

No. 1996-138

AN ACT

HB 1509

Amending Titles 15 (Corporations and Unincorporated Associations) and 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for generation choice for customers of electric cooperatives and utilities; further providing for definitions; reenacting procedural requirements for taxicab certificates and medallions; providing for restructuring of the electric utility industry; and further providing for taxation.

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

Section 1. Title 15 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 74
GENERATION CHOICE FOR CUSTOMERS
OF ELECTRIC COOPERATIVES

Sec.

7401. Short title of chapter.

7402. Application.

7403. Declaration of policy.

7404. Definitions.

7405. Customer choice in electric cooperative service territories.

7406. Competition by electric cooperatives.

7407. Transition surcharge and stranded cost recovery.

7408. Option to elect commission review.

7409. Universal service and energy conservation.

7410. Savings provision and repealer.

§ 7401. Short title of chapter.

This chapter shall be known and may be cited as the Electricity Generation Choice for Customers of Electric Cooperatives Act.

§ 7402. Application.

The provisions of 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry) shall not apply to electric cooperative corporations or to the laws relating to electric cooperative corporations.

§ 7403. Declaration of policy.

The General Assembly finds and declares as follows:

(1) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and

affordable service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

(2) Electric cooperative corporations which own and operate electric generation, transmission or distribution facilities in this Commonwealth, which are operated on a nonprofit basis and which are owned and are democratically controlled by the member-consumers which they serve are an essential part of the rural infrastructure and an important participant in the economic development and vitality of significant areas of this Commonwealth.

(3) In providing for customer choice for the member-consumers of electric cooperative corporations, the financial integrity, operations and independence of electric cooperative corporations must be protected and preserved, while comparable standards are provided for electric suppliers for the provision of service to new loads, by providing for the continued exemption for electric cooperative corporations from the jurisdiction and control of the commission and by providing for a separate system of choice for persons in the service territories of electric cooperative corporations.

(4) The complete right of electric cooperative corporations to compete with others in providing electric and other services must be provided for throughout this Commonwealth.

§ 7404. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Commission.” The Pennsylvania Public Utility Commission.

“Departing member.” A member-consumer served at retail by an electric cooperative corporation that has given notice of intent to receive generation service from another source or that is otherwise in the process of changing generation suppliers. These persons shall nonetheless remain members of the electric distribution cooperative corporation for purposes of distribution service.

“Electric-consuming facilities.” As defined in section 7352 (relating to definitions).

“Retail electric service.” As defined in section 7352 (relating to definitions).

“Service territory.” The service territory of electric cooperative corporations established in Chapter 73 (relating to electric cooperative corporations) as interpreted by existing case law.

“Transition surcharge.” The total stranded costs payable to an electric cooperative corporation as a condition precedent to a consumer-member of an electric cooperative corporation having the right to receive electric generation service from another source.

§ 7405. Customer choice in electric cooperative service territories.

(a) General rule.—

(1) An electric cooperative corporation shall provide open and nondiscriminatory access and allow other electric generation suppliers that have been licensed or certified by the commission or jurisdictional public utilities to utilize the cooperative's facilities to make sales to end-use customers it serves. A person that, on or after the effective date of this chapter, receives retail electric service at an electric-consuming facility from an electric cooperative in this Commonwealth or owns or occupies an electric-consuming facility within the service territory of an electric cooperative corporation shall have the right to purchase and receive electric generation from another source at the conclusion of a four-year transition and phase-in period beginning on the effective date of this chapter and ending January 1, 2001. The following schedule for phased implementation of retail access shall be adhered to unless the commission should determine to extend the transition and phase-in period for its jurisdictional electric utilities under 66 Pa.C.S. § 2806 (relating to implementation, pilot programs and performance-based rates), in which case the transition and phase-in period for electric cooperative corporations shall be substantially similar to that established by the commission for direct access to the competitive electric generation market by customers of electric utilities:

(i) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.

(ii) As of January 1, 2000, a maximum of 66% of the peak load of each customer class shall have the opportunity for direct access.

(iii) As of January 1, 2001, all customers of electric cooperative corporations in this Commonwealth shall have the opportunity for direct access.

(2) If the commission establishes a phase-in period which is not uniform among electric utilities, then the phase-in period for persons in the service territories of electric cooperative corporations may be as long as that of the longest phase-in period permitted by the commission. No electric cooperative corporation may utilize the transmission or distribution system of an electric utility regulated by the commission for the purpose of providing generation electric service until the electric cooperative begins its phase-in period. No electric utility regulated by the commission may utilize the transmission or distribution system of an electric cooperative corporation until the electric utility begins its phase-in period other than for pilot programs.

(3) Electric cooperative corporations may develop retail pilot programs for their own service territories.

(4) Customer bills issued by an electric cooperative corporation shall contain unbundled charges sufficient to enable the customer to determine the generation component of and basis for those charges. Electric generation shall be delivered to the departing member by the electric cooperative which has the exclusive right to provide retail electric service

in such area under Chapter 73 (relating to electric cooperative corporations) at the nondiscriminatory prices, terms and conditions determined by the electric cooperative corporation.

(5) It shall be the duty of an electric cooperative corporation which is a borrower from the Rural Utilities Service of the United States Department of Agriculture to maintain the integrity and safety of its distribution system in a manner to provide service to all customers connected to such system consistent with standards established by the Rural Utilities Service. It shall be the duty of an electric cooperative corporation which is not a borrower from the Rural Utilities Service to maintain the integrity and safety of its distribution system in a manner to provide service to all customers connected to such system consistent with standards of the National Electric Safety Code.

(6) The right in this subsection to take generation service from another source and the duty of an electric cooperative corporation to deliver service shall be expressly subject to and contingent upon the full advance satisfaction by a departing member of all of the following conditions, unless waived by the electric cooperative corporation:

(i) The departing member must give written notice of intent to receive generation service from another source to the electric cooperative corporation.

(ii) With the written notice of intent required by subparagraph (i), the departing member must provide to the electric cooperative corporation written evidence reasonably satisfactory to the electric cooperative corporation that the departing member has acquired all necessary transmission services and related ancillary services as may be necessary to transmit the generation service from the alternative electric supplier to the distribution system of the electric cooperative corporation.

(iii) The departing member must have made all payments for electric service or other services or products rendered to date by the electric cooperative corporation and must not otherwise be in violation or default of any membership requirement, rule or regulation of the electric cooperative corporation.

(iv) The departing member or the provider of the competing generation source must make full payment of a transition surcharge or transition surcharges to each electric cooperative corporation which provides distribution, transmission or generation service, directly or indirectly, to the departing member or associated electric consuming facility. During the conduct of a pilot program, the electric cooperative corporation may choose not to apply the transition surcharge to departing members. The duty to pay a transition surcharge by a departing member and the right of an electric cooperative corporation to collect a transition surcharge shall not apply to departing members

who become new members of an electric cooperative corporation following the expiration of the phase-in provided for in this chapter.

(b) Effectiveness of existing contracts.—Notwithstanding the rights set forth in subsection (a), where an agreement for electric service evidenced by a signed writing between an electric cooperative corporation and any person exists prior to the effective date of this chapter, the person shall be bound by its terms and conditions and shall not have the right to receive generation service from another source until the expiration of the term of the agreement or otherwise pursuant to the terms and conditions of the agreement.

§ 7406. Competition by electric cooperatives.

(a) Service rights.—Electric cooperative corporations may provide generation electric service to any person and at any location within this Commonwealth. In the case where an electric cooperative corporation provides generation electric service at retail to a person located outside of its service territory and within the franchised territory of an electric utility subject to 66 Pa.C.S. (relating to public utilities), it must first have been certified by the commission pursuant to subsection (e) and, unless it is otherwise exempt under subsection (d), it shall comply with all relevant terms, conditions and obligations applicable to electric generation suppliers pursuant to 66 Pa.C.S. Electric cooperative corporations shall not be required to be licensed by the commission and shall be exempt as otherwise provided for in this chapter in any and all other respects from the jurisdiction and control of the commission. To the extent such services are not provided for resale to others, such persons must be members of the electric cooperative corporation. It shall not be necessary for an electric cooperative corporation to amend its bylaws to permit it to provide service to any person at any location within this Commonwealth. All other utilities and persons owning, operating or controlling electric transmission or distribution facilities within this Commonwealth shall be obligated to transmit and deliver generation service by electric cooperative corporations at the same prices and at the same terms and conditions as are approved by the commission or the Federal Energy Regulatory Commission for similar service to others.

(b) New load termination conditions.—In the case where an electric cooperative corporation provides generation service under subsection (a) to a person not located within its exclusive retail electric service territory and, consistent with any then-existing contract rights of the electric cooperative corporation, such person subsequently desires to receive generation service from another source, the departing member shall have the right to do so, contingent upon the full advance satisfaction of the following conditions, unless waived by the electric cooperative corporation:

(1) The departing member must give written notice of intent to receive generation service from another source to the electric cooperative corporation prior to the initiation of the new generation service.

(2) The departing member must have made all payments for electric service or other services or products rendered to date by the electric cooperative corporation.

(c) Relation to utilities gross receipts tax.—

(1) To the extent that an electric cooperative corporation provides generation electric service at retail to a person in this Commonwealth and located outside of its service territory as set forth in subsection (a), then for that limited purpose and in that limited area it shall be deemed to be the statutory equivalent of an “electric light company,” a “waterpower company” and a “hydro-electric company” for purposes of Section 1101 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(2) To the extent that an electric cooperative corporation provides generation electric service at retail to a person in this Commonwealth and located outside of its service territory as set forth in subsection (a) and to the extent that the tax on sales of electric energy under section 1101 of the Tax Reform Code of 1971 has not previously been imposed on such generation electric service or electric energy, then for that limited purpose and in that limited area such retail sales to end-use consumers under this chapter shall be deemed “sales of electric energy” for purposes of section 1101 of the Tax Reform Code of 1971.

