

Metcalf: Chair  
Bradley  
Holmes  
Kant's  
Chapman  
Weigel  
Wise

HSB 218  
COMMERCE AND REGULATION

HOUSE FILE SF/HF 77  
BY (PROPOSED COMMITTEE ON  
COMMERCE AND REGULATION BILL  
BY CHAIRPERSON METCALF)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the restructuring of the electric utility  
2 industry by providing for consumer choice for certain electric  
3 services, providing penalties, and providing an effective  
4 date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 ~~Section 1.~~ **NEW SECTION.** 476B.1 TITLE.

2 This chapter shall be known and may be cited as the  
3 "Electric Choice and Competition Act".

4 Sec. 2. **NEW SECTION.** 476B.2 LEGISLATIVE FINDINGS.

5 The general assembly finds and declares all of the  
6 following:

7 1. Electricity is essential and vital to the health and  
8 well-being of all the citizens of the state of Iowa.

9 2. The citizens of the state are dependent upon the  
10 availability of reliable, low-cost electricity, which is  
11 essential to sustained economic development.

12 3. Advances in electric generation technology and federal  
13 initiatives to introduce competition into the wholesale  
14 electric market favor and compliment the introduction of  
15 competition into the retail electric market in Iowa.

16 4. Restructuring the electric industry to provide greater  
17 competition and more efficient regulation is a nationwide  
18 trend, and Iowa must pursue restructuring and increased  
19 consumer choice to introduce competitive incentives to provide  
20 electric service at fair and reasonable prices to the  
21 businesses and citizens of this state.

22 5. It is in the public interest to allow and encourage the  
23 development of competitive markets for electric generation and  
24 other electric services where possible because a competitive  
25 market is likely to be more effective than regulation in  
26 determining the efficient price for these services and in  
27 promoting efficiency in operations.

28 6. A competitive electric market holds the potential for  
29 end-use consumers of electricity to have access to reliable  
30 and safe competitive electric services at fair and reasonable  
31 prices while providing for competitive choice, more effective  
32 use of resources, and an improved quality and variety of  
33 competitive electric services.

34 7. A competitive electric industry must have adequate and  
35 reasonable safeguards to protect the public interest.

1 Residential and small commercial consumer service safeguards  
2 and protections shall be maintained or improved.

3 8. Encouraging the development of a competitive market can  
4 be accomplished in a manner that protects the environment.

5 9. A competitive market encourages economic development by  
6 permitting competitive markets to determine the most efficient  
7 use of resources.

8 10. The needs of Iowa's low-income consumers of electric  
9 services, including the need for economic energy efficiency  
10 improvements and programs, can be met while restructuring the  
11 electric industry.

12 11. Recognizing that the full costs of generation, fuel,  
13 power, and energy owned or purchased by an incumbent provider  
14 or consumer-owned utility, to the extent included in regulated  
15 rates, have been determined to be just, reasonable, prudent,  
16 and used and useful, incumbent providers and consumer-owned  
17 utilities should be afforded an opportunity to prepare for the  
18 transition from regulation to competition and afforded an  
19 opportunity to recover a reasonable amount of the costs of the  
20 transition.

21 12. Consumer-owned utilities can participate successfully  
22 in a competitive electric environment by retaining their local  
23 control over their own governance, including setting rates,  
24 terms, and conditions for products and services.

25 13. Facilities and personnel needed to maintain the safety  
26 of the electric supply, as well as all other competitive and  
27 regulated electric services, must remain available and  
28 operational.

29 14. The establishment of competitive electric markets  
30 should be undertaken in a manner that mitigates any  
31 detrimental effect on the safety and reliability of the  
32 electric system and on utility employees.

33 15. Delivery services should remain regulated. In  
34 recognition of their exclusive assigned service areas,  
35 delivery service providers should have an obligation to extend

1 the delivery grid to all consumers within the assigned service  
2 area. Standards of conduct for delivery service providers and  
3 provisions regarding transactions between delivery service  
4 providers and their affiliates should be implemented.

5 16. Full and fair competition in the markets for  
6 generation and electric services other than delivery service  
7 should be encouraged and promoted. It is not the intent of  
8 this chapter to displace applicable antitrust and unfair  
9 competition laws and the enforcement of the same with respect  
10 to competitive electric services or to weaken regulation with  
11 respect to delivery services subject to the jurisdiction of  
12 the Iowa utilities board.

13 Sec. 3. NEW SECTION. 476B.3 DEFINITIONS.

14 As used in this chapter, unless the context otherwise  
15 requires:

16 1. "Affiliate" means a person, other than a municipal  
17 utility or other political subdivision, that directly, or  
18 indirectly, through one or more intermediaries, controls, is  
19 controlled by, or is under common control with another person.

20 2. "Aggregation" means the process of organizing end-use  
21 consumers into a group for the acquisition of competitive  
22 electric services.

23 3. "Aggregator" means a person that organizes end-use  
24 consumers into a group and arranges for the acquisition of  
25 competitive electric services from a competitive electric  
26 service provider without taking title to those services.

27 4. "Alliance" means a group of electric cooperatives or  
28 their consumer-owned affiliates.

29 5. "Alternative energy" means electric energy measured in  
30 kilowatt-hours produced from an alternative energy facility.

31 6. "Alternative energy facility" means an electric  
32 generating unit whose energy input is derived, in whole or in  
33 part, from solar, wind, geothermal, landfill gas, refuse-  
34 derived fuel, agricultural crops or residues, wood, or other  
35 renewable energy sources as determined by the board.

1 "Alternative energy facility" also includes a hydroelectric  
2 generating unit with a nameplate capacity or with a contract  
3 for hydroelectric capacity no greater than one hundred  
4 megawatts.

5 7. "Ancillary services" means those services that are  
6 necessary to support the transmission of demand and energy  
7 from generation to the point of usage while maintaining  
8 reliable operation of the delivery system in accordance with  
9 good operating practices. Ancillary services, as defined by  
10 the federal energy regulatory commission as of the effective  
11 date of this chapter, include all of the following:

- 12 a. Scheduling, system control, and dispatch.
- 13 b. Reactive supply and voltage control from generation
- 14 sources.
- 15 c. Regulation and frequency response.
- 16 d. Energy imbalance.
- 17 e. Operating reserve -- spinning.
- 18 f. Operating reserve -- supplemental.

19 8. "Assigned service area" means a geographic area  
20 designated by the board within which a designated person has  
21 the exclusive right to provide bundled electric services prior  
22 to May 1, 2002, or unbundled delivery services on or after May  
23 1, 2002.

24 9. "Assignee" means a person, other than an incumbent  
25 provider or grantee, to which an interest in intangible  
26 transition property is assigned, sold, or transferred.

27 10. "Balancing" means the responsibility of a control area  
28 operator to make necessary changes in the output of the  
29 sources of generation under its control to maintain the  
30 required voltage and frequency of the grid under its control.

31 11. "Basic energy service" means power supply services  
32 provided by a consumer-owned utility to an end-use consumer  
33 who has not chosen a competitive electric service provider or  
34 is otherwise without a competitive electric service provider.

35 12. "Bilateral contract" means a contract between two

1 persons.

2 13. "Board" means the Iowa utilities board within the  
3 department of commerce created in section 474.1.

4 14. "Board's website" means an electronic posting site  
5 maintained or approved by the board.

6 15. "Bundled electric service" means combining generation,  
7 transmission, distribution, and other electric services, and  
8 pricing the combination as an undifferentiated package rather  
9 than as individual services.

10 16. "Business unit" means a division or other economic  
11 unit of a person and is considered to be an affiliate of other  
12 business units of the person.

13 17. "Capacity" means a measurement of the electrical  
14 output of a generating plant usually expressed in kilowatts or  
15 megawatts.

16 18. "Comparable service" means regulated services provided  
17 to any person on the same or functionally equivalent basis,  
18 and under the same or functionally equivalent terms and  
19 conditions, as the regulated services provided by a delivery  
20 service provider to itself or its affiliates.

21 19. "Competitive electric services" means competitive  
22 electric power supply services sold at retail in this state  
23 commencing on or after May 1, 2002, in the assigned service  
24 areas of delivery service providers that are electric  
25 companies and commencing no later than October 1, 2002, in the  
26 assigned service areas of consumer-owned utilities. Electric  
27 metering services, electric meter information gathering  
28 services, and electric billing services sold at retail in the  
29 assigned service areas of electric companies by competitive  
30 electric service providers commencing on or after May 1, 2002,  
31 and other services of electric companies determined by the  
32 board after December 31, 2002, to be competitive pursuant to  
33 this chapter are competitive electric services. Electric  
34 metering services, electric meter information gathering  
35 services, and electric billing services sold at retail in the

1 assigned service area of a consumer-owned utility by a  
2 competitive electric service provider shall not be regulated  
3 by the board or local governing body except as provided in  
4 this chapter. Services provided pursuant to section 476B.8  
5 are regulated electric services and not competitive electric  
6 services.

7 20. "Competitive electric service provider" means a person  
8 that provides or offers to provide competitive electric  
9 services in this state and includes an aggregator.

10 21. "Competitive power supply services" means demand,  
11 energy, and ancillary services sold at retail in this state,  
12 excluding scheduling, system control, load profiling and  
13 financial settlement, when related to distribution, whether  
14 subject to the regulation of the board or a local governing  
15 body.

16 22. "Consumer-owned utility" means a municipal utility or  
17 electric cooperative.

18 23. "Control" means the possession, direct or indirect, of  
19 the power to direct or cause the direction of the management  
20 and policies of a person through ownership, by contract, or  
21 otherwise.

22 24. "Control area" means an electric delivery system or  
23 combination of electric delivery systems to which a common  
24 automatic control scheme is applied in order to do the  
25 following:

26 a. Match, at all times, the sum of the power output of the  
27 generators within the electric delivery systems and demand and  
28 energy purchased from entities outside the electric delivery  
29 systems with the load in the electric delivery systems.

30 b. Maintain, within the limits of good operating practice,  
31 scheduled interchange with other control areas.

32 c. Maintain the frequency of the electric delivery systems  
33 within reasonable limits in accordance with good operating  
34 practices.

35 d. Arrange for, provide, or verify that sufficient

1 generating capacity or the right to sufficient generating  
2 capacity is available to maintain operating reserves in  
3 accordance with good operating practice.

4 25. "Control area operator" means a person operating a  
5 control area.

6 26. "Delivery service" means the transportation of  
7 electricity from one point on a delivery service provider's  
8 system to another point on that system in this state.  
9 Delivery service includes transmission service and  
10 distribution service.

11 27. "Delivery service provider" means a person that  
12 provides delivery service in this state but does not include a  
13 licensed competitive electric service provider that purchases  
14 delivery service from an electric company or consumer-owned  
15 utility and resells the delivery service at retail to an end-  
16 use consumer.

17 28. "Demand" means electric power measured in kilowatts or  
18 megawatts.

19 29. "Distribution service" means that portion of delivery  
20 service provided in this state that is not subject to the  
21 exclusive jurisdiction of the federal energy regulatory  
22 commission, or for consumer-owned utilities is not subject to  
23 section 211 of the federal Power Act. If a provider of  
24 distribution service is an electric company that is also a  
25 control area operator, the control area operations which are  
26 not subject to the exclusive jurisdiction of the federal  
27 energy regulatory commission, if any, shall be considered to  
28 be a part of distribution service and subject to the  
29 jurisdiction of the board.

