

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2537 Session of
1996INTRODUCED BY TULLI, D. R. WRIGHT, HASAY, MARSICO, ROONEY,
GRUPPO, COLAIZZO AND SERAFINI, APRIL 10, 1996AS AMENDED, COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, JUNE 19, 1996

AN ACT

1 Providing for customer choice of suppliers of electric
2 generation services, for powers and duties of the
3 Pennsylvania Public Utility Commission; establishing the
4 Universal Service Fund; PROVIDING FOR CONSUMER CHOICE IN THE <—
5 CASE OF ELECTRIC COOPERATIVE CORPORATIONS; and making
6 repeals.

TABLE OF CONTENTS

7
8 ~~Section 1. Short title.~~ <—
9 ~~Section 2. Statement of purpose.~~
10 ~~Section 3. Definitions.~~
11 ~~Section 4. Plan for customer choice in this Commonwealth's~~
12 ~~electricity market.~~
13 ~~Section 5. Vertical disaggregation of electric industry.~~
14 ~~Section 6. Retail customer choice.~~
15 ~~Section 7. Competitive transition charges.~~
16 ~~Section 8. Independent system operator.~~
17 ~~Section 9. Universal service.~~
18 ~~Section 10. Customer service.~~
19 ~~Section 11. Other considerations.~~

1 ~~Section 12. Market power remediation.~~

2 ~~Section 13. Certificates of public convenience.~~

3 ~~Section 14. Repeals.~~

4 ~~Section 15. Effective date.~~

5 CHAPTER 1. RETAIL CONSUMER CHOICE

<—

6 SECTION 101. SHORT TITLE.

7 SECTION 102. STATEMENT OF PURPOSE.

8 SECTION 103. DEFINITIONS.

9 SECTION 104. PLAN FOR CUSTOMER CHOICE IN THIS COMMONWEALTH'S
10 ELECTRICITY MARKET.

11 SECTION 105. VERTICAL DISAGGREGATION OF ELECTRIC INDUSTRY.

12 SECTION 106. RETAIL CUSTOMER CHOICE.

13 SECTION 107. COMPETITIVE TRANSITION CHARGES.

14 SECTION 108. INDEPENDENT SYSTEM OPERATOR.

15 SECTION 109. UNIVERSAL SERVICE.

16 SECTION 110. CUSTOMER SERVICE.

17 SECTION 111. OTHER CONSIDERATIONS.

18 SECTION 112. MARKET POWER REMEDIATION.

19 SECTION 113. CERTIFICATES OF PUBLIC CONVENIENCE.

20 CHAPTER 3. ELECTRIC COOPERATIVE CORPORATIONS

21 SECTION 301. DECLARATION OF POLICY.

22 SECTION 302. APPLICATION.

23 SECTION 303. DEFINITIONS.

24 SECTION 304. CUSTOMER CHOICE IN ELECTRIC COOPERATIVE
25 SERVICE AREAS.

26 SECTION 305. COMPETITION BY ELECTRIC COOPERATIVES.

27 SECTION 306. CONSTRUCTION OF CHAPTER.

28 CHAPTER 5. MISCELLANEOUS PROVISIONS

29 SECTION 501. SAVINGS PROVISION.

30 SECTION 502. DELAYED RIGHT TO PURCHASE OR RECEIVE SERVICE.

1 SECTION 503. REPEALS.

2 SECTION 504. EFFECTIVE DATE.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 ~~Section 1. Short title.~~

<—

6 CHAPTER 1

<—

7 RETAIL CONSUMER CHOICE

8 SECTION 101. SHORT TITLE.

9 This ~~act~~ CHAPTER shall be known and may be cited as the
10 Electric Utility Retail Customer Choice Act.

<—

11 Section ~~2~~ 102. Statement of purpose.

<—

12 The General Assembly finds and declares as follows:

13 (1) The generation of electricity is not a natural
14 monopoly and should not be regulated as if it were a NATURAL
15 monopoly.

<—

16 (2) Regulation of the monopoly electric industry under
17 66 Pa.C.S. Pt. I (relating to public utility code) has
18 resulted in rates that average approximately 15% higher than
19 the national average and which vary considerably among public
20 utilities.

21 (3) High rates and rate disparities hinder the sustained
22 and orderly economic development of the Commonwealth.

23 (4) Restructuring the electric generation industry to
24 facilitate retail competition will lower prices, increase
25 customer choice and improve the quality and variety of
26 generation services available in this Commonwealth, thereby
27 promoting the public interest.

28 (5) It is technically and administratively practical to
29 restructure the electric industry in this Commonwealth to
30 promote retail customer choice.

1 (6) Competitive wholesale generation will not provide
2 substantially lower prices or any customer choice to retail
3 customers because public utilities supply approximately 95%
4 of their generation requirements through base rate generation
5 that they own to captive customers in their retail service
6 territory and not through a competitive wholesale market.

7 (7) Retail customer choice of electric generation is
8 necessary and proper to ~~prevent current industry pressures~~ <—
9 ~~from shifting costs of service to captive monopoly~~ SHARE THE <—
10 BENEFITS OF COMPETITION AMONG ALL customers.

11 (8) Therefore, the General Assembly hereby finds that it
12 is in the public interest to permit all retail electric
13 customers to choose their supplier of electric generation
14 services in a competitive market and to continue to regulate
15 electric transmission and distribution and some aspects of
16 generation in order to provide safe and reliable electricity
17 at the lowest possible prices for consumers WHILE MAINTAINING <—
18 THE PUBLIC BENEFIT WORKS OF ENVIRONMENTAL PROTECTION AND LOW-
19 INCOME ASSISTANCE, THE STANDARDS OF WORKER AND PUBLIC SAFETY
20 AND THE CONSUMER SERVICES OF CUSTOMER ASSISTANCE AND
21 RELIABILITY. This policy shall be implemented in a way which
22 is just, reasonable and efficient for electric utilities
23 generating, transmitting and selling electricity, as well as
24 residential, commercial and industrial classes of consumers.

25 Section 3 103. Definitions. <—

26 The following words and phrases when used in this act CHAPTER <—
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Commission." The Pennsylvania Public Utility Commission.

