CONTRACTOR FOR INTERIOR HOUSEHOLD ENERGY SERVICE, EITHER DIRECTLY OR
36 THROUGH ANY AFFILIATE, REQUIRE THE CONTRACTORS AND SUBCONTRACTORS TO BE
37 LICENSED BY THE REGISTRAR OF CONTRACTORS AND SHALL COMPLY WITH ALL MUNICIPAL
38 PERMIT AND INSPECTION STANDARDS AND APPLICABLE LIFE SAFETY CODES. FOR THE
39 PURPOSES OF THIS PARAGRAPH, "CONTRACTOR" HAS THE SAME MEANING AS IN SECTION
40 32-1101.

41 7. PERMIT THE AGGREGATION OF LOADS BY MULTIPLE CUSTOMERS.

42 D. IN SUPERVISING AND REGULATING PUBLIC SERVICE CORPORATIONS, IT IS
43 THE PUBLIC POLICY OF THIS STATE THAT THE MOST EFFECTIVE MANNER OF

1 ESTABLISHING JUST AND REASONABLE RATES FOR ELECTRICITY IS TO PERMIT ELECTRIC
2 GENERATION SERVICE PRICES TO BE ESTABLISHED IN A COMPETITIVE MARKET.

3 E. THE COMMISSION SHALL ORDER ON A NONDISCRIMINATORY BASIS THAT PUBLIC
4 SERVICE CORPORATIONS OPEN THEIR DISTRIBUTION TERRITORIES TO COMPETITION BY
5 PUBLIC POWER ENTITIES TO THE SAME EXTENT AND UNDER THE SAME TERMS AND
6 CONDITIONS AS AUTHORIZED ELECTRICITY SUPPLIERS ARE GRANTED ACCESS THROUGH
7 COMMISSION RULES OR ORDERS.

8 F. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, DURING THE
9 INITIAL CONSTRUCTION OF A RESIDENTIAL STRUCTURE, ELECTRIC AND NATURAL GAS
10 FACILITIES AT A MINIMUM SHALL BE INSTALLED IN AND TO THE STRUCTURE IN A
11 MANNER THAT PROVIDES THE RETAIL ENERGY CONSUMER ULTIMATELY RESIDING IN THE
12 STRUCTURE AND ALL SUBSEQUENT RETAIL ENERGY CONSUMERS RESIDING IN THE
13 STRUCTURE WITH THE CAPABILITY TO CHOOSE BETWEEN ELECTRICITY AND NATURAL GAS
14 AS AN ENERGY SOURCE FOR EACH APPLIANCE APPLICATION.

15 G. A RESIDENTIAL STRUCTURE MAY BE CONSTRUCTED WITHOUT THE INSTALLATION
16 OF ANY PARTICULAR FACILITIES IF:

17 1. THE STRUCTURE IS NOT LOCATED WITHIN THE SERVICE TERRITORY OF A
18 PUBLIC SERVICE CORPORATION CERTIFICATED TO FURNISH THE ASSOCIATED ENERGY
19 SERVICE.

20 2. UNLESS MANDATED OTHERWISE BY LAW OR GOVERNMENTAL REGULATION, THE
21 PUBLIC SERVICE CORPORATION CERTIFICATED TO FURNISH THE ASSOCIATED ENERGY
22 NOTIFIES THE CONTRACTOR OR OWNER THAT THE EXTENSION OF THE FACILITIES TO THE
23 STRUCTURE IS NOT ECONOMICALLY FEASIBLE.

24 3. THE PUBLIC SERVICE CORPORATION CERTIFICATED TO FURNISH A PARTICULAR
25 ENERGY SERVICE AND THE OWNER OR CONTRACTOR AGREE THAT THE EXTENSION OF THE
26 FACILITIES TO THE STRUCTURE WOULD NOT BE ECONOMICALLY FEASIBLE OR WOULD
27 OTHERWISE BE INAPPROPRIATE.

28 H. UNLESS MANDATED BY LAW OR A GENERALLY ACCEPTED INDUSTRY CODE, A
29 PERSON OR ENTITY, INCLUDING MUNICIPAL CORPORATIONS AND POLITICAL
30 SUBDIVISIONS, SHALL NOT ENGAGE IN ANY PRACTICE THAT INTERFERES WITH THE
31 OPPORTUNITY TO HAVE ELECTRIC AND NATURAL GAS FACILITIES AT A MINIMUM
32 INSTALLED IN AND TO AN EXISTING RESIDENTIAL STRUCTURE IN A MANNER THAT
33 PROVIDES THE RETAIL ENERGY CONSUMER ULTIMATELY RESIDING IN THE STRUCTURE AND
34 ALL SUBSEQUENT RETAIL ENERGY CONSUMERS RESIDING IN THE STRUCTURE WITH THE
35 CAPABILITY TO CHOOSE BETWEEN ELECTRICITY AND NATURAL GAS AS AN ENERGY SOURCE
36 FOR EACH APPLIANCE APPLICATION. THIS SUBSECTION DOES NOT APPLY TO REASONABLE
37 SALES AND MARKETING ACTIVITIES.