30 30. "Electric company" means a delivery service provider,  
31 either on a bundled basis prior to May 1, 2002, or on an  
32 unbundled basis on or after May 1, 2002, but does not include  
33 a consumer-owned utility, municipal electric cooperative  
34 association, or governmental subdivision.

35 31. "Electric cooperative" means a person formed or

1 organized as a cooperative under the laws of this state or  
 2 elsewhere, that engages in any of the following activities:  
 3 generation of electricity, transmission of electricity,  
 4 distribution of electricity, sale of electricity, control area  
 5 operator services, or performance of ancillary services as  
 6 designated by the federal energy regulatory commission. An  
 7 electric cooperative includes a consumer-owned affiliate of an  
 8 electric cooperative, an alliance, and an incorporated city  
 9 utility provider.

10 32. "Electric power agency" means a political subdivision  
 11 that acquires or finances electric facilities pursuant to  
 12 chapter 28E or 28F.

13 33. "Eligible rates" means those rates specified in an  
 14 application for a transitional funding order from which  
 15 instrument funding charges may be deducted and collected.  
 16 Eligible rates may include any of the following: bundled  
 17 electric rates, unbundled distribution service rates, other  
 18 unbundled rates, standard offer service rates, universal  
 19 service rates, transitional service rates, basic energy  
 20 service rates, transition charges, any other charges  
 21 authorized under section 476B.15, or any other rates for  
 22 tariffed services.

23 34. "End-use consumer" means a person that prior to having  
 24 the option to choose competitive electric service, purchases  
 25 for use in this state bundled electric service or that  
 26 participates in an electric retail access pilot project  
 27 approved by the board or local governing body. On and after  
 28 the date a person has the option to choose competitive  
 29 electric service, "end-use consumer" means a person that  
 30 purchases, directly or through a competitive electric service  
 31 provider, for use in this state, standard offer service,  
 32 transitional service, universal service, basic energy service,  
 33 or unbundled distribution service sold at retail.

34 35. "Energy" means electric power measured in kilowatt-  
 35 hours (kWh).

1 36. "Good operating practices" means any of the practices,  
2 methods, and acts engaged in or approved by a significant  
3 portion of the electric industry during a relevant time  
4 period, or any of the practices, methods, or acts which, in  
5 the exercise of reasonable judgment in light of the facts  
6 known at the time the decision was made, could reasonably have  
7 been expected to accomplish the desired result at reasonable  
8 cost consistent with good business practices, reliability,  
9 safety, and expedition. "Good operating practices" is not  
10 limited to the optimum practice, method, or act, to the  
11 exclusion of all others, but rather to acceptable practices,  
12 methods, or acts consistently adhered to and generally  
13 accepted in the region.

14 37. "Grantee" means a person, other than an incumbent  
15 provider or an assignee which acquires its interest from an  
16 incumbent provider, to whom or for whose benefit the board  
17 creates, establishes, and grants rights in, to, or under  
18 intangible transition property.

19 38. "Grid" means the interconnected system used for  
20 delivering electricity within this state.

21 39. "Holder" means a holder of transitional funding  
22 instruments, including a trustee, collateral agent, nominee,  
23 or other such person acting for the benefit of such a holder.

24 40. "Incorporated city utility provider" means a  
25 corporation, existing on the effective date of this chapter,  
26 with assets worth one million dollars or more, which has one  
27 or more platted villages located within the territorial limits  
28 of the tract of land which it owns, and which provides  
29 electricity to ten thousand or fewer end-use consumers.

30 41. "Incumbent provider" means a person, or the person's  
31 successor or assign, that provided bundled electric service  
32 within an assigned service area on the effective date of this  
33 chapter.

34 42. "Instrument funding charge" means a nonbypassable  
35 charge authorized in a transitional funding order to be

1 applied and invoiced to each responsible consumer, a class of  
 2 responsible consumers of an incumbent provider, or other  
 3 person or group of persons obligated to pay eligible rates  
 4 from which the instrument funding charge has been deducted and  
 5 stated separately pursuant to section 476B.17, subsection 4,  
 6 paragraph "d".

7 43. "Intangible transition property" means the right,  
 8 title, and interest of an incumbent provider, grantee, or  
 9 assignee arising pursuant to a transitional funding order to  
 10 impose and receive instrument funding charges, and all related  
 11 revenues, collections, claims, payments, money, or proceeds of  
 12 the transitional funding order, including all right, title,  
 13 and interest of an incumbent provider, grantee, or assignee  
 14 in, to, under, and pursuant to such transitional funding  
 15 order, whether or not such intangible transition property is  
 16 characterized on the books of the incumbent provider as a  
 17 regulatory asset, a cost incurred by the incumbent provider,  
 18 or otherwise. Intangible transition property arises and  
 19 exists only to the extent that instrument funding charges are  
 20 authorized in a transitional funding order that becomes  
 21 effective in accordance with this chapter. Such intangible  
 22 transition property shall continue to exist to the extent  
 23 provided in the transitional funding order.

24 44. "Interval metering" means metering that records end-  
 25 use consumer usage on the same time frame as pricing changes  
 26 in the market, typically hourly or more frequently.

27 45. "Issuer" means a person, other than an incumbent  
 28 provider, which has issued transitional funding instruments.

29 46. "Load" means the amount of demand or energy delivered  
 30 to or required by an end-use consumer or consumers.

31 47. "Load profiling" means the process of estimating  
 32 rather than directly measuring the demand and energy  
 33 consumption of an end-use consumer during a period of time.

34 48. "Local governing body" means the board of directors of  
 35 an electric cooperative as provided in section 499.36, the

1 utility board of a municipal electric utility as defined in  
2 section 388.1, or the council of a city, as defined in section  
3 362.2, whose municipal electric utility is not operated by a  
4 utility board.

5 49. "Municipal electric cooperative association" means an  
6 electric cooperative, the membership of which is composed  
7 entirely of municipal utilities.

8 50. "Municipal utility" means all or part of an electric  
9 light and power plant system which is owned by a city,  
10 including all land, easements, rights of way, fixtures,  
11 equipment, accessories, improvement, appurtenances, and other  
12 property necessary or useful for the operation of the  
13 municipal utility. Municipal utility includes a combined  
14 utility system, as defined in section 384.80, in which at  
15 least one of the components of the combined utility system is  
16 a municipal electric utility.

17 51. "Nonbypassable charge" means a charge assessed by a  
18 delivery service provider to an end-use consumer located  
19 within the delivery service provider's assigned service area  
20 or to a competitive electric service provider serving that  
21 end-use consumer, regardless of whether the consumer purchases  
22 delivery service from that delivery service provider.

23 52. "Nuclear decommissioning" means a series of activities  
24 undertaken at the time a nuclear power plant is permanently  
25 retired from service to ensure that the final entombment,  
26 decontamination, dismantlement, removal, and disposal of the  
27 structures, systems, and components of the power plant,  
28 including the plant site, and any radioactive components and  
29 materials associated with the plant, is accomplished in  
30 compliance with all applicable state and federal laws, and to  
31 ensure that such final disposition does not pose any material  
32 threat to the public health and safety.

33 53. "Nuclear decommissioning costs" means all reasonable  
34 costs and expenses that are expected to be incurred or are  
35 actually incurred in connection with nuclear decommissioning

1 including all costs and expenses to prepare a unit of a plant  
 2 for decommissioning, such as the cost of moving spent fuel  
 3 off-site, interim spent fuel storage costs, and interim costs  
 4 incurred pursuant to a SAFSTOR decommissioning phase as  
 5 approved and defined by the nuclear regulatory commission, and  
 6 all costs and expenses after the actual decommissioning  
 7 occurs, such as physical security and radiation monitoring  
 8 expenses. "Nuclear decommissioning costs" also includes  
 9 reasonable costs and expenses to return the plant site to a  
 10 condition suitable for public use.

11 54. "Person" means person as defined in section 4.1.

12 55. "Responsible consumer" means all of the following:

13 a. Prior to May 1, 2002, a person who receives bundled  
 14 electric service pursuant to a tariff or contract.

15 b. On or after May 1, 2002, a person responsible for  
 16 payment for distribution services pursuant to a tariff or  
 17 contract.

18 c. At any time, any other person responsible for payment  
 19 of eligible rates pursuant to a tariff or contract as  
 20 specified by an incumbent provider in its application for a  
 21 transitional funding order.

22 56. "Scheduling" means the process by which a person  
 23 notifies the control area operator of the amounts of demand  
 24 and energy it intends to provide to the grid for a specified  
 25 period of time, and the source and destination of that demand  
 26 and energy.

27 57. "Tariff" means a document containing rates, charges,  
 28 schedules, regulations, terms, or conditions of regulated  
 29 electric service, filed or posted with the appropriate  
 30 regulatory authority.

31 58. "Transition charges" means nonbypassable charges to  
 32 end-use consumers, or to competitive electric service  
 33 providers or delivery service providers that are consumer-  
 34 owned utilities, that are designed to compensate an incumbent  
 35 provider or electric cooperative for all or a portion of the

1 provider's or cooperative's transition costs.

2 59. "Transition costs" means both of the following:

3 a. Costs and reduced revenues as calculated pursuant to  
4 section 476B.15 incurred by an incumbent provider as a result  
5 of changing from electric regulation under chapter 476 to a  
6 competitive electric industry pursuant to this chapter.

7 b. Costs and reduced revenues as calculated by an electric  
8 cooperative pursuant to section 476B.15, subsection 5, as a  
9 result of changing from electric regulation under chapter 476  
10 to a competitive electric industry pursuant to this chapter.

11 60. "Transitional funding instruments" means any  
12 instruments, pass-through certificates, notes, debentures,  
13 certificates of participation, bonds, certificates of  
14 beneficial interest, or other evidences of indebtedness or  
15 instruments evidencing a beneficial interest which are issued  
16 by or on behalf of an incumbent provider or issuer pursuant to  
17 a transitional funding order; which are issued pursuant to an  
18 executed indenture, pooling agreement, security agreement, or  
19 other similar agreement of an incumbent provider or issuer  
20 creating a security interest, ownership interest, or other  
21 beneficial interest in intangible transition property; and the  
22 proceeds of which are to be used for the purposes set forth in  
23 section 476B.17, subsection 3, paragraph "c".

24 61. "Transitional funding order" means an order of the  
25 board issued under section 476B.17 creating and establishing  
26 intangible transition property and the rights of any person in  
27 such property, and approving the sale, pledge, assignment, or  
28 other transfer of intangible transition property, the issuance  
29 of transitional funding instruments, and the imposition and  
30 collection of instrument funding charges.

31 62. "Transmission service" means the portion of delivery  
32 service that is subject to the exclusive jurisdiction of the  
33 federal energy regulatory commission, or for consumer-owned  
34 utilities, the portion of delivery service subject to section  
35 211 of the federal Power Act.

1 63. "Unbundled rates" means separate charges for  
2 components of regulated electric services such as distribution  
3 services.

4 64. "Unbundled services" means distribution service and  
5 other services specified in section 476B.4.