30 "Fund." The Universal Service Fund.

1 "LDU." Local distribution utility.

2 "Plan." The plan adopted under section 4 104. <—

3 "Regulatory assets." Assets which are included on the

4 balance sheet of electric utilities with ~~an~~ A SPECIFIC assurance <—

5 from the Pennsylvania Public Utility Commission that future rate

6 determinations will include such assets.

7 "RP." The recovery plan.

8 "Stranded investment." Regulatory assets, nonutility

9 generation contracts and other utility investments rendered

10 uneconomic as a result of implementation of this act. The value

11 of uneconomic utility investments shall be calculated as

12 stranded investments for the purposes of this ~~act~~ CHAPTER based <—

13 on the net difference between the embedded costs of assets

14 currently recovered through the base rates of a public utility

15 and the price recoverable for such costs as a result of the

16 change to a competitive market after prudent, thorough and

17 aggressive mitigation efforts. The term shall not include any

18 difference between asset book value and market value due to

19 wholesale competition or market value for any reason other than

20 the industry restructuring for retail generation competition

21 under this act. The term also shall not include any assets which

22 have been determined not to be prudent or used and useful by the

23 Pennsylvania Public Utility Commission.

24 Section 4 104. Plan for customer choice in this Commonwealth's <—

25 electricity market.

26 (a) Adoption.--The commission shall adopt a plan on or

27 before April 1, 1997, to reorganize this Commonwealth's electric

28 industry, consistent with the policies and procedures

29 established under this ~~act~~ CHAPTER. <—

30 (b) Transition period.--The plan adopted by the commission

1 under this ~~act~~ CHAPTER shall establish a transition period <—
2 pursuant to which all Commonwealth retail electric customers
3 shall have the opportunity to choose suppliers of electric
4 generation services. The transition period shall begin no later
5 than January 1, 1998, and end no later than December 30, 2002.
6 All retail consumers shall have the opportunity to choose
7 suppliers of electric ~~services within five years of the~~ <—
8 ~~effective date of this act.~~ GENERATION SERVICES WITHIN THE <—
9 TRANSITION PERIOD. THE REGULATED BASE RATES OF EXISTING ELECTRIC
10 UTILITIES SHALL REMAIN UNCHANGED DURING THE TRANSITION PERIOD.
11 (c) Contents of plan.--The plan shall incorporate the
12 substance of sections ~~5 through 11~~ 105 THROUGH 111. <—
13 Section ~~5~~ 105. Vertical disaggregation of electric industry. <—
14 (a) General rule.--Existing electric utilities shall
15 functionally separate electric generation, transmission and
16 distribution assets and operations. PUBLIC UTILITIES SHALL <—
17 INTERACT WITH AFFILIATES ACCORDING TO RULES, REGULATIONS AND
18 STANDARDS OF CONDUCT ADOPTED BY THE COMMISSION.
19 (b) Distribution.--
20 (1) Existing electric utilities shall ~~be granted a~~ <—
21 ~~monopoly~~ RETAIN ALL EXISTING RIGHTS AND OBLIGATIONS to <—
22 provide local electric distribution services in their
23 existing service territories. Each local distribution utility
24 shall distribute electricity AND IMPLEMENT ALL CUSTOMER <—
25 SERVICE PROGRAMS UNDER THIS ACT OR BY THE COMMISSION. EACH
26 LDU MAY, AT ITS OPTION, provide meter reading, billing and
27 other customer service functions. ~~and implement all customer~~ <—
28 ~~service programs under this act or by the commission.~~ Each
29 LDU shall have the duty to connect and deliver electricity to
30 all consumers in its service territory at the same,

1 nondiscriminatory prices and access as is made available by
2 the LDU to its own generation customers UNTIL THE END OF THE <—
3 TRANSITION PERIOD.

4 (2) Local distribution facilities shall include all
5 prudently incurred assets used and useful in the provision of
6 local distribution services under this ~~act~~ CHAPTER. LDU's <—
7 shall operate all local distribution facilities at the lowest
8 cost consistent with safe and reliable service. STANDARDS OF <—
9 PERSONNEL STAFFING SUFFICIENT TO PROTECT THE HEALTH, SAFETY
10 AND WELFARE OF THE PUBLIC AND OF ELECTRIC UTILITY EMPLOYEES
11 SHALL BE SET AND ALL ELECTRIC UTILITY WORK WHICH IS PERMANENT
12 IN NATURE SHALL BE PERFORMED BY ELECTRIC UTILITY EMPLOYEES.
13 APPRENTICESHIP AND TRAINING STANDARDS SHALL BE DEVELOPED BY
14 LABOR AND MANAGEMENT COMMITTEES WHICH SHALL BE APPROVED BY
15 THE COMMISSION. ALL PERSONNEL SHALL SUCCESSFULLY COMPLETE THE
16 APPLICABLE APPRENTICESHIP PROGRAMS AND RECEIVE PERIODIC
17 TRAINING, INCLUDING ALL VENDORS EMPLOYED BY THE UTILITY.

18 (3) The commission shall establish just and reasonable
19 rates for unbundled local distribution services which are
20 designed to recover the cost of providing all services WHICH <—
21 SHALL INCLUDE DISTRIBUTION INFRASTRUCTURE, INCLUDING, BUT NOT
22 LIMITED TO, PRIMARY AND SECONDARY LINES, TRANSFORMERS,
23 SWITCHES, POLES AND VAULTS, required under this ~~act~~ CHAPTER <—
24 or by the commission. Rates shall be based upon cost of
25 service, performance-based incentive and other considerations
26 to promote efficient, safe and reliable service at the lowest
27 cost.

28 (c) Transmission.--

29 (1) Both LDU's and other companies which are not LDU's
30 or public utilities may own transmission facilities.

1 (2) Transmission facilities are all assets of a public
2 utility prudently incurred and used and useful in the
3 transmission of electricity from generating facilities to
4 local distribution facilities. No public utility or LDU may
5 control the operation of transmission facilities except as
6 directed by a qualified independent system operator pursuant
7 to section 8 108. Transmission facilities may be controlled <—
8 only by a qualified independent system operator pursuant to
9 section 8 108, although public utilities and LDU's may <—
10 physically operate and maintain transmission facilities under
11 the control of a qualified independent system operator.