38 I. IF A TRENCH IS PROVIDED BY A CONTRACTOR OR A PROPERTY OWNER FOR THE
39 PURPOSE OF HAVING UTILITY FACILITIES INSTALLED TO A RESIDENTIAL STRUCTURE,
40 ELECTRIC AND NATURAL GAS FACILITIES AT A MINIMUM SHALL BE PERMITTED TO OCCUPY
41 THE TRENCH IF THE INSTALLATION OF THE FACILITIES IS COMPLETED IN COMPLIANCE
42 WITH GENERALLY ACCEPTED INDUSTRY SAFETY CODES APPLICABLE TO THE INSTALLATION.
43 EXCEPT IN THE CASE OF UNDERGROUND CONVERSION SERVICE AREAS PROVIDED FOR IN
44 SECTIONS 40-341 THROUGH 40-355 AND IMPROVEMENT DISTRICTS FOR UNDERGROUND

1 UTILITY FACILITIES PROVIDED FOR IN SECTION 48-620, IF THE CONTRACTOR OR
2 PROPERTY OWNER CONDITIONS OCCUPANCY IN A TRENCH ON A REIMBURSEMENT OF COSTS
3 ASSOCIATED WITH PROVIDING THE TRENCH, THE CONTRACTOR OR PROPERTY OWNER MAY
4 REQUIRE AN OCCUPANT TO PAY A PRO RATA SHARE OF THE COSTS ASSOCIATED WITH
5 PROVIDING THE TRENCH.

6 J. BEFORE INITIATING A COMPLAINT WITH A PUBLIC SERVICE CORPORATION OR
7 THE COMMISSION, THE PARTIES TO A DISPUTE ARISING UNDER SUBSECTIONS E THROUGH
8 H OF THIS SECTION SHALL MEET AND IN GOOD FAITH ATTEMPT TO RESOLVE THE DISPUTE
9 THROUGH AN INFORMAL DISPUTE RESOLUTION PROCESS.

10 ~~B.~~ K. A public service corporation shall comply with every order,
11 decision, rule or regulation made by the commission in any matter relating
12 to or affecting its business as a public service corporation, and shall do
13 everything necessary to secure compliance with and observance of every such
14 order, decision, rule or regulation.

15 L. THE COMMISSION BY RULE OR ORDER MAY EXEMPT OR PARTIALLY EXEMPT ANY
16 COMPETITIVE SERVICE OF ANY PUBLIC SERVICE CORPORATION FROM THE APPLICATION
17 OF SECTION 40-203, SECTION 40-204, SUBSECTIONS A AND B AND SECTIONS 40-248,
18 40-250, 40-251, 40-285, 40-301, 40-302, 40-303, 40-321, 40-322, 40-331,
19 40-332, 40-334, 40-365, 40-366, 40-367, 40-374 AND 40-401.

20 M. THE PROVISIONS OF SUBSECTION B, PARAGRAPHS 3 AND 5 OF THIS SECTION
21 ARE SUBJECT TO LEGISLATIVE REVIEW BY THE AUDITOR GENERAL IN 2008.

22 N. THE PROVISIONS OF SUBSECTION B, PARAGRAPH 4 OF THIS SECTION ARE
23 SUBJECT TO SUNSET REVIEW BY THE AUDITOR GENERAL IN 2003.

24 O. FAILURE TO COMPLY WITH THE RULES OR PROCEDURES ADOPTED PURSUANT TO
25 SUBSECTIONS C AND D OF THIS SECTION IS AN UNLAWFUL PRACTICE PURSUANT TO
26 SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE
27 ACTION AS PRESCRIBED BY TITLE 44, CHAPTER 10, ARTICLE 7.

28 Sec. 24. Section 40-204, Arizona Revised Statutes, is amended to read:

29 40-204. Reports by public service corporations to commission;
30 duty of corporation to deliver documents to
31 commission; confidential nature of information
32 furnished; exception; classification

33 A. Every public service corporation shall furnish to the commission,
34 in the form and detail the commission prescribes, tabulations, computations,
35 annual reports, monthly or periodical reports of earnings and expenses, and
36 all other information required by it to carry into effect the provisions of
37 this title and shall make specific answers to all questions submitted by the
38 commission. If a corporation is unable to answer any question, it shall give
39 a good and sufficient reason therefor.

40 B. When required by the commission, a public service corporation shall
41 deliver to the commission copies of any maps, profiles, contracts,
42 franchises, books, papers and records in its possession, or in any way

1 relating to its property or affecting its business, and also a complete
2 inventory of all its property in the form the commission directs.

3 C. No information furnished to the commission by a public service
4 corporation, except matters specifically required to be open to public
5 inspection, shall be open to public inspection or made public except on order
6 of the commission entered after notice to the affected public service
7 corporation, or by the commission or a commissioner in the course of a
8 hearing or proceeding.

9 D. Any officer or employee of the commission who knowingly divulges
10 any such information is guilty of a class 2 misdemeanor.