(d) Small cooperative exceptions.—Because of the relatively small number of consumers which electric cooperative corporations serve, their relatively small electric loads, the nonprofit nature of their operations and their other unique characteristics, the General Assembly finds that it may be unduly burdensome and costly for small electric cooperative corporations to comply with the relevant terms, conditions and obligations applicable to electric generation suppliers pursuant to 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) and regulations promulgated under 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry) when serving persons located outside of their service territories. Notwithstanding the provisions of subsection (a) requiring an electric cooperative corporation when serving persons outside of its territory to comply with relevant terms, conditions and obligations of electric generation suppliers pursuant to 52 Pa. Code Ch. 56 and regulations promulgated under 66 Pa.C.S. Ch. 28, an electric cooperative corporation may petition the commission to grant exemption from compliance with any or all such relevant terms, conditions or obligations or otherwise may petition the commission to establish and grant streamlined or reduced terms, conditions or standards. The commission shall approve such exemption, streamlining or reduction upon reaching a finding that the proposal is in the public interest. Exemptions shall not be transferable to any entity without prior commission approval. To the extent that an electric cooperative corporation, on its own or in partnership or combination with any other entity which operates on a for-profit basis, by sales outside of its service territory, increases its total net

electric load by more than 20% of its total net electric load as of the effective date of this chapter, this subsection shall not apply. Nothing in this chapter shall be construed as allowing any entity, either through formation of a cooperative or through any other method described in this chapter, to avoid responsibility for paying a competitive transition charge that it would otherwise be required to pay pursuant to 66 Pa.C.S. Ch. 28.

(e) Commission certification.—Prior to an electric cooperative corporation having the right to provide generation electric service at retail to a person located outside of its service territory as defined by Subchapter C of Chapter 73 (relating to unincorporated area certified territory) and within the franchised territory of an electric utility subject to 66 Pa.C.S., it must first have obtained from the commission a certification of its financial responsibility and technical capability, including the assurance that adequate reserve margins of electric supply are maintained. An application for certification by an electric cooperative corporation must be made to the commission in writing, be verified by oath or affirmation and be in such form and contain such information as the commission may require. A certification shall be issued by the commission to any qualified applicant if it is found that the applicant is fit, willing and able to perform properly the service proposed in conformity with the provisions of this chapter. No certification issued under this subsection may be transferred without prior commission approval. § 7407. Transition surcharge and stranded cost recovery.

(a) Transition surcharge.—A transition surcharge is the total stranded costs payable to an electric cooperative corporation as a condition precedent to a consumer-member of an electric cooperative corporation having the right to receive electric generation service from another source.

(b) Determination of stranded costs.—Total stranded costs shall be reasonably determined by an electric cooperative and may include:

(1) The pro rata share in all investments in electric cooperative distribution, transmission and generation plant and facilities.

(2) The pro rata share of foreseeable decommissioning costs of generation facilities.

(3) The pro rata share of all effective electric cooperative contractual commitments to others, regulatory assets, deferred debits and credits, fixed operation and maintenance expenses, expenditures made for the benefit of the departing customer and administrative and other costs incurred or to be incurred by an electric cooperative as a result of a decision by a consumer-member to take electric generation service from another source.

(c) Determination of pro rata share.—The pro rata share of electric cooperative stranded costs shall be determined on the basis of historical energy and capacity usage by this consumer-member compared to historical total energy and capacity usage of such electric cooperative or by direct assignment where applicable.

§ 7408. Option to elect commission review.

(a) General rule.—The transition surcharge assessed by an electric cooperative corporation under this chapter generally shall not be subject to the jurisdiction or control of the commission. An electric cooperative corporation shall have the option of submitting its proposed transition surcharge for review by the commission in the manner set forth in subsection (b).

(b) Submission to commission.—Either by an affirmative vote of two-thirds of all members of the corporation or by an affirmative vote of two-thirds of all directors at a meeting of the members or directors called for the purpose, an electric cooperative corporation may elect the option of submitting a transition surcharge which has been adopted by its board of directors to the commission for review and approval. Within 30 days of such action by an electric cooperative corporation, the secretary of the corporation shall certify such an action by the members or directors, as the case may be, and submit the transition surcharge to the secretary of the commission requesting review and approval.

(c) Commission determination.—The commission, within 90 days after a submission under subsection (b), shall make a determination as to whether the transition surcharge of an electric cooperative corporation is just and reasonable and shall issue an order reflecting its determination. If no order is issued within 90 days, the transition surcharge shall be deemed to be approved as being just and reasonable, and all review proceedings shall be terminated. If no order is issued by the commission within the 90 days, no appeal may be taken relative to the effectiveness of the transition surcharge, and it shall have full force and effect.

(d) Alternative.—An electric cooperative corporation may take action by a majority vote of its board of directors to alter the amount of its transition surcharge. If the transition surcharge has previously been submitted to the commission for review and approval under subsection (b) and if the change by the board of directors causes a reduction of the current transition surcharge of greater than 10%, that action by the board of directors shall have the effect of immediately terminating any pending approval proceeding by the commission and ending its jurisdiction and control over the subject transition surcharge.

§ 7409. Universal service and energy conservation.

(a) General rule.—Electric cooperative corporations shall ensure that universal service and energy conservation policies, activities and services that they provide as of the effective date of this chapter to assist customers who are low-income to afford electric service are appropriately funded and available within their territories. Such activities shall be funded by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services.

(b) Definition.—As used in this section, the term “universal service and energy conservation” shall mean policies, protections and services that help

low-income customers to maintain electric service, including customer assistance programs and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and customer education.

§ 7410. Savings provision and repealer.

(a) Savings.—Except as set forth in subsection (b), all provisions of Chapter 73 (relating to electric cooperative corporations) are saved from repeal and shall remain in full force and effect.

(b) Repeal.—

(1) Those provisions of Subchapter C of Chapter 73 (relating to unincorporated area certified territory) are repealed insofar as they conflict with the right of a departing member to take generation service from an alternative generation supplier.

(2) Those provisions of Subchapters A (relating to preliminary provisions) and B (relating to powers, duties and safeguards) of Chapter 73 are repealed insofar as they conflict with the right of an electric cooperative corporation to provide generation service to any person and at any location within this Commonwealth.

Section 2. The introductory paragraph of paragraph (2) of the definition of “public utility” in section 102 of Title 66 of the Pennsylvania Consolidated Statutes is amended and the paragraph is amended by adding subparagraphs to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

“Public utility.”

* * *

(2) The term [“**public utility**”] does not include:

* * *

(v) *Any building or facility owner/operators who hold ownership over and manage the internal distribution system serving such building or facility and who supply electric power and other related electric power services to occupants of the building or facility.*

(vi) *Electric generation supplier companies, except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation).*

* * *

Section 3. Section 2404(a) of Title 66 is reenacted to read:

§ 2404. Certificate and medallion required.

(a) Procedure.—A vehicle may not be operated as a taxicab in cities of the first class unless a certificate of public convenience is issued authorizing

the operation of the taxicab and a medallion is attached to the hood of the vehicle. Prior to the issuance of a medallion, the certificate holder shall have its vehicle inspected by the commission. The commission shall require, by order or regulation, that each medallion holder submit to a periodic vehicle inspection of its taxicab by commission personnel to ensure that the vehicle meets the requirements of this title and commission regulations. Commission inspection requirements shall be in addition to the vehicle requirements set forth in Title 75 (relating to vehicles). Commission inspection and recording requirements shall be established by regulations. No vehicle which is more than eight years old shall continue in operation as a taxicab. Notwithstanding the foregoing, the commission may authorize the operation of antique vehicles in call or demand service in such circumstances as the commission may deem appropriate. Each medallion holder's tariff rates shall be clearly and visibly displayed in each taxicab. A medallion shall not be removed from a vehicle without prior notification to and permission of the commission. A medallion authorizes operation of a vehicle as a taxicab only for the fiscal year for which the medallion is issued.

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Section 4. Title 66 is amended by adding a chapter to read:

CHAPTER 28
RESTRUCTURING OF ELECTRIC UTILITY INDUSTRY

- Sec.
- 2801. Short title of chapter.
 - 2802. Declaration of policy.
 - 2803. Definitions.
 - 2804. Standards for restructuring of electric industry.
 - 2805. Regionalism and reciprocity.
 - 2806. Implementation, pilot programs and performance-based rates.
 - 2807. Duties of electric distribution companies.
 - 2808. Competitive transition charge.
 - 2809. Requirements for electric generation suppliers.
 - 2810. Revenue-neutral reconciliation.
 - 2811. Market power remediation.
 - 2812. Approval of transition bonds.

§ 2801. Short title of chapter.

This chapter shall be known and may be cited as the Electricity Generation Customer Choice and Competition Act.

§ 2802. Declaration of policy.

The General Assembly finds and declares as follows:

(1) Over the past 20 years, the Federal Government and State government have introduced competition in several industries that previously had been regulated as natural monopolies.

(2) Many state governments are implementing or studying policies that would create a competitive market for the generation of electricity.

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

(4) Rates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities.

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.

(8) In moving toward greater competition in the electricity generation market, the Commonwealth must resolve certain transitional issues in a manner that is fair to customers, electric utilities, investors, the employees of electric utilities, local communities, nonutility generators of electricity and other affected parties.

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

(10) The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.

(11) In order to ensure the safety and reliability of the electric system, ensure the continued provision of high-quality customer service and avoid economic dislocation, utilities shall consider the experience and expertise of their work force in moving towards competition.

(12) The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties. Reliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability

of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.

(13) Under current law and regulation there exists some competition in the wholesale market for the generation of electricity, but the generation, transmission, distribution and retail sale of electricity is provided generally by public utilities under bundled rates regulated by the commission. The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity.