12 (3) Transmission services shall be available for
13 nondiscriminatory use by all generators AGGREGATORS and LDU's <—
14 and customers. The commission shall regulate all aspects of
15 transmission rates and services not subject to the exclusive
16 jurisdiction of the Federal Energy Regulation Commission.

17 (d) Generation.--

18 (1) Public utilities and LDU's may own electric
19 generation assets. ~~No LDU shall sell electric generation~~ <—
20 ~~directly to retail customers in their service territory,~~
21 ~~except as expressly permitted under this act.~~ Public
22 utilities and LDU's may sell generation directly to a
23 qualified power pool or through a direct contract.

24 (2) Public utilities and LDU's ~~shall~~ MAY offer unbundled <—
25 generation services as approved by the commission. Prices for
26 unbundled generation services shall not be established by the
27 commission, but shall be determined by competitive market
28 forces. ~~except that the commission may establish price~~ <—
29 ~~guidelines upon finding the existence of undue market power~~
30 ~~pursuant to section 12.~~

(3) The commission shall adopt a plan designed to permit all generators of electricity to compete equally to supply power in this Commonwealth and to mitigate concentrations of undue market power.

Section ~~6~~ 106. Retail customer choice. <—

The plan shall provide for the broadest practical retail customer choice and an opportunity for all consumers to benefit from the economic efficiencies of the restructured electric industry, consistent with the requirements of this ~~act~~ CHAPTER. <—

Retail customers may choose their providers of electric generation services through the following means:

(1) Retail customers may instruct their LDU to transmit power purchased on their behalf from the power pool at prices determined by ~~either~~: <—

(i) average monthly power pool prices; ~~or~~ <—

(ii) hourly prices billed through a time of use meter; OR <—

(III) OTHER PRICING MECHANISM APPROVED BY THE COMMISSION.

(2) Retail customers may negotiate a direct contract with a generator of electricity which shall be transmitted and distributed to the retail customer, subject to the restrictions contained in paragraph (4)(iv).

(3) Retail customers may choose to receive generation and other energy services by a market aggregator. Market aggregators may generate electricity directly, buy and sell electricity or enter into financial contracts for electric generation resources. Market aggregators may be brokers, cooperatives, buying clubs, municipalities or other entities which buy or arrange for electric generation services through

1 the power pool or through direct contracts. LDU's may perform
2 the role of market aggregator for any retail customer in this
3 Commonwealth. LDU's shall have the duty to provide market
4 aggregation services for any local retail distribution
5 customer within their exclusive distribution service
6 territory who has not chosen an alternative source of
7 generation. The commission shall ~~encourage~~ SET FORTH
8 STANDARDS TO ENSURE the participation of market aggregators
9 serving all classes of customers.

10 (4) Customer choice shall be phased in to promote the
11 orderly development of the power pool and contracting
12 mechanisms to ensure an efficient and reliable electric
13 industry. This shall be accomplished as follows:

14 (i) All retail customers may choose to purchase
15 electric generation through the power pool, market
16 aggregators or their LDU as a market aggregator or under
17 regulated base rates as of January 1, 1998.

18 (ii) LDU's serving customers who have chosen to
19 receive electric generation services under regulated base
20 rates shall retain sufficient generation resources to
21 meet its customers' service requirements under regulated
22 rates.

23 (iii) LDU's serving as market aggregators may
24 purchase electric generation through any combination of
25 power pool, direct contracts with generators or other
26 aggregators, as necessary to develop a portfolio of
27 reliable, competitive generation services, but LDU's may
28 not contract with any affiliate.

29 (iv) Each LDU shall file a proposal, for adoption by
30 the commission after an open public evidentiary hearing

1 with proper notice and the opportunity of all parties to
2 cross-examine witnesses, providing for the phasing in of
3 retail customer direct contracts with the generation
4 supplier of their choice and providing for direct access
5 to the transmission and distribution systems. The phase-
6 in adopted by the commission shall permit all classes of
7 customers an equal opportunity to enter into direct
8 contracts. During the calendar year:

9 (A) 1998 AND 1999, no more than ~~10%~~ 25% of the <—
10 retail distribution requirements within its monopoly
11 distribution service territory shall be supplied
12 through direct contracts.

13 ~~(B) 1999, no more than 20% of LDU distribution <—~~
14 ~~requirements shall be supplied through direct~~
15 ~~contracts.~~

16 ~~(C)~~ (B) 2000 through 2002, no more than ~~30%~~ 50% <—
17 of LDU distribution requirements shall be supplied
18 through direct contracts.

19 (5) Until the conclusion of the transition period,
20 retail customers may choose to continue to remain customers
21 of their existing public utility paying regulated rates
22 authorized by tariffs approved by the commission. Customers
23 choosing this option shall have rates capped for generation
24 services as of the effective date of this ~~act~~ CHAPTER. <—

25 Customers choosing this option shall be exempt from payment
26 of any separate competitive transition charge.

27 Section 7 107. Competitive transition charges. <—

28 (a) Plan provisions.--The plan shall provide for the
29 identification of the types, character and levels of utility
30 costs claimed as stranded investment due to implementation of

1 this ~~act~~ CHAPTER. Stranded investments shall, without <—
2 limitation, include contracts with nonutility generators,
3 regulatory assets and public utility generating assets. The plan
4 shall provide for the identification of other transition costs
5 incurred by public utilities due to restructuring of the
6 electric industry under this ~~act~~ CHAPTER. The plan shall provide <—
7 that stranded investments and other transition costs may be
8 recovered by public utilities solely as permitted under this ~~act~~ <—
9 CHAPTER. <—

10 (b) Recovery of stranded investment.--

11 (1) Public utilities shall be permitted to recover
12 qualified stranded investment subject to procedures and
13 standards under this ~~act~~ CHAPTER and those established by the <—
14 commission.