11 Sec. 25. Title 40, chapter 2, article 1, Arizona Revised Statutes, is
12 amended by adding sections 40-207, 40-208 and 40-209, to read:

13 40-207. Electricity suppliers; rules

14 A. AN ELECTRICITY SUPPLIER SHALL OBTAIN A CERTIFICATE FROM THE
15 COMMISSION BEFORE OFFERING ELECTRICITY FOR SALE TO RETAIL ELECTRIC CUSTOMERS
16 IN THIS STATE.

17 B. THE COMMISSION MAY ADOPT, AMEND AND REPEAL RULES REASONABLY
18 NECESSARY TO CARRY OUT THIS SECTION. ON OR BEFORE DECEMBER 31, 1998, THE
19 COMMISSION SHALL ADOPT RULES PROVIDING MINIMUM STANDARDS OF DISCLOSURE AND
20 COMPLAINT PROCEDURES APPLICABLE TO CERTIFICATED ELECTRICITY SUPPLIERS. THE
21 COMMISSION MAY IMPOSE CONDITIONS ON THE CERTIFICATION OF ELECTRICITY
22 SUPPLIERS TO ASSURE THEIR FINANCIAL STABILITY, INCLUDING PERIODIC REPORTS,
23 BONDS AND DEPOSITS.

24 C. AS A CONDITION OF OBTAINING A CERTIFICATE REQUIRED UNDER SUBSECTION
25 A, AN ELECTRICITY SUPPLIER SHALL AGREE TO BE SUBJECT TO THE TRANSACTION
26 PRIVILEGE TAXES AND AFFILIATED EXCISE TAXES PURSUANT TO TITLE 42, CHAPTER 5
27 AND THE PROVISIONS OF THE MODEL CITY TAX CODE.

28 40-208. Service territories; open competition

29 AFTER DECEMBER 31, 2000 SERVICE TERRITORIES ESTABLISHED BY A
30 CERTIFICATE OF CONVENIENCE AND NECESSITY SHALL BE OPEN TO ELECTRIC GENERATION
31 SERVICE COMPETITION FOR ALL RETAIL ELECTRIC CUSTOMERS FOR ANY ELECTRICITY
32 SUPPLIER THAT OBTAINS A CERTIFICATE FROM THE COMMISSION PURSUANT TO SECTION
33 40-207 OR ANY PUBLIC POWER ENTITY.

34 40-209. Franchises; electric generation suppliers; limitations

35 REGULATION OF ELECTRICITY SUPPLIERS PROVIDING ELECTRIC GENERATION
36 SERVICE IS A MATTER OF STATEWIDE CONCERN. CITIES, INCLUDING CHARTER CITIES,
37 TOWNS AND COUNTIES SHALL NOT REQUIRE FRANCHISES FOR ELECTRICITY SUPPLIERS TO
38 PROVIDE ELECTRIC GENERATION SERVICE WITHIN ITS JURISDICTION AND SHALL NOT
39 IMPOSE RENTS, CHARGES OR TAXES ON THE USE OF PUBLIC STREETS, ROADS AND ALLEYS
40 ON ELECTRICITY SUPPLIERS FOR THE PROVISION OF ELECTRIC GENERATION SERVICE
41 WITHIN ITS JURISDICTION, EXCEPT THAT A FEE EQUAL TO THE FRANCHISE FEE OF THE
42 ELECTRIC DISTRIBUTION UTILITY MAY BE CHARGED TO THE ELECTRICITY SUPPLIER ON
43 ANY PORTION OF A RETAIL ELECTRICITY SALE NOT OTHERWISE SUBJECT TO A FRANCHISE
44 FEE MADE USING ELECTRIC DISTRIBUTION FACILITIES IN SERVICE TERRITORIES THAT

1 ARE FRANCHISED AS OF THE EFFECTIVE DATE OF THIS SECTION. NOTHING IN THIS
2 SUBSECTION AFFECTS THE AUTHORITY OF CITIES, INCLUDING CHARTER CITIES, TOWNS
3 AND COUNTIES TO REQUIRE FRANCHISES FOR ELECTRICITY SUPPLIERS PROVIDING
4 ELECTRIC DISTRIBUTION SERVICE WITHIN THEIR JURISDICTION.

5 Sec. 26. Section 40-286, Arizona Revised Statutes, is amended to read:

6 40-286. Exemption from antitrust statutes

7 The provisions of title 44, chapter 10, article 1, shall not apply to
8 any conduct or activity of a public service corporation holding a certificate
9 of public convenience and necessity granted pursuant to this article, which
10 conduct or activity is approved by a statute of this state or of the United
11 States or by the corporation commission or an administrative agency of this
12 state or of the United States having jurisdiction of the subject matter.
13 THIS SECTION DOES NOT APPLY TO THE PROVISION OF COMPETITIVE ELECTRIC
14 GENERATION SERVICE OR OTHER SERVICES.