6 Sec. 4. NEW SECTION. 476B.4 UNBUNDLING OF RATES AND  
7 SERVICES.

8 1. ELECTRIC COMPANIES. On or before October 1, 1999, an  
9 incumbent provider that is an electric company shall file with  
10 the board unbundled rates as provided in this subsection. At  
11 a minimum, unbundled rates for an electric company shall  
12 reflect separate charges for distribution service; types of  
13 delivery service metering; supplying competitive electric  
14 service providers with meter information, if applicable;  
15 delivery service billings issued to competitive electric  
16 service providers; delivery service billings issued to end-use  
17 consumers; connecting to the delivery system those meters not  
18 owned by the delivery service provider; processing a change in  
19 an end-use consumer's competitive electric service provider;  
20 transition charges pursuant to section 476B.15, if applicable;  
21 and nuclear decommissioning cost recovery pursuant to section  
22 476B.16, if applicable. To the extent it elects to perform  
23 billing services for competitive electric service providers  
24 through its regulated delivery service function under section  
25 476B.12 or elects to perform meter reading or meter  
26 information gathering through its regulated delivery service  
27 function under section 476B.11, an electric company shall also  
28 propose unbundled rates for such services that shall apply to  
29 all competitive electric service providers in a  
30 nondiscriminatory manner. An electric company may propose  
31 other regulated, unbundled rates and charges associated with  
32 delivery service, as appropriate. Terms and conditions  
33 associated with all unbundled rates and charges shall be filed  
34 with the board at the time of filing unbundled rates. The  
35 board shall treat the filing as a submission under section

1 476.6, except that subsection 5 of that section shall not  
2 apply.

3 The initial unbundled rates for the services specified in  
4 this subsection shall be based upon cost of service, including  
5 current cost of capital. The electric company shall submit  
6 written evidence with its initial unbundled rate filing to  
7 support its proposed unbundled rates and charges, including  
8 direct and allocated costs associated with the levels of the  
9 unbundled rates and charges. The method used to determine  
10 class cost of service, to the maximum extent practicable,  
11 shall permit identification of cost differences attributable  
12 to variations in demand, energy, voltage delivery level,  
13 customer components of cost, and other factors.

14 The board shall approve rates, charges, terms, and  
15 conditions that are just, reasonable, and nondiscriminatory.  
16 The unbundled rates, charges, terms, and conditions approved  
17 by the board shall be posted on the board's website for  
18 informational purposes by no later than November 1, 2001, and  
19 shall become effective on May 1, 2002.

20 2. ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES. Each  
21 incumbent provider that is a consumer-owned utility, pursuant  
22 to its local governing process, shall unbundle and post on the  
23 board's website its rates and charges by January 1, 2002. At  
24 a minimum, unbundled rates for a consumer-owned utility shall  
25 reflect separate charges for distribution service; connecting  
26 to the delivery system meters not owned by the delivery  
27 service provider; supplying meter information to competitive  
28 electric service providers, if applicable; and processing a  
29 change in an end-use consumer's competitive electric service  
30 provider. A consumer-owned utility may unbundle and post  
31 other rates and charges, such as transition costs including  
32 nuclear decommissioning costs, as determined by its local  
33 governing body. The costs associated with meter reading or  
34 meter information gathering may be included in the  
35 distribution service rate as long as, for each metered

1 location, the consumer-owned utility makes the information  
 2 available at a reasonable cost-based fee to the competitive  
 3 electric service provider serving the metered location. Meter  
 4 reading, meter information, and billing charges, if  
 5 applicable, shall be posted. Terms and conditions associated  
 6 with all unbundled rates shall be posted at the same time as  
 7 the posting of unbundled rates. The unbundled rates, charges,  
 8 terms, and conditions of service of each consumer-owned  
 9 utility shall be established by its local governing body, be  
 10 nondiscriminatory, comply with section 476B.9, subsection 6,  
 11 and become effective when the first end-use consumer within  
 12 the assigned service area of the consumer-owned utility has  
 13 the option to choose competitive services.

14 3. CONTROL AREA OPERATORS.

15 a. A control area operator that is an electric company  
 16 shall file control area service rates, charges, terms, and  
 17 conditions applicable to distribution service with the board  
 18 by October 1, 1999. The filing shall also include the  
 19 processes proposed to be used by the control area operator for  
 20 scheduling and system control related to distribution service,  
 21 load profiling, and financial settlement, if applicable. The  
 22 filing shall be subject to review and approval by the board  
 23 pursuant to section 476B.9, subsection 7. Control area  
 24 service rates, charges, terms, conditions, and processes  
 25 approved by the board shall be posted on the board's website  
 26 for informational purposes by no later than November 1, 2001,  
 27 and shall become effective May 1, 2002.

28 b. A control area operator that is a consumer-owned  
 29 utility shall post on the board's website control area service  
 30 rates, charges, terms, and conditions applicable to  
 31 distribution service and the processes for load profiling and  
 32 financial settlement to be used by the control area operator.  
 33 The rates, charges, terms, conditions, and processes shall be  
 34 nondiscriminatory, comply with section 476B.9, subsection 6,  
 35 be regulated by the consumer-owned utility's local governing

1 body unless subject to the exclusive jurisdiction of the  
2 federal energy regulatory commission or the exclusive  
3 jurisdiction of another federal agency or, for consumer-owned  
4 utilities, subject to section 211 of the federal Power Act, be  
5 posted on the board's website for informational purposes by no  
6 later than January 1, 2002, and become effective when the  
7 first Iowa end-use consumer in the control area has the option  
8 to choose competitive electric services.

9 4. INFORMATIONAL POSTING OF TRANSMISSION TARIFFS. On or  
10 before November 1, 2001, each delivery service provider that  
11 provides transmission service and each control area operator  
12 shall post on the board's website, for informational purposes  
13 only, all tariffs for transmission service and ancillary  
14 services applicable to competitive electric service provider  
15 and end-use consumer transactions that have been accepted by  
16 the federal energy regulatory commission or another federal  
17 agency with jurisdiction. The posting on the board's website  
18 shall be updated at the time the delivery service provider  
19 updates its comparable posting on the federal website.

20 Sec. 5. NEW SECTION. 476B.5 CONSUMER EDUCATION.

21 1. OBJECTIVE. Educated consumers and the availability of  
22 information sufficient to allow consumers to evaluate the  
23 prices, terms, and conditions of service offered are essential  
24 to an efficient competitive marketplace. It is the intent of  
25 this section to establish a consumer education program that  
26 explains changes in the retail electric market and provides  
27 information necessary to help consumers make appropriate  
28 choices regarding their electric service, to understand their  
29 rights and responsibilities as consumers, including rights  
30 under the federal Telemarketing and Consumer Fraud and Abuse  
31 Prevention Act, and to understand the legal obligations of the  
32 competitive electric service providers and delivery service  
33 providers. A collaborative process shall be used to develop a  
34 consumer education program to assist consumers in  
35 understanding their rights and opportunities. The board shall

1 determine the date for commencement of the education program  
2 approved by the board.

3 2. COLLABORATIVE PROCESS. Within ninety days after the  
4 effective date of this chapter, the board shall convene an  
5 initial meeting of persons interested in participating in the  
6 development of a consumer education program. Additional  
7 meetings shall be scheduled by the board as necessary.  
8 Interested persons shall be provided an opportunity for input,  
9 consistent with the objective of commencing the consumer  
10 education program on a date determined by the board.

11 3. STANDARDS. A consumer education program shall be  
12 developed in a two-step process, including message development  
13 and message dissemination. Message development shall be  
14 designed to educate consumers about all of the following:

- 15 a. The existing market and the process for purchasing  
16 competitive and regulated electric services in a competitive  
17 market.
- 18 b. Consumers' rights and responsibilities in a competitive  
19 electric market.
- 20 c. The rights and responsibilities of competitive electric  
21 service providers, aggregators, and delivery service  
22 providers.
- 23 d. The role of the board and the office of consumer  
24 advocate.

25 The messages shall focus upon the educational and  
26 informational needs of nonresidential consumers using fewer  
27 than one hundred thousand kilowatt-hours annually and  
28 residential consumers including rural consumers. The content  
29 and dissemination of the messages shall be as competitively  
30 neutral as practicable.

31 The board shall specify the methods of message  
32 dissemination for electric companies. The method of message  
33 dissemination for consumer-owned utilities shall be determined  
34 by each local governing body with due consideration of the  
35 recommendations of the board. However, the board shall

1 specify the minimum number of times that consumer-owned  
2 utilities must disseminate the messages. The board shall  
3 develop the messages and, for electric companies, the method  
4 of message dissemination, giving due consideration to the  
5 comments and suggestions received through the collaborative  
6 process.

7 4. MAXIMUM COST. The total cost of message development  
8 and dissemination shall not exceed six million dollars.

9 5. FUNDING. The costs of message development and  
10 dissemination shall be funded through nonbypassable charges on  
11 the bills issued for bundled electric service, with collection  
12 to be completed by May 1, 2002. The costs of message  
13 development shall be apportioned among the incumbent providers  
14 in proportion to the number of kilowatt-hours used within an  
15 incumbent provider's assigned service area in 1998 to the  
16 total number of kilowatt-hours used in 1998 in all assigned  
17 service areas. Ninety percent of the costs of message  
18 dissemination shall be allocated to incumbent providers that  
19 are electric companies and shall be apportioned among electric  
20 companies in proportion to the number of kilowatt-hours used  
21 within the electric company's assigned service area in 1998 to  
22 the total number of kilowatt-hours used in 1998 in the  
23 assigned service areas of all electric companies. The  
24 remaining ten percent of the costs of message dissemination,  
25 not to exceed six hundred thousand dollars, shall be allocated  
26 to consumer-owned incumbent providers and shall be apportioned  
27 among them in proportion to the number of kilowatt-hours used  
28 in 1998 within the assigned service area of each to the total  
29 number of kilowatt-hours used in 1998 in the assigned service  
30 areas of all consumer-owned incumbent providers.

31 The board shall determine the date for commencement of  
32 collection of the nonbypassable charge and shall specify for  
33 electric companies by December 31, 1999, the method of  
34 allocating the costs among rates, which method may differ from  
35 the method used for apportioning costs among consumer-owned

1 incumbent providers. Moneys collected from the nonbypassable  
2 charges shall be forwarded to the board quarterly. A  
3 consumer-owned utility may collect its share of message  
4 development costs and the costs of its own message  
5 dissemination program through a nonbypassable delivery charge.

6 6. OTHER COMMUNICATIONS. Nothing in this section shall  
7 prohibit a person from communicating to an end-use consumer in  
8 an accurate and truthful manner regarding the competitive  
9 electric market and regulated electric services through a  
10 means other than the consumer education program developed  
11 under this section. In addition, the board may continue to  
12 provide information and education following the conclusion of  
13 the consumer education program, but shall not continue the  
14 nonbypassable charge established for that purpose.

15 Sec. 6. NEW SECTION. 476B.6 CONSUMER PROTECTIONS --  
16 RIGHTS AND RESPONSIBILITIES OF CONSUMERS.

17 1. LICENSE REQUIRED.