15 (2) Public utilities and nonutility generators shall
16 attempt to mitigate the costs of any power purchase contracts
17 which are in effect as of the effective date of this ~~act~~ <—
18 CHAPTER for which the contract price of generation is above <—
19 the market price for generation. One hundred percent of any
20 unmitigated costs of such contracts that are above the market
21 price for generation shall be recoverable by the public
22 utility.

23 (3) One hundred percent of regulatory assets approved by
24 the commission as of the effective date of this ~~act~~ CHAPTER <—
25 shall be qualified for recovery under subsections (e), (f)
26 and (g).

27 (4) Public utilities shall have the duty to mitigate
28 stranded investment in utility-owned generation and be
29 eligible for recovery of unmitigated costs under subsections
30 (e), (f) and (g).

(5) Other stranded investments shall be qualified for inclusion in the recovery account, subject to any mitigation requirements approved by the commission.

(c) Recovery of other transition costs.--Public utilities shall be permitted to recover other qualified unmitigated transition costs through the recovery account under subsection (g) as approved by the commission.

(d) Duty to mitigate.--Public utilities shall have the duty to prudently and aggressively mitigate ~~certain~~ stranded investments and other transition costs as of the effective date of this ~~act~~ CHAPTER. Unmitigable stranded investments may be qualified for inclusion in the recovery account.

(e) Stranded investment and transition cost recovery plan.--

(1) Each public utility shall file a recovery plan within three months after adoption of the plan by the commission pursuant to section ~~4(a)~~ 104(A). The RP shall document anticipated stranded investments, other transition costs, mitigation proposals and offsetting increases in the value of other GENERATION assets.

(2) The RP shall propose a competitive transition surcharge which shall be allocated to all customer classes pursuant to the most recent rate design approved by the commission subject to paragraph (4).

(3) The RP shall permit collection of a competitive transition surcharge to recover net, unmitigated stranded investment over a period of not less than three and no more than ten years.

(4) The RP shall establish net unmitigable stranded investment and transition costs and a proper recovery period designed to recover ~~all~~ such costs expeditiously, provided

1 that the recovery period and the amount of qualified
2 transition costs shall yield a competitive transition
3 surcharge which will not cause the total price for electric
4 power, including transmission and distribution services, for
5 any class of customer to exceed the average rates paid by
6 such class of customers as of the effective date of this ~~act~~ <—
7 CHAPTER. <—

8 (5) Any stranded investment or transition costs not
9 recovered under this ~~act~~ CHAPTER and the RP, as modified and <—
10 approved by the commission, within ten years shall not be
11 recoverable by the public utility.

12 (f) Commission approval of recovery plan.--

13 (1) The commission shall conduct open public evidentiary
14 hearings with proper notice and the opportunity for all
15 parties to cross-examine witnesses prior to approval, denial
16 or modification of an RP.

17 (2) The commission shall issue an order adopting an RP
18 which shall become effective as of the date of implementation
19 of retail customer choice.

20 (3) Sixty days prior to each anniversary of the
21 effective date of the RP, the public utility shall file an
22 updated RP with such information as is necessary to adjust
23 the competitive transition surcharge based on actual market
24 values, transition costs, stranded investments, mitigation
25 efforts and other circumstances as necessary to comply with
26 the parameters for recovery of stranded investments and
27 transition costs pursuant to this ~~act~~ CHAPTER. For good <—
28 cause, the commission may adopt an alternative RP following
29 an open public evidentiary hearing with proper notice and the
30 opportunity for all parties to cross-examine witnesses.

(g) Recovery account.--The approved RP shall establish a recovery account which itemizes approved qualified recovery costs and recovered amounts, as adjusted by annual RP filings. Approved qualified recovery costs may be recovered during a recovery period as follows:

(1) 3 years - 100%.

(2) 4 years - 95%.

(3) 5 years - 90%.

(4) 6 years - 85%.

(5) 7 years - 80%.

(6) 8 years - 75%.

(7) 9 years - 70%.

(8) 10 years - 65%.

(h) Duty to cooperate.--

(1) Public utilities shall have a duty to cooperate with the commission in the implementation of this ~~act~~ CHAPTER as a precondition for recovery of otherwise qualified recovery costs. <—

~~(2) The General Assembly finds that public utilities have relied on the current system of regulation in making investments and that the transition to a restructured industry mandated by this act will provide both economic benefits and dislocations for public utilities. The General~~ <—

(2) THE GENERAL Assembly hereby ~~also~~ finds that customers have been paying prices for electric generation that are substantially higher than a competitive market would provide and therefore already have been burdened with substantial costs of stranded investment. It is the policy of this Commonwealth to move towards a more efficient electric generation industry by distributing both the benefits of <—

1 competitive prices and the burdens of stranded investments
2 and transition costs widely and fairly among shareholders and
3 customers.

4 (3) Approval of an RP and collection of any stranded
5 investment or transition costs shall be deemed a settlement
6 of all such claims by a public utility. No public utility
7 seeking to establish claims for recovery of stranded
8 investments or transition costs through any other means shall
9 be eligible for recovery pursuant to an RP or the collection
10 of a competitive transition surcharges.

11 Section § 108. Independent system operator. <—

12 All public utilities and LDU's in this Commonwealth shall
13 participate in a qualified transmission network. ~~Coordination of~~ <—
14 ~~generation, transmission and any distribution facilities~~
15 ~~included in regulated rate of a public utility as of the~~
16 ~~effective date of this act shall be performed by an independent~~
17 ~~system operator only upon commission approval~~ AS A CONDITION TO <—
18 BEING GRANTED A CERTIFICATE OF PUBLIC CONVENIENCE under 66
19 Pa.C.S. § 1102(a)(2) (relating to enumeration of acts requiring
20 certificate). ~~An independent system operator shall be qualified~~ <—
21 ~~to coordinate operation of public utility assets upon a finding~~
22 ~~by the commission that:~~ THE QUALIFIED TRANSMISSION NETWORK <—
23 SHOULD SATISFY THE FOLLOWING CRITERIA:

24 (1) The Federal Energy Regulatory Commission or any
25 other appropriate regulatory body has approved
26 nondiscriminatory access and pricing for transmission
27 services provided by the system.

28 (2) The independent system operator is neither owned nor
29 operated by any entity owning transmission or generation
30 facilities.