(14) This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter. Electric generation suppliers will be required to obtain licenses, demonstrate financial responsibility and comply with such other requirements concerning service as the commission deems necessary for the protection of the public.

(15) In establishing the standards for the transition to and creation of a competitive electric market, heretofore, public utilities generally have had an obligation to serve customers within their defined service territories; consistent with that obligation, have undertaken long-term investments in generation, transmission and distribution facilities in order to meet the needs of their customers; and have entered into long-term power supply agreements as required by Federal law. In many instances, these investments and agreements have created costs which may not be recoverable in a competitive market. The commission is empowered under this chapter to determine the level of transition or stranded costs for each electric utility and to provide a mechanism, the competitive transition charge, for recovery of an appropriate amount of such costs in accordance with the standards established in this chapter.

(16) It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission. Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the commission.

(17) There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

(18) There are certain changes to a utility which will create transition costs to accomplish the move to a competitive market. These changes may entail the closure of facilities or reduction in employee levels. If such actions are to be undertaken, the utility must fully inform the commission of the impact of such decisions on local communities and on social services and of any tax implications of the actions. The utility is expected to discuss the transition to competition with its employees or their certified representatives and may provide severance, retraining, early retirement and outplacement services. Such transition costs may be recoverable under the competitive transition charge in section 2808 (relating to competitive transition charge).

(19) All participants in the restructured electric industry are encouraged to coordinate their plans and transactions through an independent system operator or its functional equivalent.

(20) Since continuing and ensuring the reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the independent system operator or its functional equivalent should set, and the commission shall set through regulations, inspection, maintenance, repair and replacement standards and enforce those standards.

(21) Under Federal and State clean air laws and regulations, electricity generators located in states to the west and south of this Commonwealth are not subject to requirements as stringent as those which apply to generators and other "persons" as defined in section 3 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, operating in this Commonwealth and that different regions within this Commonwealth are subject to varying air emission requirements. Under some scenarios, competition among electricity generators located in different states and different regions within this Commonwealth could make it more difficult for areas in this Commonwealth to demonstrate attainment with Federal and State air quality standards. Since this result may be caused by the disparate requirements imposed by Federal and State law on generators and other "persons" as defined in section 3 of the Air Pollution Control Act in this Commonwealth and generators located in other states, the General Assembly supports changes to Federal clean air laws and regulations that will protect Pennsylvania's environment and ensure that electricity generators and other "persons" as defined in section 3 of the Air Pollution Control Act located in this Commonwealth are not placed at an undue competitive disadvantage. The commission will consult with the Department of Environmental Protection regarding this issue during the transition to retail competition.

§ 2803. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Aggregator” or “market aggregator.” An entity, licensed by the commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

“Broker” or “marketer.” An entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

“Competitive transition charge.” A nonbypassable charge applied to the bill of every customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility’s transition or stranded costs as determined by the commission under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge).

“Consumer.” A retail electric customer.

“Customer.” A retail electric customer.

“Direct access.” The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.

“Electric distribution company.” The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

“Electric generation supplier” or “electricity supplier.” A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company. The term excludes building or facility owner/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related power services to occupants of the building or facility. The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives).

“End-use customer.” A retail electric customer.

“Reliability.” Includes adequacy and security. As used in this definition, “adequacy” means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities; and “security” means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.

“Renewable resource.” Includes technologies such as solar photovoltaic energy, solar thermal energy, wind power, low-head hydropower, geothermal energy, landfill and mine-based methane gas, energy from waste and sustainable biomass energy.

“Retail customer.” A retail electric customer.

“Retail electric customer.” A direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers.

“Transition or stranded costs.” An electric utility’s known and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility. This term includes:

(1) Regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility’s projected nuclear generating plant decommissioning costs and cost obligations under contracts with nonutility generating projects which have received a commission order, the recoverability of which shall be determined under section 2808(c)(1) (relating to competitive transition charge).

(2) Prudently incurred costs related to cancellation, buyout, buydown or renegotiation of nonutility generating projects consistent with section 527 (relating to cogeneration rules and regulations), the recoverability of which shall be determined pursuant to section 2808(c)(2).

(3) The following costs, the recoverability of which shall be determined pursuant to section 2808(c)(3):

(i) Net plant investments and costs attributable to the utility’s existing generation plants and facilities.

(ii) The utility’s disposal of spent nuclear fuel.

(iii) The utility’s long-term purchase power commitments other than the costs defined in paragraphs (1) and (2).

(iv) Retirement costs attributable to the utility's existing generating plants other than the costs defined in paragraph (1).

(v) Other transition costs of the utility, including costs of employee severance, retraining, early retirement, outplacement and related expenses, at reasonable levels, for employees who are affected by changes that occur as a result of the restructuring of the electric industry occasioned by this chapter.

The term includes any costs attributable to physical plants no longer used and useful because of the transition to retail competition. The term excludes any amounts previously disallowed by the commission as imprudently incurred. To the extent that the recoverability of amounts that are sought to be included as transition or stranded costs are subject to appellate review as of the time of the commission determination, any determination to include such costs shall be reversed to the extent required by the results of that appellate review.

"Transmission and distribution costs." All costs directly or indirectly incurred to provide transmission and distribution services to retail electric customers. This includes the return of and return on facilities and other capital investments necessary to provide transmission and distribution services and associated operating expenses, including applicable taxes.

"Universal service and energy conservation." Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

§ 2804. Standards for restructuring of electric industry.

The following interdependent standards shall govern the commission's assessment and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry:

(1) The commission shall ensure continuation of safe and reliable electric service to all consumers in the Commonwealth, including:

(i) The maintenance of adequate reserve margins by electric suppliers in conformity with the standards required by the North American Electric Reliability Council (NERC) and the regional reliability council appropriate to each supplier, or any successors to those reliability entities, and in conformity with established industry standards and practices.

(ii) The installation and maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code.

(2) Consistent with the time line set forth in section 2806 (relating to implementation, pilot programs and performance-based rates), the

commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

(3) The commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The commission may require the unbundling of other services.

(4) The following caps on electric utility rates shall apply:

(i) For a period of 54 months from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all the customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter:

(A) the total charges of an electric distribution utility for service to any customer who purchases generation from that utility shall not exceed the total charges that have been approved by the commission for such service as of the effective date of this chapter; and

(B) for customers who purchase generation from a supplier other than the electric distribution utility, the charges of the utility for non-generation services that are regulated as of the effective date of this chapter, exclusive of the competitive transition charge and intangible transition charge, shall not exceed the non-generation charges that have been approved by the commission for such service as of the effective date of this chapter.

(ii) In addition to the rate cap set forth in subparagraph (i), for a period of nine years from the effective date of this chapter or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter, the generation component of a utility's charges to customers who purchase generation from the utility, including the competitive transition charge and intangible transition charge, shall not exceed the generation component charged to the customers that has been approved by the commission for such service as of the effective date of this chapter.

(iii) An electric distribution utility may seek, and the commission may approve, an exception to the limitations set forth in subparagraphs (i) and (ii) only in any of the following circumstances:

(A) The electric distribution utility meets the requirements for extraordinary rate relief under section 1308(e) (relating to voluntary changes in rates).

(B) Either the electric distribution utility is required to begin payment under contracts with nonutility generation projects that have received commission orders, has been unable to mitigate such costs, such costs are not recoverable in a competitive generation market and such costs were not previously covered in the competitive transition charge or intangible transition charge, or the utility prudently incurs costs related to cancellation, buyout, buydown or renegotiation of nonutility generating project obligations of the utility consistent with section 527 (relating to cogeneration rules and regulations) and such costs were not previously covered in the competitive transition charge or intangible transition charge. Costs related to cancellation, buyout, buydown or renegotiation shall be recovered from ratepayers over a period not to exceed three years, unless the commission determines within its discretion to require a longer recovery period due to the magnitude of such costs, but shall be accounted for by the utility on a levelized basis over the total period in which the generation portion of the utility's rates are capped.

(C) The electric distribution utility is subject to significant increases in the rates of Federal or State taxes or other significant changes in law or regulations that would not allow the utility to earn a fair rate of return.

(D) The electric distribution utility is subject to significant increases in the unit rate of fuel for utility generation or the price of purchased power that are outside of the control of the utility and that would not allow the utility to earn a fair rate of return.

(E) The electric distribution utility is directed by the commission or an independent system operator or its functional equivalent to make expenditures to repair or upgrade its transmission or distribution system.

(F) The electric distribution utility seeks to increase its allowance for nuclear decommissioning costs to reflect new information not available at the time the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition charge or intangible transition charge, and such costs would not allow the utility to earn a fair rate of return.

(G) As permitted by paragraph (16).

(iv) Consistent with the requirements of due process, the commission may expedite proceedings that invoke the provisions of subparagraph (iii).

(v) If an electric distribution utility rolls its energy cost rate into base rates at a combined level that does not exceed its combined level of such rates which have been approved by the commission as of the effective date of this chapter, the utility shall not be required to reduce its capped rates below the capped level upon the complaint of any party if the commission determines that any excess earnings achieved under the cap are being utilized to mitigate transition or stranded costs for the benefit of ratepayers or to offset other known and measurable cost increases that would be recoverable under traditional ratemaking but are not included within the capped rates.

(vi) This paragraph shall not apply to new services offered for the first time after the effective date of this chapter.

(5) The commission may permit, but shall not require, an electric utility to divest itself of facilities or to reorganize its corporate structure.

(6) Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

(7) The commission shall require that restructuring of the electric utility industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another.

(8) The commission shall establish for each electric utility an appropriate cost-recovery mechanism which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs.

(9) The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.

(10) The commission shall establish rates for jurisdictional transmission and distribution services and shall continue to regulate distribution services for new and existing customers in accordance with this chapter and Chapter 13 (relating to rates and rate making).