18 a. Except as provided in this section, a person shall not  
19 provide or offer to provide competitive electric services to  
20 an end-use consumer, or aggregate end-use consumers for the  
21 acquisition of competitive electric services without first  
22 obtaining a license from the board. This section does not  
23 prohibit a person from communicating to an end-use consumer in  
24 an accurate and truthful manner regarding the emerging  
25 competitive electric market in this state and the person's  
26 planned role in that market. In addition to the licensing  
27 requirements in this section, the board may adopt, by rule,  
28 additional licensing requirements consistent with this section  
29 that are required to protect the public from fraud and unfair,  
30 deceptive, or other abusive business sales practices, to  
31 provide for reasonable disclosure of service terms and  
32 conditions and consumer rights and responsibilities, and to  
33 protect the integrity of the delivery system. However, the  
34 disclosure of fuel sources to an end-use consumer or the board  
35 shall only be required if necessary to support advertising

1 claims. The board may adopt, by rule, additional licensing  
2 requirements regarding adequate notice to end-use consumers  
3 prior to automatic contract renewal. The board may establish  
4 reasonable conditions or restrictions on a license. Unless  
5 otherwise expressly provided by this chapter, the licensing  
6 rules adopted by the board shall not discriminate in favor of  
7 or against incumbent providers or their affiliates. The  
8 initial licensing rules shall be proposed by the board no  
9 later than October 1, 1999.

10 b. The board may reject a request for a license if the  
11 request does not contain sufficient information for the board  
12 to evaluate the request, but must reject such a request within  
13 thirty days of the request's filing. The board shall fully  
14 describe in writing any deficiencies in a license request that  
15 is rejected.

16 c. The board shall rule upon a request for a license that  
17 is not found to be deficient within one hundred twenty days of  
18 the filing of the request with the board. However, the board  
19 may process a request for a license, but shall not make a  
20 license effective until one hundred eighty days after the  
21 adoption of the initial rules under paragraph "a".

22 d. The board shall maintain a current list of all licensed  
23 providers of competitive electric services. The board shall  
24 make such a list available to a person upon request and shall  
25 post the list on its website.

26 e. A license shall not be required for an incumbent  
27 provider that is a consumer-owned utility who chooses to  
28 provide competitive electric services only within its assigned  
29 service area, either through the incumbent provider or its  
30 affiliate.

31 f. The board may charge reasonable fees for licensing  
32 requests and for administering licenses.

33 2. LICENSE REQUIREMENTS FOR COMPETITIVE ELECTRIC SERVICE  
34 PROVIDERS OTHER THAN AGGREGATORS. In addition to other  
35 requirements that the board may adopt under subsection 1, a

1 competitive electric service provider, except one acting only  
2 as an aggregator, shall file with the board as a condition of  
3 obtaining a license under this section all of the following:

4 a. The legal name and all trade names under which the  
5 licensee will operate, a description of the business structure  
6 of the licensee, evidence of authorization to do business in  
7 the state if required, and, if applicable, the state of  
8 organization.

9 b. The names, business addresses, and business telephone  
10 numbers of the principal officers of the licensee, the name  
11 and business address of the agent for the licensee who can be  
12 contacted regarding its operations in this state, and a  
13 telephone number at which the agent can be contacted twenty-  
14 four hours a day.

15 c. Identification of any affiliates that are licensees  
16 under this section and a listing of the names and addresses of  
17 all affiliates of the competitive electric service provider  
18 engaged in the provision of competitive electric services in  
19 any other state.

20 d. Identification of any state in which the licensee or an  
21 affiliate has had a comparable license suspended, revoked, or  
22 denied, including identification of the title and number of  
23 any applicable proceedings and a copy of any final orders in  
24 such proceedings or the citation to the website where the text  
25 of the orders can be found.

26 e. A listing of all pending and completed legal actions  
27 and formal complaints pertaining to the provision of retail or  
28 wholesale electric service in the United States that have been  
29 filed against the licensee or its affiliates with a public  
30 utility regulatory body other than the board in the twelve  
31 months prior to the date of the request for a license,  
32 including identification of the title and number of any  
33 applicable proceedings and a copy of any final orders in such  
34 proceedings or the citation to the website where the text of  
35 the orders can be found.

1 f. Unless the licensee is an incumbent provider or a  
2 consumer-owned utility with delivery service property in this  
3 state on the effective date of this chapter, or a municipal  
4 electric cooperative association established prior to the  
5 effective date of this chapter, a demonstration that the  
6 licensee has the operational and financial capability to  
7 obtain and deliver the services it proposes to offer.

8 g. A commitment to provide the board, upon the board's  
9 request, with evidence supporting the basis of any advertising  
10 claims made regarding fuel sources.

11 h. A commitment to disclose to each prospective end-use  
12 consumer prior to the initiation of service those terms and  
13 conditions of service and those rights and responsibilities of  
14 the end-use consumer associated with the offered service that  
15 are required to be disclosed by rules adopted by the board  
16 pursuant to subsection 1 and section 476B.8, subsection 3.

17 i. A bond or other demonstration of the financial  
18 capability to satisfy claims and expenses that can reasonably  
19 be anticipated to occur as part of operations under its  
20 license, including the failure to honor contractual  
21 commitments. The adequacy of the bond or demonstration shall  
22 be determined by the board and reviewed by the board from time  
23 to time. In determining the adequacy of the bond or  
24 demonstration, the board shall consider the extent of the  
25 services to be offered, the size of the licensee, and the size  
26 of the load to be served, with the objective of ensuring that  
27 the board's financial requirements do not unreasonably erect  
28 barriers to market entry. In no event shall the board require  
29 a bond or other demonstration of financial capability in  
30 excess of ten million dollars. A person not subject to  
31 paragraph "f" is deemed by the board to have fulfilled the  
32 requirements of this paragraph.

33 j. A commitment that, commencing with calendar year 2006,  
34 an annual calendar year average of at least two percent of the  
35 capacity, in megawatts, available for purchase by end-use

1 consumers as a competitive power supply service will represent  
2 the licensee's ownership of, or contracts for the purchase of,  
3 capacity from alternative energy facilities, provided that the  
4 board may waive this requirement to the extent that it  
5 determines that compliance with the requirement is not  
6 practicable or that the requirement constitutes a significant  
7 impediment to the development of competitive electric  
8 services, or to the extent that a consumer-owned utility can  
9 demonstrate that a statute or a contract in effect as of  
10 January 1, 1999, precludes compliance. For purposes of  
11 meeting this requirement, the capacity available for purchase  
12 from alternative energy facilities shall be calculated by  
13 multiplying an alternative energy facility's nameplate  
14 capacity in megawatts or kilowatts by the fraction of fuel  
15 input derived from geothermal, landfill gas, refuse-derived  
16 fuel, agricultural crops or residues, or wood. If the  
17 facility was not designed as an alternative energy facility,  
18 the facility's rated capacity for purposes of reliability in  
19 the applicable reliability region or council, or its  
20 successor, shall be used in lieu of the nameplate capacity in  
21 determining the megawatts available for purchase from  
22 alternative energy facilities. In the case of a solar, wind,  
23 or hydroelectric alternative energy facility, the megawatts  
24 available for purchase shall be deemed to be equal to the  
25 nameplate capacity or contract amount. If the board finds  
26 that any costs of a contract for alternative energy during an  
27 annual calendar year are being recovered through the charges  
28 provided in section 476B.15, subsection 3, the alternative  
29 energy in that contract shall not be used to satisfy the  
30 requirement of this paragraph for that year. A licensee may  
31 credit against the capacity requirement of this paragraph one  
32 hundred fifty percent of the nameplate capacity of any  
33 alternative energy facility located in this state that is no  
34 larger than five hundred kilowatts in nameplate capacity to  
35 the extent that the licensee agrees to allow net billing. For

1 purposes of this paragraph, "net billing" means that an end-  
2 use consumer's electric service and the generation from its  
3 alternative energy facility are both measured by a single  
4 meter, and the end-use consumer only pays for service net of  
5 its own generation.

6 k. A commitment not to terminate the provision of  
7 competitive electric service, or to request a delivery service  
8 provider to disconnect electric service, to an end-use  
9 consumer without providing at least twelve calendar days'  
10 prior notice to the end-use consumer, unless the contract  
11 between a nonresidential end-use consumer and the licensee  
12 provides otherwise.

13 l. A commitment to comply with the applicable rules of the  
14 board and this chapter, and to recognize an end-use consumer's  
15 rights including the right to voluntarily aggregate under  
16 subsection 4, paragraph "e".

17 m. A commitment to comply with all applicable federal,  
18 state, and regional rules and procedures, including those for  
19 the use, operation, and maintenance of the electric delivery  
20 system including control area operations. This shall include  
21 a commitment by the proposed licensee to accept, to the extent  
22 required by the applicable authority, the responsibility to  
23 report the loads of the end-use consumers served by the  
24 proposed licensee to the North American electric reliability  
25 council or its successor, or a person performing similar  
26 functions.

27 n. A commitment that competitive electric services, when  
28 offered to residential end-use consumers, will be provided for  
29 a minimum of thirty days.

30 o. A commitment to advise each end-use consumer of the  
31 right to rescind the selection of a competitive electric  
32 service offered by the licensee within three business days of  
33 selection, in accordance with rules adopted pursuant to  
34 subsection 4, paragraph "o".

35 p. A commitment not to transfer to another person the

1 competitive electric service account of any end-use consumer  
 2 except with the consent of the end-use consumer or in  
 3 accordance with any applicable statute. This chapter does not  
 4 preclude a competitive electric service provider from  
 5 transferring all or a portion of its end-use consumers and  
 6 competitive electric service accounts pursuant to a sale or  
 7 transfer of all or a substantial portion of a competitive  
 8 electric service provider's competitive electric service  
 9 business in this state, provided that the transfer satisfies  
 10 all of the following conditions:

11 (1) The transferee will serve the affected end-use  
 12 consumers through a licensed competitive electric service  
 13 provider.

14 (2) The transferee will honor the transferor's contracts  
 15 with affected end-use consumers.

16 (3) The transferor provides written notice of the transfer  
 17 to each affected end-use consumer prior to the transfer.

18 (4) An affected residential end-use consumer is given  
 19 thirty days to change to a competing competitive electric  
 20 service provider without penalty.

21 q. A commitment not to charge or attempt to collect any  
 22 charges from end-use consumers for any competitive electric  
 23 service or electric equipment not contracted for or otherwise  
 24 agreed to by the end-use consumer.

25 r. A commitment that the licensee will have the facilities  
 26 and the personnel to contact the delivery service provider in  
 27 a timely fashion, as provided by rules adopted by the board,  
 28 upon receipt of information from an end-use consumer of the  
 29 existence of an emergency situation with respect to delivery  
 30 service. The initial rules shall be proposed by October 1,  
 31 1999.

32 s. A commitment that if the licensee ceases to comply with  
 33 contractual commitments to end-use consumers, fails to  
 34 schedule energy with the control area operator for two  
 35 consecutive twenty-four-hour periods, fails to deliver energy

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1 scheduled with or committed to a control area operator for two  
2 consecutive twenty-four-hour periods, ceases operation under  
3 its license, or otherwise substantially defaults on its  
4 obligations under its license, within eight hours of such  
5 occurrence, the licensee shall do both of the following:

6 (1) Provide the board with the names and addresses of all  
7 end-use consumers of the licensee.

8 (2) If any of the end-use consumers of the licensee are  
9 located in the assigned service area of a delivery service  
10 provider that is a consumer-owned utility, the licensee shall  
11 provide that delivery service provider with the names and  
12 addresses of such consumers.

13 t. A commitment to include on bills rendered to  
14 residential end-use consumers all of the following:

15 (1) The period of time for which the billing is  
16 applicable.

17 (2) The amount owed for current service, including an  
18 itemization of all charges.

19 (3) Any past due amount owed.

20 (4) The last date for timely payment.

21 (5) The amount of penalty for any late payment.