1 ~~(3) The system requires participants to modify or~~ <—
2 ~~construct generation, transmission or other facilities in a~~
3 ~~manner designed to achieve reliability standards such that~~
4 ~~forced outages shall not occur on more than one day in ten~~
5 ~~years.~~

6 ~~(4) The system provides back up power, running reserves~~
7 ~~and other ancillary services to maintain reliable service for~~
8 ~~all retail consumers.~~

9 ~~(5) The system operates a day ahead power pool by~~
10 ~~soliciting bids for anticipated needs.~~

11 (3) THE TRANSMISSION NETWORK SHALL BE OPERATED ACCORDING <—
12 TO GOOD UTILITY PRACTICE AND REGIONAL RELIABILITY
13 CONSIDERATIONS.

14 (4) THE INDEPENDENT SYSTEM OPERATOR SHALL PROVIDE ALL
15 NECESSARY ANCILLARY SERVICES IN A NONDISCRIMINATORY MANNER.

16 ~~(6)~~ (5) The independent system operator shall coordinate <—
17 the operational flow of electric power necessitated by the
18 entry of bilateral contracts between suppliers and customers
19 pursuant to those suppliers and customers having direct
20 access to the transmission and distribution systems.

21 ~~(7) The system permits the participation of all~~ <—
22 ~~generators and local distribution of public utilities on a~~
23 ~~nondiscriminatory basis, including those located outside of~~
24 ~~this Commonwealth, provided that the independent system~~
25 ~~operator shall not permit any generation services provided by~~
26 ~~non Commonwealth local distribution utilities to participate~~
27 ~~in the lowest price dispatch system serving Pennsylvania~~
28 ~~local distribution customers unless generation services~~
29 ~~supplied by public utilities or other generators in this~~
30 ~~Commonwealth are permitted to participate on a~~

~~nondiscriminatory basis in a lowest price dispatch system
providing generation services to local distribution customers
in such other state.~~

(6) THE INDEPENDENT SYSTEM OPERATOR PERMITS THE
PARTICIPATION OF ALL SUPPLIERS OF GENERATION AND TRANSMISSION
SERVICES ON A NONDISCRIMINATORY BASIS.

Section 9 109. Universal service.

(a) Findings.--The General Assembly hereby finds that
universal electric service is necessary for the health and well-
being of its citizens and for the sustained and orderly economic
development of this Commonwealth.

(b) Universal service programs.--

(1) The plan shall include standards for universal
service programs for retail customers with household income
below 150% of Federal poverty guidelines. Universal service
programs shall be offered by all LDU's.

(2) Universal service programs shall include usage
reduction programs for low-income households.

(c) Universal Service Fund.--The commission shall establish
the Universal Service Fund which shall be competitively neutral
to supplement any public or private funds available as necessary
to fund the programs. Local distribution rates shall include an
amount necessary to cover the costs of universal service
benefiting residential customers and shall be paid by all retail
local distribution customers on an equal per kwh basis.

(d) Disbursements from fund.--The fund shall be maintained
by each LDU. Disbursements from the fund may be made as approved
by the commission.

(e) Base rates.--In the absence of base local distribution
rates hereafter established by the commission, each LDU shall

1 fund universal service programs at the same level as is
2 presently included in base rates to support all usage reduction
3 and universal service programs of each public utility.

4 Section ~~10~~ 110. Customer service. <—

5 Maintenance of customer service shall remain at existing OR <—
6 HIGHER levels. All existing customer service policies,
7 procedures and regulations mandated by 66 Pa.C.S. Pt. I
8 (relating to public utility code) or the commission shall remain
9 in effect as of the effective date of this ~~act~~ CHAPTER until <—
10 such time as duly changed by the commission.

11 Section ~~11~~ 111. Other considerations. <—

12 The plan shall address:

13 (1) Maintenance of environmental quality.

14 (2) The establishment of standards to maintain the
15 safety and reliability of the electric industry.

16 (3) Such other considerations as shall be necessary and
17 appropriate to efficiently and effectively implement the
18 purposes of this ~~act~~ CHAPTER. <—

19 Section ~~12~~ 112. Market power remediation. <—

20 (a) Monitoring.--The commission shall monitor market power
21 and its impact on the proper functioning of a fully competitive
22 market, including, but not limited to, concentrations of asset
23 ownership, mergers and acquisitions and market power due to
24 transmission congestion constraints or the existence of supply
25 warnings, alerts or emergency declarations by the independent
26 system operation.

27 (b) Undue market power.--The commission shall have full
28 power and authority and shall order steps to remediate undue
29 market power in this Commonwealth. The commission shall adopt
30 general regulations concerning, and take appropriate specific

1 action to remediate undue market power, including, but not
2 limited to, ordering increased functional separation of
3 generation, transmission and distribution functions within a
4 public utility, corporate reorganization, denial of corporate or
5 asset acquisition, or divestiture of assets. The commission
6 shall establish benchmark price guidelines which prevent
7 excessive prices during periods of supply warnings, alerts or
8 emergencies.

9 (c) Mitigation of market power.--Prior to the entry of any
10 market power remediation order other than generally applicable
11 regulations, the commission shall seek to mitigate market power
12 in a manner agreed to by all interested parties. In the absence
13 of such agreement, the commission shall issue such an order
14 following public hearing with the participation of all
15 interested parties, and findings that the recommended
16 remediation is necessary to redress undue market power which is
17 contrary to the proper functioning of a competitive market.

18 Section ~~13~~ 113. Certificates of public convenience. <—

19 Upon the application of any generator, market aggregator,
20 local distribution utility or any other entity selling electric
21 generation services to any retail customer in this Commonwealth,
22 and the approval of such application by the commission evidenced
23 by its certificate of public convenience first had and obtained,
24 it shall be lawful for such seller of electric generation
25 service to begin to offer, render, furnish or supply such
26 service within this Commonwealth. Certificates shall be granted
27 upon a showing of financial and technical fitness, the
28 willingness and ability to comply with the requirements of this
29 ~~act~~ CHAPTER, the commission or an independent system operator <—
30 and such other considerations as the commission shall deem

1 necessary and proper for the protection of the public and the
2 proper functioning of the electric industry. The commission
3 shall not limit market entry for economic reasons or regulate
4 generation prices. APPLICANTS APPROVED UNDER THIS SECTION SHALL <—
5 BE SUBJECT TO ALL OTHER REGULATIONS WHICH THE COMMISSION FINDS
6 APPLICABLE.