(11) The time line for the transition to and phase-in of direct access to competitive electric generation shall be in accordance with section 2806.

(12) The commission has the authority to order utility participation in retail access pilot programs as set forth in section 2806 and as further implemented or modified by the commission, with direct access to begin on April 1, 1997. The commission shall conduct milestone reviews of the transition to retail electric generation competition to assure a technically workable and equitable transition period.

(13) Consistent with section 2808 (relating to competitive transition charge), the commission has the power and duty to approve a competitive transition charge for the recovery of transition or stranded costs it determines to be just and reasonable to recover from ratepayers.

(14) The transition to a competitive generation market shall be orderly, protect electric system reliability, be fair to ratepayers and provide the investors in Pennsylvania electric utilities with a fair opportunity to fully recover the amount of transition or stranded costs that the commission determines to be just and reasonable.

(15) At the time each utility files its restructuring plan with the commission, the utility shall submit an initial plan that sets forth how it shall meet its universal service and energy conservation obligations.

(16) The following shall apply:

(i) The commission shall issue regulations that permit the electric distribution company to recover any change in its State tax liability under sections 2806(h), 2809(c) (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation) or in its liability under 52 Pa. Code §§ 69.51 through 69.56 (relating to inclusion of State taxes and gross receipts taxes in base rates) to the extent that the resulting rate does not exceed the rate cap established in this section except as provided in this chapter.

(ii) With regard to any portion of the change in an electric distribution company's tax liability under section 2810 which would cause it to exceed the rate cap, the electric distribution company may file a single issue rate proceeding under section 1308(a) to recover that amount. The commission shall adjudicate, within 60 days, whether the resulting rates are just and reasonable.

(iii) With regard to any portion of the change in an electric distribution company's tax liability under sections 2806(h) and 2809(c) which would cause it to exceed the price cap, upon certification to the commission by affidavit that the electric distribution company has not collected the taxes due pursuant to the tariff indemnification provisions required by section 2810(m) and that the electric distribution company and the Department of Revenue have not collected the taxes due pursuant to the other means set forth in sections 2806(g)(3)(i) and (ii) and 2809(c) to recover the taxes due and any interest thereon, the

electric distribution utility shall be permitted to recover that amount in the State Tax Adjustment Surcharge.

§ 2805. Regionalism and reciprocity.

(a) Other states.—The commission shall take all necessary and appropriate steps to encourage interstate power pools to enhance competition and to complement industry restructuring on a regional basis. The Commonwealth, the commission and Pennsylvania electric utilities shall work with the Federal Government, other states in the region and interstate power pools to accomplish the goals of restructuring and to establish independent system operators or their functional equivalents to operate the transmission system and interstate power pools. The commission, Pennsylvania electric utilities and all electricity suppliers shall work with the Federal Government, other states in the region, the North American Electric Reliability Council and its regional coordinating councils or their successors, interstate power pools, and with the independent system operator or its functional equivalent to ensure the continued provision of adequate, safe and reliable electric service to the citizens and businesses of this Commonwealth.

(b) Electric cooperatives, municipalities and other electric generation suppliers.—

(1) In order to make the benefits of competition in the generation and sale of electricity as widely available as possible to retail customers and to provide open, fair and nondiscriminatory access to all electric generation suppliers:

(i) Consistent with 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives), no electric cooperative or municipality which distributes electricity to end-use customers may utilize the transmission or distribution system of an electric utility regulated by the commission for the purpose of supplying electricity to an end-use customer unless the electric cooperative or municipality provides open and nondiscriminatory access and allows other electric generation suppliers to utilize its facilities, including any facilities it is entitled to provide to third parties pursuant to contract, to make sales to the end-use customers it serves. A borough may prohibit electric generation suppliers from serving end-use customers within its borough limits; however, such a borough shall be prohibited from providing generation service to end-use customers outside of its borough limits which it did not serve prior to the effective date of this chapter.

(ii) The commission shall require any electric cooperative seeking a certificate under 15 Pa.C.S. Ch. 74 to provide open and nondiscriminatory access to its transmission and distribution facilities as a condition to the granting of the certificate.

(iii) The reliability of the transmission service provided to electric cooperative corporations must be comparable to the reliability which the transmission supplier provides at the wholesale level.

(2) No electric utility regulated by the commission and no affiliate of such electric utility may use the distribution system of another electric utility regulated by the commission or make sales to end-use customers in another electric utility's service territory unless the commission has approved a restructuring plan for the supplying electric utility which provides for direct access comparable to the direct access provided under the approved plan of the electric utility operating the distribution system in the location where the supplying electric utility seeks to sell electricity to an end-use customer. No electric utility regulated by the commission and no affiliate of such electric utility may use the distribution system of an electric cooperative corporation or make sales to end-use customers in the territory of an electric cooperative corporation unless the commission has approved a restructuring plan for the supplying electric utility.

§ 2806. Implementation, pilot programs and performance-based rates.

(a) General rule.—The generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter at the conclusion of a transition and phase-in period beginning on the effective date of this chapter and ending, consistent with the commission's discretion under this section, January 1, 2001. As of January 1, 2001, consistent with the commission's discretion under this section, all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

(b) Schedule.—Recognizing that approximately 5% of the peak load will have retail access through pilot programs, the following schedule for phased implementation of retail access shall be adhered to unless a determination is made by the commission under subsection (c):

(1) As of January 1, 1999, a maximum of 33% of the peak load of each customer class shall have the opportunity for direct access.

(2) As of January 1, 2000, a maximum of 66% of the peak load of each customer class shall have the opportunity for direct access.

(3) As of January 1, 2001, all customers of electric distribution companies in this Commonwealth shall have the opportunity for direct access.

(4) The commission shall establish regulations specifying that, within each customer class, the customers that are eligible for direct access prior to full direct access shall be determined on a first-come-first-served basis unless otherwise determined by the commission through regulation, in the context of restructuring plans, or in other appropriate administrative proceedings, to prevent competitive disadvantages among similarly situated customers within a customer class.

(c) Additional time.—

(1) The commission may determine that an additional six-month transition period is necessary prior to the January 1, 1999, implementation

date. A determination under this subsection must be made at least 45 days in advance of the scheduled date for implementation and must be based on one or more of the following considerations:

(i) Implementation would materially affect the reliability of the electric system.

(ii) Federal approvals necessary for the implementation of the provisions of this chapter have not been granted.

(iii) Communications and information systems necessary for the implementation of retail access have not been installed for reasons beyond the utility's control, as measured by appropriate industry standards.

(iv) Pennsylvania generators would be disadvantaged due to lack of regional reciprocity with respect to direct access.

(v) The interests of Pennsylvania consumers and the competitive position of Pennsylvania business and industry would be materially affected.

(vi) Such other consideration as would materially affect the orderly implementation of the legislative purpose of this chapter under section 2802(12) through (21) (relating to declaration of policy).

(2) Consistent with the considerations listed in paragraph (1), the commission may determine that an additional six-month transition period is necessary. This determination must be made by the commission by May 15, 1999.

(d) Filing of restructuring plans.—All electric utilities in this Commonwealth shall submit to the commission, pursuant to a schedule to be determined by the commission in consultation with the electric utilities, beginning on April 1, 1997, but in no event later than September 30, 1997, a restructuring plan to implement direct access to a competitive market for the generation of electricity.

(e) Contents of restructuring plans.—A restructuring plan under subsection (d) must include, consistent with the determinations of the commission, unbundled prices or rates for generation, jurisdictional transmission, distribution and other services; a proposed competitive transition charge; a proposed universal service and energy conservation cost-recovery mechanism; procedures for ensuring direct access to all licensed electric generation suppliers; a discussion of the impacts of the proposed plan on the utility's employees; and revised tariffs and rate schedules implementing the above.

(f) Commission review.—The commission shall review the restructuring plan filed by each electric utility and shall, after open evidentiary hearings with proper notice and opportunity for all parties to cross-examine witnesses, issue an order accepting, modifying or rejecting such plan at the earliest date possible, but no later than nine months from the filing of such restructuring plan. If the commission rejects a restructuring plan, it shall state the specific reasons for rejection and direct the electric utility to file an alternative plan addressing these objections within 30 days of the entry date of the

commission order rejecting the plan. The commission shall review the alternative plan, solicit comments from interested parties and issue a final order within 45 days of the filing of the revised plan.

(g) Retail access pilot programs.—As of the effective date of this chapter, the commission has authority to order electric utilities to submit proposals for retail access pilot programs to begin April 1, 1997. The commission shall provide guidelines for retail access pilot programs by order.

(1) In order to determine whether all customer classes can benefit from competitive markets, utilities shall tailor proposed retail access pilot programs to accommodate the specific geographic, demographic and socioeconomic characteristics of their customer base. Retail access pilot programs must include an equal opportunity for the broadest practical direct access by all customer classes to electric generation suppliers.

(2) The minimum period of time for a retail access pilot program shall be one year and shall include an evaluation process as directed by the commission.

(3) In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, participation in the retail access pilot programs shall be limited to electricity suppliers subject to commission licensure or certification.

(i) Each participating electricity supplier shall do all of the following:

(A) Certify to the commission that it will pay and in subsequent years has paid the full amount of taxes imposed by Articles II and XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and any tax imposed by this chapter.

(B) Provide the commission with the address of the participant's principal office in this Commonwealth or the address of the participant's registered agent in this Commonwealth, the latter being the address at which the participant may be served process.

(C) Agree that it shall be subject to all taxes imposed by the Tax Reform Code of 1971 and any tax imposed by this chapter.

(ii) Failure of an electricity supplier to pay a tax referred to in subparagraph (i) or to otherwise comply with the provisions of this paragraph shall be cause for the commission to revoke the license of the electricity supplier.