22 (6) The location for or method of remitting payment.

23 (7) A toll-free telephone number for the end-use consumer  
24 to contact for information and to make complaints regarding  
25 the licensee.

26 (8) A toll-free telephone number for the end-use consumer  
27 to contact the licensee in the event of an emergency.

28 (9) A toll-free telephone number for the end-use consumer  
29 to notify the delivery service provider of an emergency  
30 regarding delivery service.

31 (10) If the bill is to an end-use consumer in the assigned  
32 service area of a delivery service provider that is an  
33 electric company, information regarding regulated rates,  
34 charges, refunds, and services as provided in rules adopted by  
35 the board as being required by the public interest. The

1 initial rules shall be by October 1, 1999.

2 u. A commitment to notify the board during the pendency of  
3 the license request and after the issuance of the license of  
4 any substantial change in the representations and commitments  
5 required by this subsection within fourteen days of such  
6 change.

7 v. A commitment to annually submit to the board such  
8 information as the board reasonably determines by rule is  
9 necessary to monitor the development of competitive electric  
10 services in this state and the licensee's compliance with this  
11 chapter. Information submitted pursuant to this paragraph  
12 shall be kept confidential and shall not be available for  
13 public examination. The initial rules shall be by October 1,  
14 1999.

15 3. LICENSE REQUIREMENTS FOR AGGREGATORS. In addition to  
16 other requirements that the board may adopt under subsection  
17 1, each competitive electric service provider that acts only  
18 as an aggregator shall file with the board the information  
19 specified in subsection 2, paragraphs "a", "b", "c", "d", "e",  
20 "g", "h", "k", "l", "n", "o", "p", "u", and "v". If the  
21 aggregator will be issuing bills to end-use consumers, then it  
22 shall also file the information required in subsection 2,  
23 paragraphs "q", "r", and "t".

24 4. RIGHTS OF CONSUMERS.

25 a. An end-use consumer shall have access to competitive  
26 electric services and regulated delivery services in  
27 accordance with this chapter.

28 b. The electric grid shall be extended to every end-use  
29 consumer in accordance with section 476B.9 and such applicable  
30 rules as are adopted by the board, or, for a consumer-owned  
31 utility, policies adopted by the local governing body.

32 c. An end-use consumer shall have nondiscriminatory access  
33 to use the electric grid in accordance with this chapter.

34 d. An end-use consumer shall not be refused competitive  
35 electric services, regulated delivery services, standard offer

1 service, transitional service, basic energy service, or  
2 universal service on the basis of age, race, religion,  
3 national origin, gender, or disability within the meaning of  
4 the federal Americans with Disabilities Act.

5 e. An end-use consumer shall have the right to voluntarily  
6 aggregate with other end-use consumers for the purpose of  
7 seeking competitive electric services. Aggregation shall not  
8 be restricted by any rule or regulation except those  
9 determined necessary by the board to maintain the safety or  
10 reliability of the delivery system or to prevent fraud or  
11 unfair advantage. An end-use consumer shall not be forced to  
12 aggregate with any group of end-use consumers or other persons  
13 without the end-use consumer's express consent.

14 f. An end-use consumer that has the option to choose  
15 competitive electric services under this chapter may negotiate  
16 a bilateral contract for these services.

17 g. An end-use consumer or an account of an end-use  
18 consumer shall not be transferred by a competitive electric  
19 service provider to another person except as provided in  
20 subsection 2, paragraph "p".

21 h. An end-use consumer located in the assigned service  
22 area of an incumbent provider that is an electric company  
23 shall have the right not to choose another competitive  
24 electric service provider and automatically receive service  
25 under section 476B.8, subsection 1 or 2, as applicable, from  
26 their incumbent provider without further action by the end-use  
27 consumer.

28 i. An end-use consumer located in the assigned service  
29 area of an incumbent provider that is a consumer-owned utility  
30 shall have the right not to choose another competitive  
31 electric service provider and automatically receive service  
32 from the consumer-owned utility under section 476B.8,  
33 subsection 4, without further action by the end-use consumer.

34 j. A residential end-use consumer who is located in the  
35 assigned service area of an electric company and who either

1 has made a good faith effort to obtain a competitive electric  
 2 service provider, but has not been able to do so, or qualifies  
 3 for assistance under section 476B.13, subsection 1, shall have  
 4 the option to receive electric services pursuant to section  
 5 476B.8, subsection 3, and the rules adopted pursuant to that  
 6 subsection. An end-use consumer who is located in the  
 7 assigned service area of a consumer-owned utility and who is  
 8 without a competitive electric service provider shall have the  
 9 option to receive electric services pursuant to section  
 10 476B.8, subsection 4.

11 k. Except as otherwise provided in this chapter, on or  
 12 after May 1, 2002, information regarding the electric usage  
 13 history or electric account credit history of an individual  
 14 end-use consumer in the possession of an electric company,  
 15 consumer-owned utility, delivery service provider, control  
 16 area operator, competitive electric service provider, or  
 17 aggregator shall not be provided to any other electric  
 18 company, consumer-owned utility, delivery service provider,  
 19 control area operator, competitive electric service provider,  
 20 or aggregator except pursuant to an order of the board or a  
 21 court having jurisdiction, pursuant to a final determination  
 22 of an appropriate governmental entity with authority to compel  
 23 disclosure of such information, with the consent of the end-  
 24 use consumer, or pursuant to a proposed sale or transfer of  
 25 all or a substantial portion of the electric business in this  
 26 state of the person disclosing the information.

27 1. An end-use consumer shall be entitled to request from  
 28 its incumbent provider or competitive electric service  
 29 provider the most recent twenty-four months of the consumer's  
 30 historical usage information, if reasonably available, from  
 31 its account. The requested information shall be provided to  
 32 the end-use consumer without charge one time per calendar  
 33 year. If requested more than once per calendar year, the end-  
 34 use consumer may be charged the reasonable cost incurred by  
 35 the incumbent provider or competitive electric service

1 provider in providing the information.

2 m. The board may adopt rules regarding physical  
3 disconnection procedures. Only a delivery service provider  
4 with an assigned service area shall physically disconnect end-  
5 use consumers located within its assigned service area. Rules  
6 adopted, at a minimum, shall provide that disconnection is  
7 warranted by any of the following:

8 (1) Failure to pay charges for delivery service including  
9 nonbypassable charges.

10 (2) Failure of an end-use consumer that does not qualify  
11 for service under section 476B.8 to designate one or more  
12 competitive electric service providers to provide competitive  
13 power supply services, and, where applicable, electric  
14 metering, or electric billing services.

15 (3) Failure to pay for standard offer service,  
16 transitional service, basic energy service, or universal  
17 service.

18 The initial rules shall be proposed by June 1, 2001.

19 n. An end-use consumer shall have the right to install  
20 metering in accordance with section 476B.11.

21 o. An end-use consumer shall have three business days  
22 after the selection of a competitive electric service provider  
23 or a competitive electric service, but prior to the initiation  
24 of the service, within which to rescind the selection. The  
25 board shall propose rules by June 1, 2001, applicable to  
26 competitive electric service providers regarding the manner,  
27 method, and content of the notice to be provided to end-use  
28 consumers regarding this right.

29 p. Provisions addressing consumer fraud, including  
30 misrepresentations regarding service and terms of service,  
31 contained in section 714.16, subsection 2, paragraph "a", and  
32 all accompanying provisions of chapter 714 shall apply to  
33 competitive electric service providers.

34 q. A residential end-use consumer that is certified as a  
35 low-income consumer shall have the opportunity to receive

1 assistance for bill payment and energy efficiency programs as  
2 provided in section 476B.13, subsection 1, and is eligible to  
3 request electric service under section 476B.8, subsection 3 or  
4 4, as applicable.

5 r. The board shall establish rules of uniform  
6 applicability to all competitive electric service providers  
7 that it determines to be required to protect the public  
8 interest regarding credit practices, consumer deposit  
9 practices, collection practices, service termination  
10 practices, billing practices, accuracy of information, public  
11 safety, electric service reliability, and quality of electric  
12 service. The initial rules shall be proposed by June 1, 2001.

13 Sec. 7. NEW SECTION. 476B.7 AVAILABILITY OF CHOICE.

14 1. Beginning on May 1, 2002, an end-use consumer located  
15 in the assigned service area of a delivery service provider  
16 that is an electric company shall have the option to choose  
17 competitive electric services from competitive electric  
18 service providers and unbundled delivery services from a  
19 delivery service provider. An end-use consumer located in the  
20 assigned service area of a delivery service provider that is a  
21 consumer-owned utility shall have the option to choose  
22 competitive electric services from competitive electric  
23 service providers and unbundled delivery services from the  
24 delivery service provider on a date to be determined by the  
25 consumer-owned utility's local governing body, but in no event  
26 prior to May 1, 2002, or after October 1, 2002. The board  
27 shall adopt rules regarding the procedures to be used by  
28 delivery service providers, competitive electric service  
29 providers, and end-use consumers for those end-use consumers  
30 exercising their option to choose competitive electric  
31 services, including the amount of notice that must be provided  
32 to the delivery service provider prior to switching from  
33 bundled electric service to unbundled delivery service. The  
34 initial rules shall be proposed by October 1, 2000.

35 2. After January 1, 1999, the board shall not initiate or

1 order an increase or a reduction in any of the bundled  
2 electric rates or standard offer service rates of an electric  
3 company except as provided in section 476B.8.

4 3. A consumer-owned utility pursuant to a decision by its  
5 local governing body may implement a retail access pilot  
6 project at any time prior to the time end-use consumers within  
7 the assigned service area have the option to choose  
8 competitive electric services. Such pilot projects shall be  
9 terminated at the time end-use consumers within the consumer-  
10 owned utility's assigned service area have the option to  
11 choose competitive electric services. An incumbent provider  
12 that is an electric company may propose a retail access pilot  
13 project to the board.

14 4. The board may order the suspension of the dates for  
15 commencement of the option to choose competitive electric  
16 services specified in subsection 1 if the board determines  
17 that essential deadlines cannot reasonably be met or there is  
18 a threat to service reliability or the public safety. The  
19 suspension may apply to all end-use consumers or some portion  
20 of such consumers. The suspension shall continue until the  
21 board determines the concern has been resolved or until the  
22 conclusion of the next regular session of the Iowa general  
23 assembly following the suspension, whichever occurs first.

24 5. If nationally recognized bond counsel determines that  
25 access to a municipal utility's delivery system by a  
26 competitive electric service provider, or provision of  
27 competitive electric services by the municipal utility, will  
28 result in the loss of exemption from federal income taxation  
29 for interest on debt incurred for electric facilities prior to  
30 the effective date of this chapter, the governing body of the  
31 municipal utility may defer the commencement of the option to  
32 choose competitive electric service in its assigned service  
33 area for a period of up to six months following the date on  
34 which the debt is eligible to be currently refunded. The  
35 reasonable costs of replacing tax-exempt bonds with taxable

1 bonds may be collected as a nonbypassable charge. This  
 2 subsection shall not be used to unreasonably impair the  
 3 ability of consumers to choose competitive electric services.  
 4 6. The board may adopt rules for evaluating whether other  
 5 regulated electric services of electric companies subject to  
 6 the jurisdiction of the board should become competitive  
 7 services, in addition to the competitive electric services  
 8 specified in this chapter. For the purpose of this  
 9 subsection, the board's authority shall not include  
 10 distribution service except the control area services subject  
 11 to its jurisdiction. The initial rules shall be proposed by  
 12 June 1, 2001. Upon a board determination that a service  
 13 provided by an electric company is subject to effective  
 14 competition, the board shall deregulate the price of the  
 15 service. Service regulation, but not rate regulation, shall  
 16 continue if the service is deemed essential and the public  
 17 interest requires retention of service regulation.