15 Sec. 27. Section 40-360.02, Arizona Revised Statutes, is amended to
16 read:

17 40-360.02. Ten year plans; filing; failure to comply

18 A. Every person contemplating construction of any ~~facilities~~
19 transmission line within the state during any ten year period shall file a
20 ten year plan with the commission on or before ~~the thirty-first day of~~
21 January 31 of each year.

22 B. Each plan filed pursuant to subsection A shall set forth the
23 following information with respect to the proposed facilities to the extent
24 such information is available:

25 ~~1. The proposed general area of each plant.~~

26 ~~2. The approximate generating capacity of each plant and the number
27 of plants proposed for each site.~~

28 ~~3. The type of fuel proposed for each plant.~~

29 ~~4. The proposed source of fuel and water for each plant.~~

30 ~~5. 1. The size and approximate proposed route of the ANY transmission
31 lines associated with each proposed plant and of the transmission lines
32 PROPOSED to be constructed to serve any other purposes.~~

33 ~~6. 2. The purpose to be served by each proposed transmission line.~~

34 ~~7. 3. The estimated date by which each plant or transmission line
35 will be in operation.~~

36 C. Failure of any person to comply with the requirements of subsection
37 A or B may, in the commission's discretion in the absence of a showing of
38 good cause, constitute a ground for refusing to consider an application of
39 such person.

40 D. ~~Such~~ THE plans shall be recognized and utilized as tentative
41 information only and are subject to change at any time at the discretion of
42 the person filing the ~~same~~ PLANS.

1 E. THE PLANS SHALL BE REVIEWED BIENNIALLY BY THE COMMISSION AND THE
2 COMMISSION SHALL ISSUE A WRITTEN DECISION REGARDING THE ADEQUACY OF THE
3 EXISTING AND PLANNED TRANSMISSION FACILITIES IN THIS STATE TO MEET THE
4 PRESENT AND FUTURE ENERGY NEEDS OF THIS STATE IN A RELIABLE MANNER.

5 Sec. 28. Section 42-5010, Arizona Revised Statutes, as amended by Laws
6 1998, chapter 1, section 161, is amended to read:

7 42-5010. Rates; distribution base

8 A. The tax imposed by this article is levied and shall be collected
9 at the rate of:

10 1. Five per cent of the tax base as computed for the business of every
11 person engaging or continuing in this state in the following business
12 classifications described in article 2 of this chapter:

- 13 (a) Transporting classification.
- 14 (b) Utility classification.
- 15 (c) Telecommunications classification.
- 16 (d) Pipeline classification.
- 17 (e) Private car line classification.
- 18 (f) Publication classification.
- 19 (g) Job printing classification.
- 20 (h) Prime contracting classification.
- 21 (i) Owner builder sales classification.
- 22 (j) Amusement classification.
- 23 (k) Restaurant classification.
- 24 (l) Personal property rental classification.
- 25 (m) Retail classification.
- 26 (n) Membership camping classification.

27 2. Five and one-half per cent of the tax base as computed for the
28 business of every person engaging or continuing in this state in the
29 transient lodging classification described in section 42-5070.

30 3. Three and one-eighth per cent of the tax base as computed for the
31 business of every person engaging or continuing in this state in the mining
32 classification described in section 42-5072.

33 4. Zero per cent of the tax base as computed for the business of every
34 person engaging or continuing in this state in the commercial lease
35 classification described in section 42-5069.

36 B. Twenty per cent of the tax revenues collected from persons on
37 account of engaging in business under the business classifications listed in
38 subsection A, paragraph 1, subdivisions (a) through (i) of this section AND
39 TWENTY PER CENT OF THE TAX REVENUES ON PURCHASES OF ELECTRICITY FROM AN
40 ELECTRICITY SUPPLIER UNDER SECTION 42-5155 is designated as distribution base
41 for purposes of section 42-5029.

42 C. Forty per cent of the tax revenues collected from persons on
43 account of engaging in business under the business classifications listed in

1 subsection A, paragraph 1, subdivisions (j) through (n) of this section is
2 designated as distribution base for purposes of section 42-5029.

3 D. Thirty-two per cent of the tax revenues collected from persons on
4 account of engaging in business under the business classification listed in
5 subsection A, paragraph 3 of this section is designated as distribution base
6 for purposes of section 42-5029.

7 E. Fifty-three and one-third per cent of the tax revenues collected
8 from persons on account of engaging in business under the business
9 classifications listed in subsection A, paragraph 4 of this section is
10 designated as distribution base for purposes of section 42-5029.

11 F. Fifty per cent of the tax revenues collected from persons on
12 account of engaging in business under the business classification listed in
13 subsection A, paragraph 2 of this section is designated as distribution base
14 for purposes of section 42-5029.

15 Sec. 29. Section 42-5063, Arizona Revised Statutes, as amended by Laws
16 1998, chapter 1, section 166, is amended to read:

17 42-5063. Utilities classification; definitions

18 A. The utilities classification is comprised of the business of:

19 1. Producing and furnishing or furnishing to consumers ~~electricity,~~
20 natural or artificial gas and water.