(iii) If an electricity supplier, other than an electric distribution company, does not pay the tax imposed upon gross receipts under section 1101 of the Tax Reform Code of 1971 or this chapter, the electric distribution company to whose retail customer the electricity supplier provided generation service shall remit the unpaid tax, as a tax on the use of electricity in this Commonwealth, to the Department of Revenue and may collect or seek reimbursement of the tax so paid from the electricity provider or any other appropriate party that used the electricity in this Commonwealth. The department shall collect and

enforce the use tax herein provided under section 1102 of the Tax Reform Code of 1971. Failure of the electric distribution company to pay the amount within 30 days after notice provided by the department shall cause interest to be imposed on the electric distribution company in accordance with Article XI of the Tax Reform Code of 1971. Interest shall be calculated from the 31st day after the department gives the notice required in this subparagraph. An electric distribution company or other appropriate person may challenge the imposition of the tax and interest by filing a petition with the department not later than 30 days after the date on which the tax became due.

(4) The percentage of utility load committed to a retail access pilot program must be approximately 5% of utility's peak load for each customer class. Waivers of this condition may be considered by the commission for economic development purposes or special circumstances.

(h) Flexible pricing.—In addition to the implicit authority of the commission under section 501 (relating to general powers), the commission has the authority to approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives.

(i) Performance-based rates and alternative regulation.—The commission has authority to use performance-based rates as an alternative to existing rate base/rate of return ratemaking, subject to the restrictions pertaining to rate caps in section 2804(4) (relating to standards for restructuring of electric industry).

§ 2807. Duties of electric distribution companies.

(a) General rule.—Each electric distribution company shall maintain the integrity of the distribution system at least in conformity with the National Electric Safety Code and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all customers connected to the system consistent with this title and the commission's regulations. In performing such duties, the electric distribution company shall implement procedures to require all electric generation suppliers to deliver energy to the electric distribution company at locations and in amounts which are adequate to meet the energy supplier's obligations to its customers. Subject to commission approval, the electric distribution company may require that the customer install, at the customer's expense, enhanced metering capability sufficient to match the energy delivered by the electric generation suppliers with consumption by the customer.

(b) Procedures for review by the commission.—There shall be a rebuttable presumption that the electric distribution company has the ability to receive energy at all points on its system sufficient to meet the needs of all electric generation suppliers' customers on its system. The electric distribution company shall not have an obligation to install nonstandard facilities, either as to type or location, for the purpose of receiving energy from the energy supplier unless the energy supplier or its customer pays the

full cost of these facilities. Nothing in this chapter shall prevent the electric distribution company from upgrading its system to meet changing customer requirements consistent with the requirements of section 1501 (relating to character of service and facilities), and the commission may establish incentive programs to encourage such system upgrades. Disputes concerning facilities shall be subject to the jurisdiction of the commission and may be initiated by the filing of a complaint under section 701 (relating to complaints) by the electric generation supplier or the customer.

(c) Customer billing.—Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.

(1) Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges.

(2) If services are provided by an entity other than the electric distribution company, the entity that provides those services shall furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers.

(3) The electric distribution company shall not be required to forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers.

(d) Consumer protections and customer service.—The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

(1) The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.

(2) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

(3) Prior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing customers of the changes in the electric utility industry. The program shall

provide consumers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to approval by the commission.

(e) **Obligation to serve.**—An electric distribution company's obligation to provide electric service following implementation of restructuring and the choice of alternative generation by a customer is revised as follows:

(1) While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

(2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

(3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

§ 2808. Competitive transition charge.

(a) **General rule.**—To provide each electric utility with an opportunity to recover its transition or stranded costs following the commission's determination under subsection (c), every customer accessing the transmission or distribution network shall pay a competitive transition charge to the electric distribution company in whose certificated territory that customer is located. The costs to be recovered shall be allocated to customer classes in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the commission in the electric utility's most recent base rate proceeding. If a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from the customer through a competitive transition charge. The recovery of transition or stranded costs associated with existing generating facilities is contingent on continued operation at reasonable availability levels of the generation facilities for which recovery has been approved, except when the generation facility is uneconomic on a production cost basis because of the transition to a competitive market.

(b) Period for collecting competitive transition charge.—The competitive transition charge shall be included on bills to customers for a period not to exceed nine years from the effective date of this chapter unless an alternative payment methodology is mutually agreed upon by the customer and the utility or unless the commission in its discretion and for good cause shown orders an alternative payment period. In establishing the length of the period for collection of the competitive transition charge, the commission shall consider the effect on the ability of the Commonwealth to compete in attracting industry and jobs, on the financial health of electric utilities and other relevant factors.

(c) Determination of competitive transition charge.—In determining the level of transition or stranded costs that an electric utility may recover through the competitive transition charge, the commission shall apply the following principles:

(1) The commission shall allow recovery of regulatory assets and other deferred charges typically recoverable under current regulatory practice, the unfunded portion of the utility's projected nuclear generating plant decommissioning costs and cost obligations under contracts with nonutility generating projects that have received a commission order. Nothing in this chapter shall be construed as requiring an electric utility or a nonutility generating project to enter into an arrangement to buy down, buy out and terminate or otherwise restructure a contract or as authorizing the commission to require a utility to pursue such an arrangement with a nonutility generating project.

(2) The commission shall allow recovery of an electric utility's prudently incurred costs related to cancellation, buyout, buydown or renegotiation of nonutility generating projects consistent with section 527 (relating to cogeneration rules and regulations).

(3) The commission shall determine the level of other generation-related transition or stranded costs that may be recovered through the competitive transition charge.

(4) The commission shall consider the extent to which the electric utility has undertaken efforts to mitigate generation-related transition or stranded costs by appropriate means in a manner that is reasonable under all of the circumstances, including consideration of whether mitigation has been commensurate with the magnitude of the electric utility's generation-related transition or stranded costs. During the transition period, electric utilities shall have the duty to mitigate generation-related transition or stranded costs to the extent practicable. Efforts may include the following:

(i) Acceleration of depreciation and amortization of existing rate base generation assets.

(ii) Minimization of new capital spending for existing rate base generation assets.

(iii) Reallocation of depreciation reserves to existing rate base generation assets.

(iv) Reduction of book assets by application of new proceeds of any sale of idle or underutilized existing rate base generation assets.

(v) Maximization of market revenues from existing rate base generation assets.

(vi) Issuance of securitized debt pursuant to the provisions of section 2812 (relating to approval of transition bonds).

(5) Of equal importance to the mitigation efforts under paragraph (4), the commission shall consider efforts undertaken over time, prior to the enactment of this chapter, to reduce or moderate customer rate levels while maintaining safe and efficient operations.

(d) Commission review.—As a component of its restructuring plan, each electric utility shall file with the commission a recovery plan, including a proposed competitive transition charge and supporting documentation. In evaluating a recovery plan and any proposed competitive transition charge, the commission shall schedule open evidentiary hearings with proper notice and opportunity for all parties to cross-examine witnesses as necessary.

(e) Use of transition bonds.—After the effective date of this chapter, a utility may apply to the commission for a qualified rate order under section 2812 for some or all of its transition or stranded costs.

(1) In evaluating a utility application under this subsection, the commission shall schedule hearings, as necessary.

(2) If the commission issues a qualified rate order under section 2812 and if the transition bonds approved by that order are successfully issued, then:

(i) the utility shall impose and collect through its customer bills the intangible transition charges approved by that qualified rate order; and

(ii) simultaneously, either the utility's rates for electric service or the utility's competitive transition charges shall be reduced by an amount equal to the revenue requirement of the transition or stranded costs for which transition bonds have been successfully issued.

(f) Annual revenue.—Consistent with section 1307(e) (relating to sliding scale of rates; adjustments), the commission shall establish procedures for the annual review of the competitive transition charge. The review shall reconcile the annual revenues received from the charge with the annual amortization of transition or stranded costs approved by the commission under this section. The commission shall adjust the competitive transition charge based upon underrecovery or overrecovery of the annual amortization amount.

§ 2809. Requirements for electric generation suppliers.

(a) License requirement.—No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the commission. Consistent with 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric

cooperatives), electric cooperative corporations must possess a certificate for service to supply generation services beyond their territorial limits.

(b) License application and issuance.—An application for an electric generation supplier license must be made to the commission in writing, be verified by oath or affirmation and be in such form and contain such information as the commission may by its regulations require. A license shall be issued to any qualified applicant, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission's regulations regarding standards and billing practices, and that the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in this chapter; otherwise, such application shall be denied.

(c) Financial responsibility.—

(1) In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, no energy supplier license shall be issued or remain in force unless the holder complies with all of the following:

(i) Furnishes a bond or other security approved by the commission in form and amount to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

(ii) Certifies to the commission that it will pay and in subsequent years has paid the full amount of taxes imposed by Articles II and XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and any tax imposed by this chapter.

(iii) Provides the commission with the address of the participant's principal office in this Commonwealth or the address of the participant's registered agent in this Commonwealth, the latter being the address at which the participant may be served process.

(iv) Agrees that it shall be subject to all taxes imposed by the Tax Reform Code of 1971 and any tax imposed by this chapter.

Failure of an electricity supplier to pay a tax referred to in this paragraph or to otherwise comply with the provisions of this paragraph shall be cause for the commission to revoke the license of the electricity supplier.

(2) If an electricity supplier other than an electric distribution company does not pay the tax imposed upon gross receipts under section 1101 of the Tax Reform Code of 1971 or this chapter, the electric distribution company to whose retail customer the electricity supplier provided generation service shall remit the unpaid tax, as a tax on the use of electricity in this Commonwealth, to the Department of Revenue and may collect or seek reimbursement of the tax so paid from the electricity provider or any other appropriate party that used the electricity in this Commonwealth. The department shall collect and enforce the use tax

herein provided under section 1102 of the Tax Reform Code of 1971. Failure of the electric distribution company to pay the amount within 30 days after notice provided by the department shall cause interest to be imposed on the electric distribution company in accordance with Article XI of the Tax Reform Code of 1971. Interest shall be calculated from the 31st day after the department gives the notice required in this paragraph. An electric distribution company or other appropriate person may challenge the imposition of the tax and interest by filing a petition with the department not later than 30 days after the date on which the tax became due.