18 Sec. 8. NEW SECTION. 476B.8 PRICE PROTECTIONS FOR  
 19 CERTAIN CONSUMERS.

20 1. STANDARD OFFER SERVICE.

21 a. (1) A nonresidential end-use consumer that purchased  
 22 fewer than twenty-five thousand kilowatt-hours of electric  
 23 service in 2001 and in each calendar year after 2001 and a  
 24 residential end-use consumer located within the assigned  
 25 service area of an incumbent provider that is an electric  
 26 company shall be provided electric service by the incumbent  
 27 provider under this subsection commencing May 1, 2002. This  
 28 service shall be provided by the incumbent provider's  
 29 competitive electric service provider or its delivery service  
 30 provider, at its option, and shall be a regulated service.  
 31 This service shall continue until the earlier of any of the  
 32 following:

- 33 (a) The end-use consumer selects an electric service
- 34 offering other than the one provided in this subsection.
- 35 (b) The end-use consumer no longer qualifies to receive

1 service under the terms and conditions of this paragraph "a"  
2 or the applicable standard offer service tariff or board  
3 rules.

4 (c) January 1, 2006.

5 (2) Termination of standard offer service on January 1,  
6 2006, is conditioned upon the board finding, after a contested  
7 case proceeding concluding not later than October 1, 2005,  
8 that as of January 1, 2006, all of the following conditions  
9 will exist:

10 (a) Transition cost recovery under section 476B.15,  
11 subsection 1, will have concluded.

12 (b) The delivery service provider substantially complies  
13 with all applicable board rules governing the administration  
14 of open access and comparable distribution service adopted  
15 pursuant to section 476B.9, subsection 2.

16 (c) The delivery service provider has in place an  
17 enforceable dispute resolution process.

18 (d) Transaction costs assessed by the delivery service  
19 provider to end-use consumers exercising their option to  
20 choose competitive electric services are reasonable.

21 (e) Competitive electric services purchased by end-use  
22 consumers eligible for standard offer service are subject to  
23 effective competition in the relevant markets.

24 (3) In determining whether a service is or becomes subject  
25 to effective competition in the relevant markets, the board,  
26 in addition to other factors, shall consider whether a  
27 comparable service is available from a competitive electric  
28 service provider other than the incumbent provider and whether  
29 market forces are sufficient to assure competitively priced  
30 services without regulation. If the board finds that any of  
31 the conditions under subparagraph (2) have not been met,  
32 standard offer service shall continue until a showing is made  
33 by the incumbent provider and the board determines all  
34 conditions are met. An end-use consumer has no right to  
35 return to standard offer service after any of the conditions

1 identified under subparagraph (1) occur, except that an end-  
2 use consumer having selected an electric service offering  
3 other than standard offer service may return to standard offer  
4 service if all of the following apply:

5 (a) No more than ninety days have passed since the  
6 consumer left standard offer service.

7 (b) The consumer has not previously left and returned to  
8 standard offer service.

9 (c) The consumer is otherwise still qualified to receive  
10 standard offer service.

11 The ninety-day period in subparagraph subdivision (a) shall  
12 not extend the termination date of standard offer service.

13 b. At the time an incumbent provider that is an electric  
14 company files its initial unbundled rates with the board  
15 pursuant to section 476B.4, it shall also file its initial  
16 standard offer service tariffs under this subsection, which  
17 shall be subject to review and approval by the board. The  
18 initial standard offer service tariffs shall reflect the  
19 electric rates, charges, terms, and conditions of the tariffs  
20 applicable to nonresidential end-use consumers using fewer  
21 than twenty-five thousand kilowatt-hours per year and the  
22 tariffs applicable to residential end-use consumers, as those  
23 tariffs existed in the rate zones of the incumbent provider's  
24 assigned service area on the effective date of this chapter,  
25 adjusted to avoid duplicate recovery of costs to be recovered  
26 under section 476B.15, subsection 3, costs to be recovered  
27 under section 476B.16, and the portion of uncollectible costs  
28 projected to be offset by the programs established under  
29 section 476B.13, subsection 1. However, the board may approve  
30 modifications to the terms and conditions of such tariffs  
31 existing on the effective date of this chapter to the extent  
32 just, reasonable, and nondiscriminatory. An electric company,  
33 to the extent it has not already done so, shall eliminate  
34 automatic adjustment mechanisms in effect pursuant to section  
35 476.6, subsection 11, that are applicable to standard offer

1 service rates. Elimination shall be accomplished by adjusting  
2 the initial standard offer service rates to include a  
3 representative amount of the costs which would have been  
4 recovered through the mechanisms. If an electric company's  
5 nuclear generating unit is unavailable for reasons beyond the  
6 electric company's reasonable control, the electric company  
7 may file with the board an adjustment reflecting changes in  
8 exogenous factors beyond the control of the electric company.  
9 The board shall allow the adjustment to become effective  
10 immediately. The board shall review the adjustment within  
11 thirty days after the date the adjustment is effective, and  
12 order refunds of the revenues resulting from the adjustment if  
13 the board determines after its review that the nuclear  
14 generating unit's unavailability was reasonably within the  
15 control of the electric company. The effective date of the  
16 automatic adjustment mechanism elimination for standard offer  
17 service rates shall be May 1, 2002. An electric company may  
18 retain automatic adjustment mechanisms to the extent the  
19 mechanisms apply to transitional service under subsection 2.  
20 c. After January 1, 1999, the board shall not initiate or  
21 order an increase or a reduction in any of the bundled  
22 electric rates of an electric company or in the standard offer  
23 service rates established pursuant to this section except as  
24 provided in this subsection. However, an incumbent provider  
25 that is an electric company may reduce its bundled electric  
26 rates or standard offer service rates at any time, so long as  
27 such reduction is effected in a nondiscriminatory manner, the  
28 reduction is filed with the board thirty days prior to the  
29 proposed effective date of the reduction, and the reduced  
30 rates are posted on the board's website. The board may hold a  
31 hearing on the reduction prior to the proposed effective date  
32 and may suspend the effective date for up to an additional  
33 sixty days. The board shall approve the reduction unless it  
34 determines that it is unreasonably discriminatory or would  
35 constitute predatory pricing as defined by applicable

1 antitrust law. A board finding of predatory pricing under  
2 this paragraph shall be given no weight in any subsequent  
3 legal action, except with respect to judicial review of the  
4 board's ruling brought pursuant to section 476B.22.

5 d. Commencing January 1, 2003, an incumbent provider that  
6 is an electric company may increase its standard offer service  
7 rates to reflect increases in its unbundled distribution  
8 service rates approved by the board under section 476B.9,  
9 subsection 5. An incumbent provider that is an electric  
10 company may also increase its standard offer service rates  
11 after January 1, 2003, to reflect increases in applicable  
12 transmission service rates approved by a federal or state  
13 agency with rate jurisdiction. Standard offer service rates  
14 incorporating an increase permitted by this paragraph shall be  
15 filed with the board thirty days prior to becoming effective.  
16 The increased standard offer service rates shall become  
17 effective at the conclusion of the thirty-day period unless  
18 the board determines that the incumbent provider has increased  
19 standard offer service rates by an amount greater than the  
20 increase in unbundled distribution service rates or  
21 transmission service rates, in which case the board may  
22 suspend the effective date for up to an additional sixty days.  
23 If the board suspends a filing made pursuant to this  
24 paragraph, the board shall provide the incumbent provider with  
25 an opportunity for hearing.

26 e. On or before January 1, 2003, an incumbent provider  
27 that is an electric company may file with the board a  
28 mechanism to increase or decrease standard offer service rates  
29 by adjusting the generation components of the rates to or  
30 toward the market price of generation that an affected end-use  
31 consumer should reasonably be expected to pay after the  
32 termination of standard offer service. The mechanism shall be  
33 approved by the board if it finds, after hearing, that it is  
34 in the public interest and is as revenue neutral to the  
35 incumbent provider as practicable. In determining the public

1 interest of the mechanism, the board, in addition to other  
2 factors, shall consider whether the approval of the mechanism  
3 would contribute to the development of effective competition  
4 in the relevant markets. A mechanism approved under this  
5 paragraph shall not become effective before January 1, 2004.  
6 The board shall determine the market price that the affected  
7 end-use consumer would reasonably be expected to pay in the  
8 relevant competitive market. An incumbent provider's filing  
9 under this paragraph is subject to section 476B.9, subsection  
10 5.

11 f. If the board does not allow the termination of standard  
12 offer service in a relevant market on or before January 1,  
13 2006, pursuant to paragraph "a", the incumbent provider shall  
14 be required to acquire competitive power supply services in  
15 the market for this service. The price of standard offer  
16 service shall be adjusted to reflect the cost of acquiring  
17 that supply. The board shall adopt rules to assure  
18 competitive pricing under this paragraph.

19 g. At any time, an incumbent provider that is an electric  
20 company may file with the board a request to recalculate the  
21 generation component of its bundled electric rates or standard  
22 offer service rates to reflect changes in revenues, expenses,  
23 and investments due to exogenous factors beyond the control of  
24 the electric company. Such filing is subject to section  
25 476B.9, subsection 5.

26 h. At a time and in a manner determined by the board to be  
27 reasonable and in the public interest, an electric company  
28 shall notify those end-use consumers receiving standard offer  
29 service of the termination of such service and the  
30 alternatives reasonably available to such consumers.

31 i. Rates, charges, terms, and conditions in effect under  
32 this subsection shall be posted on the board's website.

33 j. An end-use consumer receiving standard offer service  
34 under this subsection shall also be billed for applicable  
35 charges under section 476B.13, subsection 1, section 476B.15,

1 subsection 3, and section 476B.16.

2 2. TRANSITIONAL SERVICE.

3 a. Commencing on May 1, 2002, a nonresidential end-use  
4 consumer of an incumbent provider that is an electric company  
5 who purchased twenty-five thousand kilowatt-hours of electric  
6 service or more from the electric company in 2001 and who has  
7 not chosen competitive electric services from another  
8 competitive electric service provider shall receive  
9 transitional service from the incumbent provider for a period  
10 not to exceed one year and under tariff provisions approved by  
11 the board. On or before January 1, 2001, an incumbent  
12 provider shall file its initial rates, charges, terms, and  
13 conditions applicable to this transitional service and shall  
14 specify the duration for which the service will be available.  
15 The board shall approve transitional service rates, charges,  
16 terms, and conditions to the extent it determines them to be  
17 just and reasonable. The filing shall be subject to section  
18 476B.9, subsection 5. The rates, charges, terms, conditions,  
19 and duration of transitional service approved by the board  
20 shall be posted on the board's website for informational  
21 purposes by no later than November 1, 2001, and shall become  
22 effective May 1, 2002.

23 b. Nothing in this subsection shall preclude a qualifying  
24 end-use consumer from exercising its option to choose  
25 competitive electric services from a licensed competitive  
26 electric service provider at any time, consistent with this  
27 chapter and applicable board rules.