7 CHAPTER 3 <—

8 ELECTRIC COOPERATIVE CORPORATIONS

9 SECTION 301. DECLARATION OF POLICY.

10 THE GENERAL ASSEMBLY FINDS THAT ELECTRIC COOPERATIVE
11 CORPORATIONS WHICH OWN AND OPERATE ELECTRIC DISTRIBUTION,
12 TRANSMISSION OR GENERATION FACILITIES IN THIS COMMONWEALTH,
13 WHICH ARE OPERATED ON A NONPROFIT BASIS AND WHICH ARE OWNED AND
14 DEMOCRATICALLY CONTROLLED BY THE MEMBER CONSUMERS WHICH THEY
15 SERVE, ARE AN ESSENTIAL PART OF THE RURAL INFRASTRUCTURE AND AN
16 IMPORTANT PARTICIPANT IN THE ECONOMIC DEVELOPMENT AND VITALITY
17 OF SIGNIFICANT AREAS OF THIS COMMONWEALTH. IN PROVIDING FOR
18 CUSTOMER CHOICE FOR THE MEMBER CONSUMERS OF ELECTRIC COOPERATIVE
19 CORPORATIONS, THE GENERAL ASSEMBLY INTENDS TO PROTECT AND
20 PRESERVE THE OPERATIONS AND INDEPENDENCE OF ELECTRIC COOPERATIVE
21 CORPORATIONS BY PROVIDING FOR CONTINUED EXEMPTION FOR ELECTRIC
22 COOPERATIVE CORPORATIONS FROM THE JURISDICTION AND CONTROL OF
23 THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, AND BY PROVIDING FOR
24 A SEPARATE SYSTEM OF CHOICE FOR PERSONS IN THE SERVICE
25 TERRITORIES OF ELECTRIC COOPERATIVE CORPORATIONS. THE GENERAL
26 ASSEMBLY FURTHER INTENDS TO PROVIDE FOR THE COMPLETE RIGHT OF
27 ELECTRIC COOPERATIVE CORPORATIONS TO COMPETE WITH OTHERS IN
28 PROVIDING ELECTRIC AND OTHER SERVICES THROUGHOUT THIS
29 COMMONWEALTH.

30 SECTION 302. APPLICATION.

1 WITH THE EXCEPTION OF THE CHAPTER 5 PROVISIONS RELATING TO
2 ELECTRIC COOPERATIVE CORPORATIONS, THE PROVISIONS OF THIS ACT
3 WHICH ARE NOT SET FORTH IN THIS CHAPTER SHALL NOT APPLY TO
4 ELECTRIC COOPERATIVE CORPORATIONS OR TO THE LAWS RELATING TO
5 ELECTRIC COOPERATIVE CORPORATIONS.

6 SECTION 303. DEFINITIONS.

7 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
8 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
9 CONTEXT CLEARLY INDICATES OTHERWISE:

10 "DEPARTING MEMBER." A MEMBER CONSUMER SERVED AT RETAIL BY AN
11 ELECTRIC COOPERATIVE CORPORATION WHO HAS GIVEN NOTICE OF INTENT
12 TO RECEIVE GENERATION SERVICE FROM ANOTHER SOURCE, OR WHO IS
13 OTHERWISE IN THE PROCESS OF CHANGING GENERATION SUPPLIERS. THESE
14 PERSONS SHALL NONETHELESS REMAIN MEMBERS OF THE ELECTRIC
15 DISTRIBUTION COOPERATIVE CORPORATION WHICH PROVIDES DISTRIBUTION
16 SERVICE.

17 "ELECTRIC-CONSUMING FACILITIES." THE PHRASE SHALL HAVE THE
18 MEANING ASCRIBED TO IT IN 15 PA.C.S. § 7352 (RELATING TO
19 DEFINITIONS).

20 "RETAIL ELECTRIC SERVICE." THE PHRASE SHALL HAVE THE MEANING
21 ASCRIBED TO IT IN 15 PA.C.S. § 7352 (RELATING TO DEFINITIONS).

22 "TRANSITION SURCHARGE." THE TOTAL STRANDED COSTS PAYABLE TO
23 AN ELECTRIC COOPERATIVE CORPORATION AS A CONDITION PRECEDENT TO
24 A CONSUMER-MEMBER OF AN ELECTRIC COOPERATIVE CORPORATION HAVING
25 THE RIGHT TO RECEIVE ELECTRIC GENERATION SERVICE FROM ANOTHER
26 SOURCE. TOTAL STRANDED COSTS SHALL BE REASONABLY DETERMINED BY
27 AN ELECTRIC COOPERATIVE AND MAY INCLUDE, BUT ARE NOT LIMITED TO,
28 THE PRO RATA SHARE OF ALL INVESTMENTS IN ELECTRIC COOPERATIVE
29 DISTRIBUTION, TRANSMISSION AND GENERATION PLANT AND FACILITIES,
30 THE PRO RATA SHARE OF FORESEEABLE DECOMMISSIONING COSTS OF

1 GENERATION FACILITIES, THE PRO RATA SHARE OF ALL THEN EFFECTIVE
2 ELECTRIC COOPERATIVE CONTRACTUAL COMMITMENTS TO OTHERS,
3 REGULATORY ASSETS, DEFERRED DEBITS AND/OR CREDITS, FIXED
4 OPERATION AND MAINTENANCE EXPENSES, EXPENDITURES MADE FOR THE
5 BENEFIT OF THE DEPARTING CUSTOMER AND ALL ADMINISTRATIVE AND
6 GENERAL AND OTHER COSTS INCURRED, OR TO BE INCURRED, BY AN
7 ELECTRIC COOPERATIVE AS A RESULT OF A DECISION BY A CONSUMER-
8 MEMBER TO TAKE ELECTRIC GENERATION SERVICE FROM ANOTHER SOURCE.
9 THE PRO RATA SHARE OF ELECTRIC COOPERATIVE STRANDED COSTS SHALL
10 BE DETERMINED ON THE BASIS OF HISTORICAL ENERGY AND CAPACITY
11 USAGE BY SUCH CONSUMER-MEMBER, COMPARED TO HISTORICAL TOTAL
12 ENERGY AND CAPACITY USAGE OF SUCH ELECTRIC COOPERATIVE, OR BY
13 DIRECT ASSIGNMENT WHERE APPLICABLE.