(d) Transferability of licenses.—No license issued under this chapter may be transferred without prior commission approval.

(e) Form of regulation of electric generation suppliers.—The commission may forbear from applying requirements of this part which it determines are unnecessary due to competition among electric generation suppliers. In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained and assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.

(f) Availability of the services of brokers and marketers or aggregators.—Prior to approving the licensure of any broker and marketer or aggregator, the commission shall set forth standards to ensure that all retail customer classes may choose to purchase electricity through a broker and marketer or aggregator. The commission shall also ensure that brokers, marketers and aggregators comply with 52 Pa. Code Ch. 56.
§ 2810. Revenue-neutral reconciliation.

(a) General intent of revenue-neutral reconciliation.—It is the intention of the General Assembly that the restructuring of the electric industry be accomplished in a manner that allows Pennsylvania to enjoy the benefits of competition, promotes the competitiveness of Pennsylvania's electric utilities and maintains revenue neutrality to the Commonwealth. This section is not intended to cause a shift in proportional tax obligations among customer classes or individual electric distribution companies. It is the intention of the General Assembly to establish this revenue replacement at a level necessary to recoup losses that may result from the restructuring of the electric industry and the transition thereto.

(b) Imposition.—

(1) For tax periods beginning on or after January 1, 1999, a tax at the rate provided in subsection (c) is imposed upon the gross receipts of electric distribution companies and electric generation suppliers.

(2) A tax at the rate provided in subsection (c) is imposed upon the gross receipts of any municipality owned or operated public utility or of any public utility service furnished by any municipality. Gross receipts

shall be exempt from the tax to the extent that gross receipts are derived from sales of electric energy inside the limits of the municipality owning or operating the public utility or furnishing the public utility service.

(3) A tax at the rate provided in subsection (c) is imposed upon the gross receipts derived from any electric cooperative owned or operated public utility or from any public utility service furnished by any electric cooperative. Gross receipts shall be exempt from the tax to the extent that gross receipts are derived from sales for resale or sales of electric energy within the limits of its service territory as set forth in 15 Pa.C.S. § 7406 (relating to competition by electric cooperatives).

(c) Rate.—

(1) By December 1, 1998, and each October 1 thereafter until and including October 1, 2002, the Secretary of Revenue shall publish the rate of tax as provided in paragraph (2) in the form of a notice in the Pennsylvania Bulletin and the rate shall apply to the tax imposed by subsection (b) for the period beginning the next January 1. The tax rate published on October 1, 2002, shall continue in force without further adjustment. If the commission determines under section 2806(c) (relating to implementation, pilot programs and performance-based rates) to extend the transition period by more than six months, the requirement for an annual adjustment of the tax rate shall be extended by one additional year. The secretary shall also certify the rate calculated to the majority and minority chairs of the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives and detail the calculations of the rate.

(2) The secretary shall calculate the rate for the periods beginning on and after January 1, 1999, in the manner set forth in this paragraph:

(i) Multiply the 1995-1996 fiscal tax revenue base by a fraction, the numerator of which is the total kilowatt hours of electricity distributed for ultimate consumption in Pennsylvania in the preceding calendar year as certified by the commission and the denominator of which is the total kilowatt hours of electricity distributed for ultimate consumption in Pennsylvania in the calendar year 1995 as certified by the commission.

(ii) From the product derived under subparagraph (i), subtract the total cash payments made to the department during the Commonwealth's preceding fiscal year on account of affected taxes actually paid by each electric distribution company and electric generation supplier and by any other entity, including a successor, whose affected taxes are contained in the 1995-1996 fiscal tax revenue base.

(iii) Divide the difference derived under subparagraph (ii) by the total gross receipts in the preceding calendar year as certified by the commission to determine the tax rate. The tax rate under this subparagraph shall be a decimal rounded to three places.

(3) On August 1, 2000, August 1, 2001, and August 1, 2002, the department shall deliver a report to the General Assembly and the Governor that shall describe the dynamic economic effect upon the affected taxes due to electric utility restructuring. It is the purpose of this report to provide the General Assembly and the Governor with information to determine whether it is appropriate to consider modifying the calculation described in paragraph (2) to reflect additional tax revenues, if any, resulting from the dynamic economic effects upon the affected taxes.

(4) If the effective rate for any affected tax is different from the effective rate for such affected tax in the 1995-1996 fiscal tax revenue base, an adjustment shall be made to the computation of the rate of tax under paragraph (2) by multiplying that portion of the 1995-1996 fiscal tax revenue base attributable to the affected tax by a fraction, the numerator of which is the effective rate of the affected tax for the preceding fiscal year and the denominator of which is the effective rate of tax of the affected tax in the base fiscal year.

(5) For negative rates:

(i) If the rate of tax calculated for a tax year prior to the tax year beginning January 1, 2004, or January 1, 2005, in the event of an extension by more than six months by the commission as provided in section 2806(c) is negative, a credit equal to the negative tax rate for such tax year multiplied by the taxable gross receipts for that tax year shall be allowed against the taxpayer's liability for any tax for that tax year imposed under Article XI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(ii) If the rate of tax calculated as the final adjustment is negative for the tax period beginning January 1, 2003, or January 1, 2004, in the event of an extension by more than six months by the commission as provided in section 2806(c), the rate of tax imposed by section 1101(b) of the Tax Reform Code of 1971 for the tax years beginning January 1, 2004, and thereafter, or January 1, 2005, and thereafter, in the event of an extension by more than six months, shall be adjusted and set as follows: the tax rate expressed as a decimal rounded to three positions shall be subtracted from .044 or the current rate imposed under section 1101(b) of the Tax Reform Code of 1971 to determine the adjusted tax rate. The adjusted tax rate shall be published in the Pennsylvania Bulletin.

(6) Information to be provided to the department or the commission shall be as follows:

(i) To ensure the identification of cash payments for purposes of subsection (d), the commission shall require any licensee, electric distribution company, electric generation supplier or other person affected to disclose on its license application, renewal or transfer its

State tax account or similar number relative to any of the taxes specified.

(ii) The commission shall report and certify to the secretary of the department by August 1, 1998, and each August 1 thereafter the total amount of electricity distributed for ultimate consumption in this Commonwealth during the previous two calendar years and the total gross receipts for the past year.

(iii) As a condition of licensure, the commission shall require each electric distribution company and electric generation supplier to report their annual gross receipts in this Commonwealth.

(iv) For purposes of enforcing sections 2806 and 2809 (relating to requirements for electric generation suppliers) as they relate to the payment of State taxes, an applicant for the grant, renewal or transfer of a license issued under this title shall, by filing an application with the commission, waive confidentiality with respect to State tax information regarding the applicant in the possession of the department, regardless of the source of the information, and shall consent to the department providing that information to the commission.

(7) Beginning June 15, 1999, and each year thereafter, an amount equal to 0.18% of total utilities gross receipts shall be deposited into the Public Transportation Assistance Fund as provided in Article XXIII of the Tax Reform Code of 1971.

(d) Payment of tax and reports.—The tax imposed under subsection (b) shall be paid within the time prescribed by law. For the purpose of ascertaining the amount of the tax, the treasurer or other appropriate officer of the taxpayer shall transmit to the department by March 15 an annual report, and under oath or affirmation, of the amount of gross receipts received by the taxpayer during the prior calendar year. The treasurer or other appropriate officer of the taxpayer liable to report or pay taxes imposed under subsection (b), except municipalities and cooperatives, shall transmit to the department by March 15 a tentative report for the prior calendar year. The tentative report shall set forth all of the following:

(i) The amount of gross receipts received in the period of 12 months next preceding and reported in the annual report.

(ii) The gross receipts received in the first three months of the current calendar year.

(iii) Other information as the department may require.

(e) Tax computation.—Upon the date its tentative report is required to be made, the taxpayer making a tentative report shall transmit the report to the department on account of the tax due for the current calendar year and compute and make payment of the tentative tax with the report under section 3003 of the Tax Reform Code of 1971.

(f) Time to file reports.—The time for filing annual reports may be extended, estimated settlements may be made by the department if reports are not filed, and the penalties for failing to file reports and pay the taxes

imposed under subsection (b) shall be as prescribed by the laws defining the powers and duties of the department. If the works of a taxpayer are operated by another taxpayer, the taxes imposed under subsection (b) shall be apportioned between the taxpayers in accordance with the terms of their respective leases or agreements. For the payment of the apportioned taxes, the Commonwealth shall first look to the taxpayer operating the works. Upon payment by that taxpayer, no other taxpayer shall be held liable for any tax imposed under subsection (b).

(g) Timely mailing treated as timely filing and payment.—Notwithstanding the provisions of any State tax law to the contrary, whenever payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth by a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(h) Procedure, enforcement and penalties.—Parts III, IV, VI and VII of Article IV and Article XXX of the Tax Reform Code of 1971 shall apply to this section insofar as they are consistent with this section and applicable to the tax imposed under subsection (b). Notwithstanding the provisions of section 403(d) of the Tax Reform Code of 1971, if the officers of any corporation subject to tax under this chapter neglect or refuse to make a report as required in this chapter or knowingly make a false report, the department shall add to the tax determined to be due a penalty of 5% of the amount of tax due for each month or fraction of a month until the penalty has reached 25% and thereafter a penalty of 1% of the amount of tax due for each month or fraction of a month. Penalties added to the tax shall not bear interest.

(i) Electric light, waterpower and hydroelectric utilities.—The terms “electric light company,” “waterpower company” and “hydro-electric company,” as used in section 1101(b) of the Tax Reform Code of 1971, shall be deemed to include electric distribution companies and electric generation suppliers.