28 c. An end-use consumer receiving transitional service  
29 under this subsection shall also be billed for applicable  
30 charges under section 476B.13, subsection 1, section 476B.15,  
31 subsection 3, and section 476B.16.

32 3. UNIVERSAL SERVICE.

33 a. The board shall adopt rules establishing the conditions  
34 with which a residential end-use consumer located in the  
35 assigned service area of a delivery service provider that is

1 an electric company must comply to qualify to receive service  
2 under this subsection. The rules, at a minimum, shall address  
3 the rights and remedies to avoid disconnection including, but  
4 not limited to, use of prepaid meters, payment plans, deposit  
5 requirements, load limiters, and other provisions deemed  
6 appropriate by the board. The rules shall include a  
7 requirement that electric service to a residential end-use  
8 consumer who is the head of the household as defined by law  
9 and who is eligible for assistance under the programs  
10 established by section 476B.13, subsection 1, shall not be  
11 discontinued from November 1 through April 1 except as  
12 otherwise provided by the board. The initial rules shall be  
13 proposed by March 1, 2001.

14 b. Residential end-use consumers who qualify to receive  
15 service under the rules adopted pursuant to paragraph "a" and  
16 who can demonstrate they have made an effort, as defined by  
17 the board rules, to secure electric service from a competitive  
18 electric service provider, but have been denied service, or  
19 who have been determined to qualify for assistance under  
20 section 476B.13, subsection 1, shall have the option to be  
21 provided electric service under this subsection by their  
22 delivery service provider.

23 c. At the time an electric company files its initial  
24 unbundled rates with the board pursuant to section 476B.4, the  
25 electric company shall also file its initial universal service  
26 tariffs under this subsection, which shall be subject to  
27 review and approval by the board. Through December 31, 2005,  
28 the rates for universal service shall generally be the same as  
29 the residential rates that would be available to the consumer  
30 from its incumbent provider under subsection 1, including the  
31 adjustments as specified in that subsection. However, an  
32 electric company may propose to offer only one universal  
33 service rate in each rate zone and may propose automatic  
34 adjustment mechanisms applicable only to rates under this  
35 subsection. The board shall approve universal service rates

1 and tariffs to the extent it determines those rates and  
2 tariffs to be just and reasonable. The initial universal  
3 service rates approved by the board shall be posted on the  
4 board's website by no later than November 1, 2001, and shall  
5 become effective May 1, 2002. Beginning January 1, 2006, the  
6 rates for this service shall be based upon the market prices  
7 applicable to the type of service received by the consumer,  
8 adjusted for any state or federal subsidy of the rate paid to  
9 the delivery service provider. The board may adopt rules, to  
10 be effective January 1, 2006, that require the delivery  
11 service provider to acquire competitive power supply services  
12 for this service.

13 d. Section 476B.9, subsection 5, applies to changes in the  
14 initial universal service tariffs proposed by an electric  
15 company after the board's approval of the initial tariffs.

16 e. Rates, charges, terms, and conditions in effect under  
17 this subsection shall be posted on the board's website within  
18 twenty-four hours after becoming effective.

19 f. An end-use consumer receiving universal service under  
20 this subsection shall also be billed for applicable charges  
21 under section 476B.13, subsection 1, section 476B.15,  
22 subsection 3, and section 476B.16.

23 4. CONSUMER-OWNED UTILITIES.

24 a. BASIC ENERGY SERVICE. Delivery service providers with  
25 an assigned service area that are consumer-owned utilities  
26 shall offer basic energy services to all end-use consumers  
27 within their assigned service areas that have not specified a  
28 competitive electric service provider or are otherwise without  
29 a competitive electric service provider. Rates, charges,  
30 terms, and conditions of basic energy services shall be  
31 established by the local governing body and shall comply with  
32 section 476B.9, subsection 6.

33 b. UNIVERSAL SERVICE. Delivery service providers with an  
34 assigned service area that are consumer-owned utilities shall  
35 offer universal service as a type of basic energy service to

1 eligible residential consumers determined in accordance with  
2 the board's rules adopted pursuant to subsection 3, paragraphs  
3 "a" and "b". This service will only be offered to eligible  
4 consumers for the same period of time this service is offered  
5 by electric company delivery service providers. Rates  
6 associated with this service are subject to section 476B.9,  
7 subsection 6.

8 Sec. 9. NEW SECTION. 476B.9 RESPONSIBILITIES AND RIGHTS  
9 OF DELIVERY SERVICE PROVIDERS.

10 1. RESPONSIBILITIES FOR SAFE AND RELIABLE SERVICE.

11 a. A delivery service provider shall furnish safe and  
12 reliable delivery services and facilities. A delivery service  
13 provider with an assigned service area shall maintain within  
14 the state those administrative, technical, and operating  
15 personnel necessary for the provision of safe and reliable  
16 delivery services and facilities. A delivery service provider  
17 shall also maintain within the state an office for Iowa  
18 operations that shall maintain those books, accounts, papers,  
19 and records deemed necessary by the board to be maintained  
20 within the state, unless otherwise authorized by the board.  
21 Nothing in this paragraph requires a consumer-owned utility to  
22 relocate any delivery service personnel or to change the  
23 current location of its books, accounts, papers, or records.

24 b. The board shall have general oversight responsibility  
25 for delivery service safety requirements and inspection and  
26 maintenance activities for all delivery service providers.  
27 The board shall adopt rules for delivery service providers  
28 that it determines are required for reasonably safe and  
29 reliable delivery service, including rules relating to credit  
30 practices, collection practices, disconnection practices,  
31 billing practices, public safety, service reliability, quality  
32 of service, and power quality. The board shall adopt rules  
33 regarding outages, outage duration, and delivery service  
34 restoration, giving due consideration to factors including  
35 weather, terrain, cost, and end-use consumer density. The

1 board shall also adopt rules regarding distribution service  
2 extensions for delivery service providers that are electric  
3 companies. The initial rules shall be proposed by March 1,  
4 2001.

5 c. The board shall adopt rules requiring that delivery  
6 service providers demonstrate that personnel who will be  
7 installing, operating, and maintaining the delivery system  
8 have the requisite skills, knowledge, experience, and training  
9 to perform those work functions necessary to provide high  
10 quality, safe, and reliable services. Such demonstration may  
11 include a showing that applicable personnel have completed an  
12 accredited or recognized apprenticeship training program for  
13 the particular skill, trade, or craft. The initial rules  
14 shall be proposed by June 1, 2001.

15 2. OPEN ACCESS AND COMPARABLE DELIVERY SERVICE.

16 a. Commencing May 1, 2002, for each delivery service  
17 provider that is an electric company, and commencing on the  
18 date that an end-use consumer has the option to choose  
19 competitive electric services in the assigned service area of  
20 each delivery service provider that is a consumer-owned  
21 utility, unbundled distribution services, and other electric  
22 services unbundled pursuant to section 476B.4, shall be made  
23 available to end-use consumers and, if in the assigned service  
24 area of an electric company, to licensed competitive electric  
25 service providers, as provided in this chapter and the rules  
26 adopted by the board to implement this section. Unbundled  
27 delivery services shall be offered on a nondiscriminatory and  
28 comparable service basis.

29 b. The board may adopt uniform rules for administering  
30 open access and comparable delivery service including, but not  
31 limited to, procedures for access to consumer information for  
32 operational purposes, data transfers, and switching of  
33 competitive electric service providers by end-use consumers.  
34 However, the board shall not impose rates upon a consumer-  
35 owned utility. The rules shall give due consideration to the

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1 technology available, the administrative and financial burden  
2 on delivery service providers and competitive electric service  
3 providers, the objective of reasonable distribution service  
4 rates, and the objective of nondiscriminatory and comparable  
5 service. The initial rules shall be proposed by October 1,  
6 2000.

7 c. Delivery service providers shall adopt and implement  
8 procedures for restoring delivery service after outages on a  
9 nondiscriminatory basis without regard to the competitive  
10 electric service provider serving the end-use consumer.

11 d. If, after notice and opportunity for hearing, the board  
12 determines that any delivery service provider or control area  
13 operator is imposing unreasonable or artificial barriers to  
14 access to any competitive electric service on the delivery  
15 system, the board shall require the delivery service provider  
16 or control area operator to take corrective measures, not  
17 inconsistent with federal law, to the extent necessary and  
18 feasible to eliminate the barriers to access. However, the  
19 board shall not impose rates upon a consumer-owned utility.  
20 The measures ordered by the board may include a requirement  
21 that the delivery service provider participate in a regional  
22 entity approved by the federal energy regulatory commission,  
23 or its successor, that has authority over the portion of the  
24 delivery system subject to federal regulation independently  
25 from the wholesale electric sales function of the delivery  
26 service provider. For the purposes of this paragraph,  
27 artificial barriers shall not include legislative or  
28 regulatory actions.

29 3. ELIMINATION OF OBLIGATION TO PROVIDE CERTAIN ELECTRIC  
30 SERVICES.

31 a. Except as provided in subsection 7 and sections 476B.8,  
32 476B.11, and 476B.12, an incumbent provider and a delivery  
33 service provider shall not have any obligation to provide  
34 competitive electric services to an end-use consumer that has  
35 the option to choose competitive electric services.

1 b. A delivery service provider or a control area operator  
 2 shall not be liable for any damages to an end-use consumer if  
 3 a competitive electric service provider chosen by the consumer  
 4 fails to fulfill the terms of its contract with the end-use  
 5 consumer. This paragraph shall not be construed to limit the  
 6 liability of a delivery service provider or a control area  
 7 operator for damages caused by its own actions or failure to  
 8 act.

9 4. ASSIGNED SERVICE AREAS.

10 a. EXCLUSIVE ASSIGNED SERVICE AREAS ESTABLISHED. The  
 11 state has determined to displace competition in the provision  
 12 of electric service with a system of exclusive assigned  
 13 service areas as established pursuant to section 476.25 and in  
 14 effect on January 1, 1999. The service areas shall continue  
 15 to be assigned to the persons to whom such areas were assigned  
 16 on January 1, 1999, or their successors, who shall provide  
 17 bundled electric service to end-use consumers on an exclusive  
 18 basis until the dates when choice is available as specified in  
 19 section 476B.7. On or after the dates when choice is  
 20 available, a person assigned a service area immediately prior  
 21 to the dates when choice is available shall be the delivery  
 22 service provider for the assigned service area unless such  
 23 person designates to the board a different person. A delivery  
 24 service provider shall provide delivery services to end-use  
 25 consumers within its assigned area on an exclusive basis  
 26 pursuant to this chapter.

27 b. CLARIFICATION OR MODIFICATION OF BOUNDARIES.

28 (1) Consistent with this subsection, the board, on its own  
 29 motion or at the request of a delivery service provider or  
 30 municipal corporation, after notice and opportunity for  
 31 hearing, may clarify or modify the boundaries of an assigned  
 32 service area if it finds that the clarification or  
 33 modification will promote the public interest, preserve  
 34 existing assigned service areas and the delivery service  
 35 providers' right to serve existing end-use consumers, prevent

1 unnecessary duplication of facilities, provide adequate  
2 delivery service to all assigned service areas and end-use  
3 consumers affected, and promote the efficient and economical  
4 use and development of the electric delivery system.