14 SECTION 304. CUSTOMER CHOICE IN ELECTRIC COOPERATIVE SERVICE
15 AREAS.

16 (A) GENERAL RULE.--A PERSON WHO, ON OR AFTER THE EFFECTIVE
17 DATE OF THIS CHAPTER, RECEIVES RETAIL ELECTRIC SERVICE AT AN
18 ELECTRIC-CONSUMING FACILITY FROM AN ELECTRIC COOPERATIVE IN THIS
19 COMMONWEALTH, OR A PERSON WHO, ON OR AFTER THE EFFECTIVE DATE OF
20 THIS CHAPTER, OWNS OR OCCUPIES AN ELECTRIC-CONSUMING FACILITY
21 WITHIN THE SERVICE TERRITORY OF AN ELECTRIC COOPERATIVE
22 CORPORATION, SHALL HAVE THE RIGHT TO PURCHASE AND RECEIVE
23 ELECTRIC GENERATION SERVICE FROM ANOTHER SOURCE. ELECTRIC
24 GENERATION SHALL BE DELIVERED TO THE DEPARTING MEMBER BY THE
25 ELECTRIC COOPERATIVE WHICH HAS THE EXCLUSIVE RIGHT TO PROVIDE
26 RETAIL ELECTRIC SERVICE IN SUCH AREA UNDER 15 PA.C.S. CH. 73
27 (RELATING TO ELECTRIC COOPERATIVE CORPORATIONS) AT THE PRICES,
28 TERMS AND CONDITIONS DETERMINED BY THE ELECTRIC COOPERATIVE
29 CORPORATION. THE RIGHT IN THIS SUBSECTION TO TAKE GENERATION
30 SERVICE FROM ANOTHER SOURCE, AND THE DUTY OF AN ELECTRIC

1 COOPERATIVE CORPORATION TO DELIVER SERVICE, SHALL BE EXPRESSLY
2 SUBJECT TO AND CONTINGENT UPON THE FULL ADVANCE SATISFACTION BY
3 A DEPARTING MEMBER OF ALL THE FOLLOWING CONDITIONS, UNLESS
4 WAIVED BY THE ELECTRIC COOPERATIVE CORPORATION:

5 (1) THE DEPARTING MEMBER SHALL GIVE WRITTEN NOTICE OF
6 INTENT TO RECEIVE GENERATION SERVICE FROM ANOTHER SOURCE TO
7 THE ELECTRIC COOPERATIVE CORPORATION.

8 (2) THE NOTICE OF INTENT SHALL NOT BE EFFECTIVE EARLIER
9 THAN 90 DAYS FROM THE DATE OF THE WRITTEN NOTICE OF THE
10 DEPARTING MEMBER, OR UPON FULL SATISFACTION OF ALL CONDITIONS
11 SET FORTH IN THIS SUBSECTION, WHICHEVER IS LATER.

12 (3) WITH THE WRITTEN NOTICE OF INTENT REQUIRED BY
13 PARAGRAPH (1), THE DEPARTING MEMBER SHALL PROVIDE TO THE
14 ELECTRIC COOPERATIVE CORPORATION A COPY OF ITS FULLY EXECUTED
15 AGREEMENT WITH ITS CHOSEN ALTERNATIVE GENERATION SUPPLIER,
16 WHICH AGREEMENT SHALL BE REVOCABLE AT THE OPTION OF THE
17 DEPARTING MEMBER WITHOUT PENALTY AND AT ANY TIME UP TO THE
18 INITIATION OF GENERATION SERVICE BY THE ALTERNATIVE ELECTRIC
19 SUPPLIER.

20 (4) WITH THE WRITTEN NOTICE OF INTENT REQUIRED BY
21 PARAGRAPH (1), THE DEPARTING MEMBER SHALL PROVIDE TO THE
22 ELECTRIC COOPERATIVE CORPORATION WRITTEN EVIDENCE REASONABLY
23 SATISFACTORY TO THE ELECTRIC COOPERATIVE CORPORATION THAT THE
24 DEPARTING MEMBER HAS ACQUIRED ALL NECESSARY TRANSMISSION
25 SERVICES AND RELATED ANCILLARY SERVICES AS MAY BE NECESSARY
26 TO TRANSMIT THE GENERATION SERVICE FROM THE ALTERNATIVE
27 ELECTRIC SUPPLIER TO THE DISTRIBUTION SYSTEM OF THE ELECTRIC
28 COOPERATIVE CORPORATION. THE RIGHT OF THE DEPARTING MEMBER TO
29 NECESSARY TRANSMISSION SERVICES AND RELATED ANCILLARY
30 SERVICES SHALL BE REVOCABLE AT THE OPTION OF THE DEPARTING

1 MEMBER WITHOUT PENALTY AND AT ANY TIME UP TO THE INITIATION
2 OF GENERATION SERVICE BY THE ALTERNATIVE ELECTRIC SUPPLIER.

3 (5) THE DEPARTING MEMBER SHALL HAVE MADE ALL PAYMENTS
4 FOR ELECTRIC SERVICE OR OTHER SERVICES OR PRODUCTS RENDERED
5 TO DATE BY THE ELECTRIC COOPERATIVE CORPORATION AND SHALL
6 OTHERWISE NOT BE IN VIOLATION OR DEFAULT OF ANY MEMBERSHIP
7 REQUIREMENT, RULE OR REGULATION OF THE ELECTRIC COOPERATIVE
8 CORPORATION.