(j) Sales of electric energy.—Retail sales of electric generation, transmission, distribution or supply of electric energy, dispatching services, customer services, competitive transition charges, intangible transition charges and universal service and energy conservation charges and such other retail sales in this Commonwealth the receipts of which, if bundled, would have been deemed to be sales of electric energy prior to the effective date of this chapter shall be deemed sales of electric energy for purposes of section 1101 of the Tax Reform Code of 1971. The phrases “doing business in this Commonwealth” and “engaged in electric light and power business, waterpower business and hydro-electric business in this Commonwealth,” as such terms are used in section 1101(b) of the Tax Reform Code of 1971 and in this chapter, shall be construed to include the direct or indirect engaging

in, transacting or conducting of activity in this Commonwealth for the purpose of establishing or maintaining a market for the sales of electric energy and include obtaining a license or certification from the commission to supply electric energy. Retail sales of generation shall be deemed to occur at the meter of the retail consumer.

(k) Electric cooperatives.—Section 1101(b) of the Tax Reform Code of 1971 shall apply to electric cooperatives and impose a tax upon the gross receipts derived from any electric cooperative owned or operated public utility or from any public utility service furnished by any electric cooperative. Gross receipts shall be exempt from the tax to the extent that the gross receipts are derived from sales for resale or sales of electric energy within the limits of its service territory as set forth in 15 Pa.C.S. § 7406.

(l) Provisions to be construed with utilities gross receipts tax.—Subsections (i), (j) and (k) shall be construed in conjunction with Article XI of the Tax Reform Code of 1971 and shall be effective for tax years beginning January 1, 1997, and thereafter.

(m) Indemnification.—The electric distribution utility company's tariff shall provide that, if an electric distribution company becomes liable under sections 2806(g) and 2809(c) for State taxes not paid by an electric generation supplier, that electric generation supplier shall indemnify the electric distribution company for the amount of the liability so imposed upon the electric distribution utility.

(n) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affected taxes.” The taxes imposed under Articles II, IV, VI and XI and section 2301(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Base fiscal year.” The year beginning on July 1, 1995, and ending on June 30, 1996.

“Department.” The Department of Revenue of the Commonwealth.

“Effective rate.” The tax rate applicable during the fiscal year or, if more than one rate is applicable, the average of the rates that were in effect for each month of the fiscal year.

“Fiscal year.” A year beginning on July 1 and ending on the subsequent June 30.

“Gross receipts.” The gross receipts from the retail sales of electric energy as defined in section 1101(b) of the Tax Reform Code of 1971.

“1995-1996 fiscal tax revenue base.” The receipts from affected taxes from the fiscal year 1995-1996, such amount being \$984,141,837.

“Portion of the 1995-1996 fiscal tax revenue base attributable to the affected tax.” The following amounts for the tax indicated:

Tax	Amount
Corporate net income tax	\$181,628,433
Capital stock-franchise tax	\$117,495,605

Sales and use tax	\$187,401,632
Public utility realty tax	\$ 43,883,573
Utilities gross receipts tax	\$453,732,594

“Total utilities gross receipts.” The total gross receipts for a calendar year for all electric distribution companies and electric generation suppliers which are derived from the sales of electric energy and required to be reported to the commission under subsection (c)(6)(iii).

§ 2811. Market power remediation.

(a) Monitoring competitive conditions.—The commission shall monitor the market for the supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

(b) Initiation of investigations.—Upon complaint or upon its own motion for good cause shown, the commission shall conduct an investigation of the impact on the proper functioning of a fully competitive retail electricity market, including the effect of mergers, consolidations, acquisition or disposition of assets or securities of electricity suppliers, transmission congestion and anticompetitive or discriminatory conduct affecting the retail distribution of electricity.

(c) Conduct of investigations.—

(1) The commission may require an electricity supplier to provide information, including documents and testimony, in accordance with the commission’s regulations regarding the discovery of information from any electricity supplier.

(2) Confidential, proprietary or trade secret information provided under this subsection shall not be disclosed to any person not directly employed or retained by the commission to conduct the investigation without the consent of the party providing the information.

(3) Notwithstanding the prohibition on disclosure of information in paragraph (2), the commission shall disclose information obtained under this subsection to the Office of Consumer Advocate and the Office of Small Business Advocate under an appropriate confidentiality agreement. The commission may disclose the information to appropriate Federal or State law enforcement officials if it determines that the disclosure of the information is necessary to prevent or restrain a violation of Federal or State law and it provides the party that provided the information with reasonable notice and opportunity to prevent or limit disclosure.

(d) Referrals and intervention.—If, as a result of an investigation conducted under this section, the commission has reason to believe that anticompetitive or discriminatory conduct, including the unlawful exercise of market power, is preventing the retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission, pursuant to its regulations, shall:

(1) Refer its findings to the Attorney General, the United States Department of Justice, the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

(2) Subject to subsection (c)(3), disclose any information it has obtained in the course of its investigation to the agency or agencies to which it has made a referral under paragraph (1).

(3) Intervene, as provided and permitted by law or regulation, in any proceedings initiated as a result of a referral made under paragraph (1).

(e) Approval of proposed mergers, consolidations, acquisitions or dispositions.—

(1) In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

(2) Upon request for approval, the commission shall provide notice and an opportunity for open, public evidentiary hearings. If the commission finds, after hearing, that a proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market, the commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

(f) Preservation of rights.—Nothing in this section shall restrict the right of any party to pursue any other remedy available to it under this part. § 2812. Approval of transition bonds.

(a) Qualified rate orders.—Notwithstanding any other provision of law, the commission is authorized to issue qualified rate orders in accordance with the provisions of this subsection to facilitate the recovery or financing of qualified transition expenses of an electric utility or assignee.

(1) A qualified rate order may be adopted by the commission only upon the application of an electric utility and shall become effective in accordance with its terms. After the issuance of a qualified rate order, the electric utility retains sole discretion regarding whether to assign, sell or otherwise transfer intangible transition property or to

cause the transition bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

(2) After the effective date of this chapter, an electric utility may file an application for a qualified rate order pursuant to the following procedures:

(i) Each application for a qualified rate order shall contain a complete accounting of the utility's transition or stranded costs, detailed information regarding the utility's proposal for the sale of intangible transition property or the issuance of transition bonds and information regarding the electric utility's planned use of the proceeds of the sale or issuance. After the utility has filed its restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), the utility may incorporate by reference the information in the restructuring plan in providing the information.

(ii) An electric utility may file an application for a qualified rate order concurrently with, prior to, during or following the filing of its restructuring plan under section 2806. If an electric utility requests expedited review under subsection (b)(1)(i) or (ii), it shall designate in its application the portion of its total claimed transition or stranded costs for which it requests such expedited review.

(iii) After notice and an opportunity to be heard, the commission may issue a final qualified rate order for all or a portion of the amount of transition or stranded costs that it finds would be just and reasonable for the utility to recover from ratepayers under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge). The commission shall issue a final qualified rate order only for the amounts for which it finds such issuance to be in the public interest. The commission shall complete its review of the application and issue its final determination by the later of nine months from the filing, unless the electric utility requests expedited treatment under subsection (b), or 15 days following the filing of the electric utility's restructuring plan under section 2806.

(b) Expedited review procedures.—

(1) The commission shall provide for expedited review of applications for qualified rate orders upon request of the electric utility pursuant to the following procedures:

(i) If the utility elects to file an application prior to the filing of its restructuring plan and requests expedited review, the commission, after notice and an opportunity to be heard, may issue a final qualified rate order approving the issuance of

transition bonds for a portion of the utility's transition or stranded costs that the commission finds would be just and reasonable to recover from ratepayers under sections 2804 and 2808. The commission shall consider only the portion of the transition or stranded costs for which the utility requests approval to issue transition bonds. Consideration of all remaining amounts and amounts not resolved by the commission shall be deferred for consideration in the electric utility's restructuring plan proceeding under section 2806. The commission shall complete its review of the application and issue its final determination within 120 days after the request for expedited review but in no event earlier than 15 days after the utility has filed its restructuring plan under section 2806.

(ii) If the electric utility files an application for a qualified rate order concurrently with its restructuring plan or during the course of the restructuring plan proceeding, the electric utility may request, and the commission may allow, an accelerated determination of the application. After notice and an opportunity to be heard, the commission may issue a final qualified rate order approving the issuance of transition bonds for a portion of the utility's stranded or transition costs that the commission finds would be just and reasonable to recover from ratepayers under sections 2804 and 2808. The commission shall consider only the portion of the utility's transition or stranded costs for which the utility seeks expedited review. Consideration of all remaining amounts and amounts not resolved by the commission shall be deferred for consideration in a final order regarding the utility's restructuring plan under section 2806. The commission shall complete its review of the application and issue its final determination within 120 days after the request for expedited review.

(iii) If the electric utility files an application for a qualified rate order after the commission enters a final order regarding the utility's restructuring plan, and requests expedited treatment, the commission shall complete its review and issue its final determination within 120 days of the request for expedited review.

(2) The qualified rate order shall require that the proceeds from the assignment, sale or transfer or other financing of intangible transition property shall be used principally to reduce the electric utility's transition or stranded costs and to reduce the related capitalization, pursuant to a plan submitted by the electric utility in its application for a qualified rate order and approved by the commission.

(3) Notwithstanding any other provision of law, the commission has the power to specify that all or a portion of a qualified rate order

shall be irrevocable. To the extent so specified, neither the order nor the intangible transition charges authorized to be imposed and collected under the order shall be subject to reduction, postponement, impairment or termination by any subsequent action of the commission. Nothing in this paragraph is intended to supersede the right of any party to judicial review of the qualified rate order.