21 2. PROVIDING TO RETAIL ELECTRIC CUSTOMERS ANCILLARY SERVICES, ELECTRIC
22 DISTRIBUTION SERVICES, ELECTRIC GENERATION SERVICES, ELECTRIC TRANSMISSION
23 SERVICES AND OTHER SERVICES RELATED TO PROVIDING ELECTRICITY.

24 B. The utility classification does not include:

25 1. Sales of ancillary services, electric distribution services,
26 electric generation services, electric transmission services and other
27 services related to providing electricity, gas or water to a person for
28 resale.

29 2. Sales of natural gas or liquefied petroleum gas used to propel a
30 motor vehicle.

31 3. Sales of alternative fuel, as defined in section 1-215, to a used
32 oil fuel burner who has received a permit to burn used oil or used oil fuel
33 under section 49-426 or 49-480.

34 ~~B.~~ C. The tax base for the utilities classification is the gross
35 proceeds of sales or gross income derived from the business, but the
36 following shall be deducted from the tax base:

37 1. Revenues received by a municipally owned utility in the form of
38 fees charged to persons constructing residential, commercial or industrial
39 developments or connecting residential, commercial or industrial developments
40 to a municipal utility system or systems if the fees are segregated and used
41 only for capital expansion, system enlargement or debt service of the utility
42 system or systems.

43 2. Revenues received by any person or persons owning a utility system
44 in the form of reimbursement or contribution compensation for property and

1 equipment installed to provide utility access to, on or across the land of
2 an actual utility consumer if the property and equipment become the property
3 of the utility. This exclusion shall not exceed the value of such property
4 and equipment.

5 3. Gross proceeds of sales or gross income derived from sales to:

6 (a) Qualifying hospitals as defined in section 42-5001.

7 (b) A qualifying health care organization as defined in section
8 42-5001 if the tangible personal property is used by the organization solely
9 to provide health and medical related educational and charitable services.

10 4. The portion of gross proceeds of sales or gross income derived from
11 sales to an environmental technology manufacturer, producer or processor as
12 defined in section 41-1514.02, that are used directly in environmental
13 technology manufacturing, producing or processing. This paragraph shall
14 apply for fifteen full consecutive calendar or fiscal years from the date the
15 first paper manufacturing machine is placed in service. In the case of an
16 environmental technology manufacturer, producer or processor who does not
17 manufacture paper, the time period shall begin with the date the first
18 manufacturing, processing or production equipment is placed in service.

19 D. FOR PURPOSES OF THIS SECTION:

20 1. "ANCILLARY SERVICES" MEANS THOSE SERVICES SO DESIGNATED IN FEDERAL
21 ENERGY REGULATORY COMMISSION ORDER 888 ADOPTED IN 1996 THAT INCLUDE THE
22 SERVICES NECESSARY TO SUPPORT THE TRANSMISSION OF ELECTRICITY FROM RESOURCES
23 TO LOADS WHILE MAINTAINING RELIABLE OPERATION OF THE TRANSMISSION SYSTEM
24 ACCORDING TO GOOD UTILITY PRACTICE.

25 2. "ELECTRIC DISTRIBUTION SERVICE" MEANS DISTRIBUTING ELECTRICITY TO
26 RETAIL ELECTRIC CUSTOMERS THROUGH THE USE OF ELECTRIC DISTRIBUTION
27 FACILITIES.

28 3. "ELECTRIC GENERATION SERVICE" MEANS PROVIDING ELECTRICITY FOR SALE
29 TO RETAIL ELECTRIC CUSTOMERS BUT EXCLUDING ELECTRIC DISTRIBUTION OR
30 TRANSMISSION SERVICES.

31 4. "ELECTRIC TRANSMISSION SERVICE" MEANS TRANSMITTING ELECTRICITY TO
32 RETAIL ELECTRIC CUSTOMERS OR TO ELECTRIC DISTRIBUTION FACILITIES AND SO
33 CLASSIFIED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR, TO THE EXTENT
34 PERMITTED BY LAW, SO CLASSIFIED BY THE ARIZONA CORPORATION COMMISSION.

35 5. "OTHER SERVICES" INCLUDES METERING, METER READING SERVICES, BILLING
36 AND COLLECTING SERVICES.

37 6. "RETAIL ELECTRIC CUSTOMER" MEANS A PERSON WHO PURCHASES ELECTRICITY
38 FOR THAT PERSON'S OWN USE, INCLUDING USE IN THAT PERSON'S TRADE OR BUSINESS
39 AND NOT FOR RESALE, REDISTRIBUTION OR RETRANSMISSION.

40 7. "UTILITY BUSINESS" MEANS A PERSON ENGAGED IN THE BUSINESS OF
41 PRODUCING AND FURNISHING OR FURNISHING TO CONSUMERS NATURAL OR ARTIFICIAL
42 GAS, WATER OR ELECTRICITY INCLUDING AN ELECTRICITY SUPPLIER.