9 (6) IF THE WRITTEN NOTICE OF INTENT REQUIRED BY
10 PARAGRAPH (1) IS GIVEN PRIOR TO DECEMBER 30, 2012, THE
11 DEPARTING MEMBER, OR THE PROVIDER OF THE COMPETING GENERATION
12 SOURCE, SHALL MAKE FULL PAYMENT OF A TRANSITION SURCHARGE OR
13 TRANSITION SURCHARGES TO EACH ELECTRIC COOPERATIVE
14 CORPORATION WHICH PROVIDES DISTRIBUTION, TRANSMISSION OR
15 GENERATION SERVICE, DIRECTLY OR INDIRECTLY, TO THE DEPARTING
16 MEMBER OR ASSOCIATED ELECTRIC CONSUMING FACILITY.

17 (7) AN AGREEMENT BY THE DEPARTING MEMBER TO WAIVE ALL
18 CLAIM TO ANY PATRONAGE CAPITAL DISTRIBUTIONS OR OTHER CAPITAL
19 AMOUNTS ALLOCATED OR HELD BY ANY ELECTRIC COOPERATIVE
20 CORPORATION WHICH PROVIDES, OR WHICH HAS PROVIDED,
21 DISTRIBUTION, TRANSMISSION OR GENERATION SERVICE DIRECTLY OR
22 INDIRECTLY TO THE DEPARTING MEMBER, AND AN AGREEMENT TO
23 ASSIGN AND TRANSFER THE PATRONAGE CAPITAL AMOUNTS TO THE
24 ELECTRIC COOPERATIVE CORPORATION OR CORPORATIONS.

25 (B) EFFECTIVENESS OF EXISTING CONTRACTS.--NOTWITHSTANDING
26 THE RIGHTS SET FORTH IN SUBSECTION (A), WHERE AN AGREEMENT FOR
27 ELECTRIC SERVICE, EVIDENCED BY A SIGNED WRITING BETWEEN AN
28 ELECTRIC COOPERATIVE CORPORATION AND ANY PERSON EXISTS, THE
29 PERSON SHALL CONTINUE TO BE BOUND BY ITS TERMS AND CONDITIONS
30 AND SHALL NOT HAVE THE RIGHT TO RECEIVE GENERATION SERVICE FROM

1 ANOTHER SOURCE UNTIL THE EXPIRATION OF THE TERM OF THE
2 AGREEMENT, OR OTHERWISE PURSUANT TO THE TERMS AND CONDITIONS OF
3 THE AGREEMENT.

4 SECTION 305. COMPETITION BY ELECTRIC COOPERATIVES.

5 ELECTRIC COOPERATIVE CORPORATIONS SHALL BE AUTHORIZED TO
6 PROVIDE GENERATION SERVICE AND ANY OTHER AUTHORIZED SERVICES TO
7 ANY PERSON AND AT ANY LOCATION WITHIN THIS COMMONWEALTH. IT
8 SHALL NOT BE NECESSARY FOR AN ELECTRIC COOPERATIVE CORPORATION
9 TO AMEND ITS ARTICLES OF INCORPORATION OR ITS BYLAWS TO PERMIT
10 IT TO PROVIDE SERVICE TO ANY PERSON AT ANY LOCATION WITHIN THIS
11 COMMONWEALTH. ALL OTHER UTILITIES AND PERSONS OWNING, OPERATING
12 OR CONTROLLING ELECTRIC TRANSMISSION OR DISTRIBUTION FACILITIES
13 IN THIS COMMONWEALTH SHALL BE OBLIGATED TO TRANSMIT AND DELIVER
14 GENERATION SERVICE BY ELECTRIC COOPERATIVE CORPORATIONS AT THE
15 SAME PRICES AND UPON THE SAME TERMS AND CONDITIONS AS ARE
16 APPROVED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR
17 SIMILAR SERVICE TO OTHERS.

18 SECTION 306. CONSTRUCTION OF CHAPTER.

19 THE PROVISIONS OF THIS CHAPTER SHALL BE CONSTRUED LIBERALLY.
20 THE ENUMERATION OF ANY OBJECT, PURPOSE, POWER, MANNER, METHOD OR
21 THING SHALL NOT BE DEEMED TO EXCLUDE LIKE OR SIMILAR OBJECTS,
22 PURPOSES, POWERS, MANNERS, METHODS OR THINGS.

23 CHAPTER 5

24 MISCELLANEOUS PROVISIONS

25 SECTION 501. SAVINGS PROVISION.

26 EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS ACT, ALL PROVISIONS
27 OF 15 PA.C.S. CH. 73 ARE SAVED FROM REPEAL AND SHALL REMAIN IN
28 FULL FORCE AND EFFECT.

29 SECTION 502. DELAYED RIGHT TO PURCHASE OR RECEIVE SERVICE.

30 NO PERSON WHO RECEIVES RETAIL ELECTRIC SERVICE FROM AN

1 ELECTRIC COOPERATIVE CORPORATION OR WHO OWNS OR OCCUPIES AN
2 ELECTRIC CONSUMING FACILITY WITHIN THE EXCLUSIVE SERVICE
3 TERRITORY OF AN ELECTRIC COOPERATIVE CORPORATION SHALL HAVE THE
4 RIGHT TO PURCHASE OR RECEIVE ELECTRIC GENERATION SERVICE FROM
5 ANOTHER SOURCE PRIOR TO DECEMBER 30, 2002.

6 Section ~~14~~ 503. Repeals.

<—

7 The following acts or parts of acts are repealed to the
8 extent specified:

9 15 PA.C.S. CH. 73 IS REPEALED INsofar AS ITS PROVISIONS
10 RELATE TO THE RIGHT OF A DEPARTING MEMBER TO TAKE GENERATION
11 SERVICE FROM AN ALTERNATIVE GENERATION SUPPLIER AND LIMIT OR
12 RESTRICT THE SERVICE AREA OF AN ELECTRIC COOPERATIVE
13 CORPORATION.

<—

14 66 Pa.C.S. is repealed insofar as it is inconsistent with
15 this act.

16 All other acts and parts of acts are repealed insofar as they
17 are inconsistent with this act.

18 Section ~~15~~ 504. Effective date.

<—

19 This act shall take effect immediately.