(4) The commission shall provide in any qualified rate order for a procedure for the expeditious approval by the commission of periodic adjustments to the intangible transition charges that are the subject of the pertinent qualified rate order. Such adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition or redemption premium and for other fees, costs and charges in respect of transition bonds approved by the commission as part of or in conjunction with a qualified rate order. The commission shall determine whether the adjustments are required on each anniversary of the issuance of the qualified rate order and at the additional intervals as may be provided for in the qualified rate order. The adjustments, if required, shall be approved within 90 days of each anniversary of the issuance of the qualified rate order or of each additional interval provided for in the qualified rate order.

(5) Notwithstanding any other provision of law, on such conditions as the commission may approve, all or portions of the interest of an electric utility in intangible transition property may be assigned, sold or transferred to an assignee and may be pledged or assigned as security by an electric utility or assignee to or for the benefit of a financing party. To the extent that an interest is assigned, sold or transferred or is pledged or assigned as security, the commission shall authorize the electric utility to contract with the assignee or financing party that the electric utility will continue to operate its system to provide service to its customers, will impose and collect the applicable intangible transition charges for the benefit and account of the assignee or financing party and will account for and remit the applicable intangible transition charge to or for the account of the assignee or financing party. If the qualified rate order so provides, the obligations of the electric utility:

(i) shall be binding upon the electric utility, its successors and assigns; and

(ii) shall be required by the commission to be undertaken and performed by the electric utility and any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory, as a condition to the provision of service to such

customer by such electric utility or other entity, unless the customer has paid a termination charge in the manner and on the basis specified in the qualified rate order.

(6) The irrevocable status of any portion of a qualified rate order under paragraph (3) shall lapse and terminate to the extent that an assignment, sale or transfer of the intangible transition property resulting from the rate order or the issuance of the related transition bonds is not effected within the period specified in the qualified rate order.

(7) The effect of any subsequent refinancing of transition bonds upon the rates authorized in a qualified rate order shall be as provided in such order.

(8) In its qualified rate order, the commission shall afford flexibility in establishing the terms and conditions of the transition bonds, including repayment schedules, interest rates and other financing costs. The electric utility shall file the final terms of issuance with the commission.

(c) Intangible transition property.—

(1) Any right that an electric utility has in the intangible transition property prior to its sale or transfer or any other right created under this section or created in the qualified rate order and assignable under this section or assignable pursuant to a qualified rate order shall be only a contract right.

(2) The Commonwealth pledges to and agrees with the holders of any transition bonds issued under this section and with any assignee or financing party who may enter into contracts with an electric utility under this section that the Commonwealth will not limit or alter or in any way impair or reduce the value of intangible transition property or intangible transition charges approved by a qualified rate order until the transition bonds and interest on the transition bonds are fully paid and discharged or the contracts are fully performed on the part of the electric utility. Subject to other requirements of law, nothing in this paragraph shall preclude limitation or alteration if adequate compensation is made by law for the full protection of the intangible transition charges collected pursuant to a qualified rate order and of the holder of this transition bond and any assignee or financing party entering into contract with the electric utility.

(d) Security interests in intangible transition property.—

(1) Neither intangible transition property nor any right, title or interest of a utility or assignee described in paragraph (1) of the definition of “intangible transition property” in subsection (g), whether before or after the issuance of the qualified rate order, shall constitute “an account” or “general intangibles” under 13 Pa.C.S. § 9106 (relating to definitions: “account”; “general intangibles”) nor shall any such right, title or interest pertaining to a qualified rate order, including the associated intangible transition property and any revenues, collections,

claims, payments, money or proceeds of or arising from intangible transition charges pursuant to such order, be deemed proceeds of any right or interest other than in the order and the intangible transition property arising from the order.

(2) The granting, perfection and enforcement of security interests in intangible transition property to secure transition bonds is governed by this section rather than by Title 13 (relating to commercial code).

(3) A valid and enforceable security interest in intangible transition property shall attach and be perfected only by means of a separate filing with the commission, under regulations the commission prescribes. For this purpose:

(i) If the transition bonds are issued to finance any qualified transition expenses, as specified in the applicable qualified rate order, the lien of the bonds shall attach automatically to the intangible transition property relating to the expenses from the time of issuance of the bonds.

(ii) The lien under subparagraph (i) shall be deemed a valid and enforceable security interest in the intangible transition property securing the qualified transition bonds and shall be continuously perfected if, before the date of issuance specified in subparagraph (i) or within no more than ten days after the date, a filing has been made by or on behalf of the financing party to protect that security interest in accordance with the procedures prescribed by the commission under this subsection. Any filing in respect to such transition bonds shall take precedence over any other filing.

(iii) The lien under subparagraph (i) is enforceable against the assignee and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the intangible transition property previously perfected in the manner described in this subsection if value has been given by the purchasers of transition bonds. A perfected lien in intangible transition property is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated intangible transition property, whether or not revenues have accrued. Intangible transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenues have accrued. The lien created under this paragraph is perfected and ranks prior to any other lien, including any judicial lien, which subsequently attaches to the intangible transition property, to the intangible transition charges and to the qualified rate order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this paragraph is not defeated or

adversely affected by changes to the qualified rate order or to the intangible transition charges payable by any customer.

(iv) The relative priority of a lien created under this paragraph is not defeated or adversely affected by the commingling of revenues arising with respect to intangible transition property with funds of the electric utility or other funds of the assignee.

(v) If an event of default occurs under approved transition bonds, the holders of transition bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the lien in the intangible transition property securing the transition bonds, subject to the rights of any third parties holding prior security interests in the intangible transition property perfected in the manner provided in this subsection. Upon application by the holders or their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the intangible transition property pledged to the holders. An order under this subparagraph shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency proceedings with respect to the electric utility or assignee.

(4) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this subsection and may provide that transfers of intangible transition property to an assignee be filed in accordance with the same system.

(e) True sale.—A transfer of intangible transition property by an electric utility to an assignee which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a qualified rate order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or other financing, of the intangible transition property, other than for Federal and State income and franchise tax purposes. Granting to holders of transition bonds a preferred right to the intangible transition property or the provision by the electric utility of any credit enhancement with respect to transition bonds shall not impair or negate the characterization of any transfer as a true sale, other than for Federal and State income and franchise tax purposes. A transfer of intangible transition property shall be deemed perfected as against third persons, including any judicial lien creditors, when all of the following have taken place:

(1) The commission has issued the qualified rate order creating intangible transition property.

(2) A sale or transfer of the intangible transition property in writing has been executed and delivered to the assignee.

(f) Actions with respect to intangible transition charges.—

(1) Nothing in this chapter shall entitle any person to bring an action against a retail electric customer for nonpayment of intangible transition charges, other than the electric utility, its successor or any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory.

(2) The commission has exclusive jurisdiction over any dispute arising out of the obligations to impose and collect intangible transition charges of an electric utility, its successor or any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that became a customer of electric services within such territory after the effective date of this chapter and is still located within such territory.

(g) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Assignee.” An entity, including a corporation, public authority, trust or financing vehicle, to which an electric utility assigns, sells or transfers other than as security all or a portion of its interest in or right to intangible transition property. The term includes an entity, including a corporation, public authority, trust or financing vehicle to which a direct assignee of an electric utility may assign, sell or transfer other than as security its interest in or right to intangible transition property.

“Financing party.” A holder of transition bonds, including trustees, collateral agents and other entities acting for the benefit of such a holder.

“Intangible transition charges.” The amounts authorized to be imposed on all customer bills and collected, through a nonbypassable mechanism by the electric utility or its successor or by any other entity which provides electric service to a person that was a customer of an electric utility located within the certificated territory of the electric utility on the effective date of this chapter or that, after this effective date of this chapter, became a customer of electric services within such territory and is still located within such territory, to recover qualified transition expenses pursuant to a qualified rate order. The amounts shall be allocated to customer classes in a manner that does not shift interclass or intraclass costs and maintains consistency with the allocation methodology for utility production plant accepted by the commission in the electric utility’s most recent base rate proceeding.

“Intangible transition property.”

(1) The property right created under this section representing the irrevocable right of the electric utility or an assignee to receive through

intangible transition charges amounts sufficient to recover all of its qualified transition expenses. The term includes all right, title and interest of the electric utility or assignee in the qualified rate order and in all revenues, collections, claims, payments, money or proceeds of or arising from intangible transition charges pursuant to the order to the extent that, in accordance with this chapter, the order and the rates and other charges authorized under the order are declared to be irrevocable.

(2) Intangible transition property shall arise and exist only when, as and to the extent that an electric utility or assignee has qualified transition expenses for which intangible transition charges are authorized in a qualified rate order that has become effective in accordance with subsection (a) and shall thereafter continuously exist to the extent provided in the order.

“Qualified rate order.” An order of the commission adopted in accordance with this section, authorizing the imposition and collection of intangible transition charges.

“Qualified transition expenses.” The transition or stranded costs of an electric utility approved by the commission for recovery under sections 2804 (relating to standards for restructuring of electric industry) and 2808 (relating to competitive transition charge) through the issuance of transition bonds; the costs of retiring existing debt or equity capital of the electric utility or its holding company parent, including accrued interest and acquisition or redemption premium, costs of defeasance, and other related fees, costs and charges relating to, through the issuance of transition bonds or the assignment, sale or other transfer of intangible transition property; and the costs incurred to issue, service or refinance the transition bonds, including accrued interest and acquisition or redemption premium, and other related fees, costs and charges, or to assign, sell or otherwise transfer intangible transition property.

“Transition bonds.” Bonds, debentures, notes, certificates of participation or of beneficial interest or other evidences of indebtedness or ownership which:

(1) are issued by or on behalf of the electric utility or assignee pursuant to a qualified rate order;

(2) are secured by or payable from intangible transition property; and

(3) reach final maturity in no longer than ten years.

Section 5. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 6. This act shall take effect January 1, 1997.

APPROVED—The 3rd day of December, A.D. 1996.

THOMAS J. RIDGE