43 Sec. 30. Section 42-5151, Arizona Revised Statutes, as amended by Laws
44 1998, chapter 1, section 172, is amended to read:

1 42-5151. Definitions

2 In this article, unless the context otherwise requires:

3 1. "ELECTRIC DISTRIBUTION UTILITY" MEANS A PUBLIC SERVICE CORPORATION
4 OR PUBLIC POWER ENTITY THAT OPERATES, CONTROLS OR MAINTAINS ELECTRIC
5 DISTRIBUTION FACILITIES.

6 2. "ELECTRICITY" MEANS ELECTRIC ENERGY, ELECTRIC CAPACITY OR ELECTRIC
7 CAPACITY AND ENERGY.

8 3. "ELECTRICITY SUPPLIER" MEANS A PERSON, WHETHER ACTING IN A
9 PRINCIPAL, AGENT OR OTHER CAPACITY, THAT OFFERS TO SELL ELECTRICITY TO A
10 RETAIL ELECTRIC CUSTOMER IN THIS STATE.

11 ~~1~~ 4. "Notice" means written notice served personally or by certified
12 mail and addressed to the last known address of the person to whom such
13 notice is given.

14 ~~2~~ 5. "Person" means an individual, firm, partnership, joint venture,
15 association, corporation, estate, trust, receiver or syndicate, this state
16 or a county, city, municipality, district or other political subdivision or
17 agency thereof.

18 ~~3~~ 6. "Purchase" means any transfer, exchange or barter, conditional
19 or otherwise, in any manner or by any means, of tangible personal property
20 for a consideration, including transactions by which the possession of
21 property is transferred but the seller retains the title as security for
22 payment.

23 ~~4~~ 7. "Purchase price" or "sales price" means the total amount for
24 which tangible personal property is sold, including any services that are a
25 part of the sale, valued in money, whether paid in money or otherwise, and
26 any amount for which credit is given to the purchaser by the seller without
27 any deduction on account of the cost of the property sold, materials used,
28 labor or services performed, interest charged, losses or other expenses, but
29 does not include:

30 (a) Discounts allowed and taken.

31 (b) Charges for labor or services in installing, remodeling or
32 repairing.

33 (c) Freight costs billed to and collected from a purchaser by a
34 retailer for tangible personal property which, on the order of the retailer,
35 is shipped directly from a manufacturer or wholesaler to the purchaser.

36 (d) Amounts attributable to federal excise taxes imposed by 26 United
37 States Code section 4001, 4051 or 4091 on sales of heavy trucks and trailers
38 and automobiles or on sales of use fuel, as defined in section 28-5701.

39 8. "RETAIL ELECTRIC CUSTOMER" MEANS A PERSON WHO PURCHASES ELECTRICITY
40 FOR THAT PERSON'S OWN USE, INCLUDING USE IN THAT PERSON'S TRADE OR BUSINESS,
41 AND NOT FOR RESALE, REDISTRIBUTION OR RETRANSMISSION.

42 ~~5~~ 9. "Retailer" includes:

1 (a) Every person engaged in the business of making sales of tangible
2 personal property for storage, use or other consumption or in the business
3 of making sales at auction of tangible personal property owned by that person
4 or others for storage, use or other consumption. If in the opinion of the
5 department it is necessary for the efficient administration of this article
6 to regard any salesmen, representatives, peddlers or canvassers as the agents
7 of the dealers, distributors, supervisors or employers under whom they
8 operate or from whom they obtain the tangible personal property sold by them,
9 regardless of whether they are making sales on their own behalf or on behalf
10 of such dealers, distributors, supervisors or employers, the department may
11 so regard them and may regard the dealers, distributors, supervisors or
12 employers as retailers for purposes of this article.

13 (b) A person who solicits orders for tangible personal property by
14 mail if the solicitations are substantial and recurring or if the retailer
15 benefits from any banking, financing, debt collection, telecommunication,
16 television shopping system, cable, optic, microwave or other communication
17 system or marketing activities occurring in this state or benefits from the
18 location in this state of authorized installation, servicing or repair
19 facilities.

20 ~~6-~~ 10. "Storage" means keeping or retaining tangible personal
21 property purchased from a retailer for any purpose except sale in the regular
22 course of business or subsequent use solely outside this state.

23 ~~7-~~ 11. "Taxpayer" means any retailer or person storing, using or
24 consuming tangible personal property the storage, use or consumption of which
25 is subject to the tax imposed by this article when such tax was not paid to
26 a retailer.

27 ~~8-~~ 12. "Use or consumption" means the exercise of any right or power
28 over tangible personal property incidental to owning the property except
29 holding for sale or selling the property in the regular course of business.

30 Sec. 31. Section 42-5155, Arizona Revised Statutes, is amended to
31 read:

32 42-5155. Levy of tax; tax rate; purchaser's liability

33 A. There is levied and imposed an excise tax on the storage, use or
34 consumption in this state of tangible personal property purchased from a
35 retailer **OR UTILITY BUSINESS**, as a percentage of the sales price.

36 B. The tax imposed by this section applies to any purchaser which
37 purchased tangible personal property for resale but subsequently uses or
38 consumes the property **BUT DOES NOT APPLY TO THE GROSS PROCEEDS OF SALES OR**
39 **GROSS INCOME DERIVED FROM THE SALE OF TANGIBLE PERSONAL PROPERTY EXCLUDED OR**
40 **EXEMPT UNDER SECTION 42-5063.**

41 C. The tax rate shall equal the rate of tax applied to retailers **AND**
42 **UTILITY BUSINESSES** according to the respective classification under articles

1 and 2 of this chapter for the same type of transaction or business activity.

D. Every person storing, using or consuming in this state tangible personal property purchased from a retailer **OR UTILITY BUSINESS** is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state.

E. A receipt from a retailer ~~who~~ **AND UTILITY BUSINESS THAT** maintains a place of business in this state or from a retailer ~~who~~ **AND UTILITY BUSINESS THAT** is authorized by the department to collect the tax, under such rules as it may prescribe, and ~~who~~ **THAT** is for the purposes of this article regarded as a retailer **AND UTILITY BUSINESS** maintaining a place of business in this state, given to the purchaser as provided in section 42-5161 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Sec. 32. Section 42-5161, Arizona Revised Statutes, is amended to read:

42-5161. Collection from purchaser; receipt; tax as debt to state

Every retailer **AND UTILITY BUSINESS** shall collect from the purchaser the tax imposed by this article and give to such purchaser a receipt therefor in the manner and form prescribed by the department. The tax required to be collected shall be shown separately on the invoice or other proof of sale. The tax required to be collected shall constitute a debt owed by the retailer **AND UTILITY BUSINESS** to this state.

Sec. 33. Section 42-6103, Arizona Revised Statutes, is amended to read:

42-6103. County general excise tax; authority to levy; rate; distribution; use of proceeds

A. A county having a population of less than one million five hundred thousand persons, according to the most recent United States decennial census, on a unanimous vote of the board of supervisors, may levy and, if levied, the department shall collect a county general excise tax on each person engaging or continuing in the county in a business taxed under chapter 5, article 1 of this title and section 42-5352, subsection A.

B. The excise tax levied pursuant to subsection A of this section shall be at a rate applied as a percentage of the rates on each class of business subject to the tax imposed by chapter 5, article 1 of this title and section 42-5352, subsection A, not to exceed ten per cent.

C. A COUNTY HAVING A POPULATION OF LESS THAN ONE MILLION FIVE HUNDRED THOUSAND PERSONS, ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS, ON A UNANIMOUS VOTE OF THE BOARD OF SUPERVISORS, MAY LEVY, AND IF LEVIED, THE DEPARTMENT SHALL COLLECT, A COUNTY GENERAL USE TAX ON EACH RETAIL

1 ELECTRICITY CUSTOMER USING OR CONSUMING ELECTRICITY IN THE COUNTY PURCHASED
2 FROM AN ELECTRICITY SUPPLIER.

3 D. THE USE TAX LEVIED PURSUANT TO SUBSECTION C OF THIS SECTION SHALL
4 BE AT A RATE APPLIED AS A PERCENTAGE OF THE USE TAX IMPOSED BY CHAPTER 5,
5 ARTICLE 4 OF THIS TITLE, NOT TO EXCEED TEN PER CENT. NOTWITHSTANDING SECTION
6 42-6102, THE USE TAX LEVIED PURSUANT TO SUBSECTION C OF THIS SECTION SHALL
7 BE ADMINISTERED SUBJECT TO CHAPTER 5, ARTICLE 4 OF THIS TITLE.

8 ~~C.~~ E. At the end of each month the state treasurer shall transmit the
9 net revenues collected pursuant to this section to the treasurer of the
10 county levying the tax. The county shall use these revenues to support and
11 enhance countywide services.

12 Sec. 34. Joint legislative study committee on electric
13 deregulation issues; members; duties; report

14 A. A joint legislative study committee on electric deregulation issues
15 is established consisting of the following members:

16 1. Three members of the senate appointed by the president of the
17 senate, no more than two of whom are members of the same political party.
18 One of these members shall be the chairman of the commerce and economic
19 development committee who serves as cochairman.

20 2. Three members of the house of representatives appointed by the
21 speaker of the house of representatives, no more than two of whom are members
22 of the same political party, one serving as cochairman.

23 B. The committee shall meet to study issues involving electric
24 deregulation including the following:

25 1. Deregulation of billing and metering services and taxation of these
26 services.

27 2. Taxation issues associated with electric competition.

28 3. Regulation of public power entities outside their service
29 territory.

30 4. Constitutional issues relating to facilitating electric
31 competition.

32 5. Independent system operators.

33 6. Buy-through.

34 7. Load profiling.

35 8. Provider of last resort after competition is phased in.

36 9. Stranded cost recovery.

37 10. Low income services.

38 11. Consumer education and protection.

39 12. System priority of electric service providers.

40 13. Transmission system capacity and capability.

41 14. Public power entities compliance with the code of conduct and
42 affiliate issues between competitive and noncompetitive service electricity
43 providers.

1 15. System reliability.

2 16. Antitrust issues.

3 C. The committee shall submit a report regarding the committee's
4 activities and recommendations for legislative action on or before December
5 15, 1998 to the governor, the president of the senate, the speaker of the
6 house of representatives, the secretary of state and the director of the
7 department of library, archives and public records.

8 Sec. 35. Legislative intent

9 A. The legislature intends by this act to promote and protect the
10 interests of retail electric power customers and the state as a whole by
11 moving from the regulatory framework for delivery of electric generation to
12 a framework under which competition is allowed in the sale of electricity to
13 retail customers. Furthermore, it is in the public interest for the
14 legislature to establish policies for the state to ensure an orderly
15 transition to a competitive market in the retail sale of electricity that
16 should allow citizens of this state and businesses operating in this state
17 to achieve the economic benefits from industry restructuring. Specific
18 policies that the legislature has outlined in this act include:

19 1. Retail electricity prices set by a competitive market meet the
20 constitutional test of being just and reasonable.

21 2. That the legislature supports and encourages the Arizona
22 corporation commission and public power entities to coordinate their efforts
23 in transition to electric competition.

24 3. Competition in the retail sale of electricity is intended to
25 encourage innovation, efficiency and better service to all customers.

26 4. Reliable electric service is of utmost importance to the safety,
27 health and welfare of this state's citizens and economy.

28 5. Recovery of existing utilities' stranded costs as determined by the
29 corporation commission and the governing body of the public power entity.

30 6. The delivery of electricity over distribution systems should
31 continue to be provided through distribution territories, where territories
32 exist, to ensure system safety, reliability, environmental protection and
33 fair access for all market participants.

34 7. It is important that sufficient supplies of electricity and an
35 adequate transmission and distribution system will be available to serve the
36 citizens and businesses of this state and that electric distribution
37 utilities with service territories continue to have an obligation to provide
38 electric distribution service and act as a supplier of last resort for
39 electric generation service if other electricity suppliers are not willing
40 to supply electric generation service.

41 8. Public interest programs including bill assistance, rate discount
42 and weatherization programs provide essential aid to both rural and urban
43 at-risk electric retail customers and are supported and encouraged to
44 continue in a competitive retail electric generation service market.

1 9. The collection of multiple consumers or facilities, or both, for
2 the purpose of negotiating lower electric generation service prices is
3 recognized as a likely outcome of a competitive retail electric generation
4 service market.

5 B. The legislature also intends to determine the long-range effect of
6 this act by assembling in the year 2008 a commission of legislators,
7 government officials, industry representatives and private citizens, as
8 determined by the president of the senate, the speaker of the house of
9 representatives and the governor, to analyze the benefits and burdens of
10 electric power competition in this state.

1 Sec. 36. Severability

2 If any provisions or applications of this act is held invalid, the
3 invalidity does not affect other provisions or applications that can be given
4 effect without the invalid provision or application, and to this end the
5 provisions of this act are severable.

6 Sec. 37. Applicability

7 A. This act applies to all electric cooperative nonprofit membership
8 corporations or nonprofit electric generation and transmission cooperative
9 corporations that were subject to title 10, chapter 19, article 2 or 4,
10 Arizona Revised Statutes, on December 31, 1998.

11 B. Notwithstanding subsection A, any previously valid provisions in
12 the articles of incorporation or bylaws of any electric cooperative nonprofit
13 membership corporation or nonprofit electric generation and transmission
14 cooperative corporation that is subject to title 10, chapter 19, article 2
15 or 4, Arizona Revised Statutes, on December 31, 1998 that are in conflict
16 with any provision of this act continue to be valid. Any existing electric
17 cooperative nonprofit membership corporation or nonprofit electric generation
18 and transmission cooperative corporation may amend or restate its articles
19 of incorporation and may retain any previously valid provisions of its
20 articles of incorporation that are in conflict with any provision of this
21 act.

22 Sec. 38. Corporation commission information; suspension

23 A. The corporation commission shall inform the legislature and provide
24 testimony before the joint legislative study committee on electric
25 deregulation issues if the commission delays the December 31, 1998 or
26 December 31, 2000 date for competition.

27 B. If after December 31, 1998 the implementation dates for competition
28 for public service corporations are delayed, the governing body of a public
29 power entity may suspend by official resolution further application of
30 section 30-803, subsection A, Arizona Revised Statutes, as added by this act,
31 for up to six months. Any retail electric customers who have selected
32 another electricity supplier before the adoption of the resolution shall not
33 be affected by the official resolution.

34 Sec. 39. Delayed repeal

35 Sections 34 and 38 of this act are repealed from and after December 31,
36 2000.

37 Sec. 40. Effective date

38 Sections 42-5010, 42-5063, 42-5151, 42-5155 and 42-5161, Arizona
39 Revised Statutes, as amended by this act, are effective from and after
40 December 31, 1998.