5 (2) An agreement between delivery service providers to  
6 designate assigned service areas and end-use consumers or to  
7 clarify or modify assigned service areas to be served by the  
8 delivery service providers or for the exchange of end-use  
9 consumers between delivery service providers shall be  
10 submitted to the board for review. The agreement, when  
11 approved by the board, is valid and enforceable and shall be  
12 incorporated into the appropriate assigned service areas  
13 established pursuant to this subsection. The board shall  
14 approve an agreement if the board finds the agreement  
15 satisfies the criteria set forth in subparagraph (1).

16 (3) If a delivery service provider declines to enter into  
17 an agreement to designate an assigned service area or end-use  
18 consumers, or to clarify or modify an assigned service area,  
19 an aggrieved person may petition the board to order such a  
20 designation, clarification, or modification on the grounds  
21 that the proposed designation, clarification, or modification  
22 will promote the public interest, preserve existing service  
23 areas and the delivery service providers' right to serve  
24 existing end-use consumers, prevent unnecessary duplication of  
25 facilities, provide adequate delivery service to all assigned  
26 service areas and end-use consumers affected, and promote the  
27 efficient and economical use and development of the electric  
28 delivery system. If the board finds that the petition meets  
29 the foregoing standards, the board shall order the  
30 designation, clarification, or modification on such terms and  
31 conditions as it finds just and reasonable.

32 c. LIMIT ON BYPASS. Except with the written approval of  
33 the affected delivery service provider and the board, a person  
34 shall not provide or offer to provide delivery service to an  
35 end-use consumer in an assigned service area assigned to

1 another delivery service provider, or construct delivery  
 2 service facilities in an assigned service area assigned to  
 3 another delivery service provider to serve an end-use consumer  
 4 in such assigned service area. This paragraph does not  
 5 preclude an end-use consumer from constructing, or having  
 6 constructed, on real estate which the end-use consumer owns or  
 7 leases, distribution service facilities for the exclusive  
 8 purpose of meeting the end-use consumer's own electric service  
 9 requirements, as long as such facilities are constructed  
 10 entirely within the boundaries of such real estate and, as a  
 11 consequence of constructing such facilities, will not allow  
 12 that end-use consumer to avoid nonbypassable charges or reduce  
 13 the value of facilities dedicated to that end-use consumer for  
 14 which the delivery service provider would not be compensated.  
 15 With respect to matters subject to the board's jurisdiction, a  
 16 person may file a complaint with the board regarding a  
 17 violation of this paragraph. Upon finding a violation, the  
 18 board shall order appropriate corrective action including  
 19 discontinuance of the unlawful service, removal of the  
 20 unlawful facility, compensation for lost margin, or other  
 21 disposition commensurate with the injury suffered. A petition  
 22 for franchise filed by a municipal utility pursuant to section  
 23 478.2 for facilities used to connect the utility to the  
 24 transmission grid shall not be limited by this paragraph.

25 d. CERTIFICATES OF AUTHORITY. A municipal corporation,  
 26 after being authorized by a vote of the people, or any  
 27 delivery service provider may file a petition with the board  
 28 requesting a certificate of authority to furnish delivery  
 29 service to the existing point of delivery of any end-use  
 30 consumer already receiving delivery service. If, after thirty  
 31 days have elapsed following notice by the board to the person  
 32 currently serving the end-use consumer, objection to the  
 33 petition is not filed and investigation is not deemed  
 34 necessary, the board shall issue a certificate. If an  
 35 objection is filed, and the board, after notice and

1 opportunity for hearing, determines that delivery service to  
2 the end-use consumer by the petitioner should be granted, the  
3 board shall grant a certificate in whole or in part, upon such  
4 terms, conditions, and restrictions as may be justified. In  
5 determining whether a proposal should be granted, the board  
6 shall consider the factors set forth in paragraph "b",  
7 subparagraph (1). Whether or not an objection is filed, a  
8 certificate issued shall require that the petitioner pay to  
9 the person presently serving the end-use consumer the  
10 reasonable price for acquisition of the facilities serving the  
11 end-use consumer as determined by the board. A price  
12 determination by the board shall include due consideration of  
13 all of the following:

14 (1) The value of the facilities being acquired.

15 (2) Any penalties, buyout costs, or other costs associated  
16 with any commitments to generating and transmission capacity  
17 on behalf of the departing consumers or to support the  
18 delivery service facilities being acquired.

19 (3) Projected loss of revenue and its impact on remaining  
20 end-use consumers of the affected provider.

21 (4) The cost of any facilities necessary to reintegrate  
22 the system of the delivery service provider after detaching  
23 the portion sold.

24 e. OBLIGATION TO EXTEND DELIVERY SERVICE FACILITIES. A  
25 delivery service provider that has been assigned an exclusive  
26 delivery service area pursuant to this subsection shall extend  
27 delivery service facilities to all end-use consumers within  
28 its assigned service area as provided in this chapter. The  
29 board shall adopt rules for electric companies setting forth  
30 the terms and conditions of delivery service facility  
31 extensions for electric companies and shall issue proposed  
32 rules by no later than October 1, 2001.

33 f. DELIVERY SERVICE AREA MAPS. Whenever requested by the  
34 board, delivery service providers shall file with the board,  
35 jointly or severally, detailed maps of their assigned service

1 areas drawn to a scale specified by the board showing all of  
2 the following:

3 (1) The locations of franchised transmission lines,  
4 distribution lines, and related facilities.

5 (2) All state and federal highways and other public roads  
6 within the delivery service area.

7 (3) All section lines and numbers, and township and range  
8 numbers within the delivery service area.

9 (4) The corporate boundaries of all cities within the  
10 delivery service area.

11 (5) All lakes and rivers within the delivery service area.

12 (6) All railroads within the delivery service area.

13 (7) Any additional information requested by the board.

14 If deemed by the board to be necessary, the board shall  
15 prepare or cause to have prepared a composite map of this  
16 state showing the delivery service areas. The form and detail  
17 of all maps shall be determined by the board.

18 g. EXCEPTION. Notwithstanding contrary provisions of this  
19 section, a delivery service provider may extend delivery  
20 service facilities and provide delivery service outside its  
21 assigned service area to its own utility property and  
22 facilities.

23 h. RIGHTS OF CITIES. If not inconsistent with this  
24 chapter, the rights of cities under chapters 362 through 390  
25 are preserved.

26 However, prior to the institution of condemnation  
27 proceedings under chapter 6B, a city shall obtain a  
28 certificate of authority from the board as provided in  
29 paragraph "d" and the board's determination of price shall be  
30 conclusive evidence of damages in these condemnation  
31 proceedings.

32 i. EFFECT OF INCORPORATION, ANNEXATION, OR CONSOLIDATION.  
33 The inclusion by incorporation, annexation, or consolidation  
34 of any facilities or service area of a person with an  
35 exclusive assigned service area within the boundaries of any

1 city shall not by such inclusion impair or affect in any  
2 respect the rights of the delivery service provider to  
3 continue to provide delivery services and to extend service to  
4 prospective end-use consumers in accordance with this chapter.

5 5. DELIVERY SERVICE RATE REGULATION FOR ELECTRIC  
6 COMPANIES. A delivery service provider that is also an  
7 electric company shall file, post, and maintain applicable  
8 unbundled rates in accordance with this subsection and section  
9 476B.4. The board shall regulate the rates, charges,  
10 schedules, and regulations for distribution services and other  
11 services unbundled pursuant to section 476B.4, subsection 1,  
12 and provided by delivery service providers that are electric  
13 companies. The burden of establishing the reasonableness of  
14 rates, charges, schedules, and regulations is upon the  
15 delivery service provider.

16 a. FILING WITH BOARD. Except as provided in paragraphs  
17 "g" and "i", a delivery service provider that is an electric  
18 company shall not make effective a new or changed distribution  
19 service rate, charge, schedule, or regulation or other  
20 unbundled rate, charge, schedule, or regulation subject to the  
21 jurisdiction of the board until the rate, charge, schedule, or  
22 regulation has been approved by the board. Notwithstanding  
23 anything in this chapter to the contrary, if an application  
24 for a new or changed rate or charge is filed with the board  
25 and posted on its website, and if affected competitive  
26 electric service providers and end-use consumers have the  
27 option to select or not select such rate or charge, the rate  
28 or charge shall become effective within ten business days  
29 after filing. The board, within ten business days after the  
30 filing, may docket the filing and suspend the rate or charge,  
31 either upon the filing of a written objection or on its own  
32 motion, but the board shall not suspend the rate or charge for  
33 more than ninety days from the date the tariff was filed.

34 b. LIMITATIONS ON FILING. A delivery service provider  
35 that is an electric company shall not make a subsequent filing

1 of an application for a new or changed rate, charge, schedule,  
 2 or regulation which relates to the same rate, charge,  
 3 schedule, or regulation for which a filing is pending within  
 4 twelve months following the date the prior application was  
 5 filed or until the board has issued a final order on the prior  
 6 application, whichever date is earlier, unless the delivery  
 7 service provider applies to the board for authority to make a  
 8 subsequent filing at an earlier date and such application is  
 9 approved by the board.

10 c. WRITTEN NOTICE OF INCREASE. A delivery service  
 11 provider that is an electric company shall give written notice  
 12 of a proposed increase of a distribution service rate or  
 13 charge or other unbundled rate or charge subject to the  
 14 jurisdiction of the board to all affected competitive electric  
 15 service providers and end-use consumers receiving service  
 16 under board-approved tariffs or with whom the delivery service  
 17 provider has distribution service contracts, whether or not  
 18 written, prior to the time the application for the increase is  
 19 filed with the board. The notice shall state that the  
 20 competitive electric service provider or end-use consumer has  
 21 a right to file a written objection to the rate increase and  
 22 may request the board to hold a public hearing to determine if  
 23 the increase should be allowed. The board shall adopt rules  
 24 prescribing the timing, manner, and method of serving the  
 25 written notice. The board may adopt rules regarding  
 26 notification of other end-use consumers that may be affected  
 27 by a proposed increase. The initial rules shall be proposed  
 28 by March 1, 2001.

29 d. FACTS AND ARGUMENTS SUBMITTED. At the time an  
 30 application for any new or changed rate, charge, schedule, or  
 31 regulation is filed with the board, the delivery service  
 32 provider shall submit factual evidence and written argument  
 33 offered in support of the filing. If the application proposes  
 34 an increase in distribution service rates, the delivery  
 35 service provider shall also file testimonial evidence in

1 support of the filing.

2 e. HEARING SET. After the filing of an application by a  
3 delivery service provider for a new or changed rate, charge,  
4 schedule, or regulation subject to the jurisdiction of the  
5 board, the board, prior to the expiration of thirty days after  
6 the filing date, shall docket the case as a formal proceeding  
7 and set the case for hearing unless the new or changed rate,  
8 charge, schedule, or regulation is approved by the board. If  
9 an application presents no material issue of fact subject to  
10 dispute, and the board determines that the application  
11 violates a relevant statute, or is not in substantial  
12 compliance with a board rule, the application may be rejected  
13 by the board without prejudice and without a hearing, provided  
14 that the board issues a written order setting forth all of its  
15 reasons for rejecting the application. The board shall give  
16 notice of formal proceedings as it deems appropriate. Except  
17 as provided in paragraphs "g" and "i", the docketing of a case  
18 as a formal proceeding suspends the effective date of the new  
19 or changed rate, charge, schedule, or regulation until the  
20 rate, charge, schedule, or regulation is approved by the  
21 board.

22 f. UTILITY HEARING EXPENSES REPORTED. If a case has been  
23 docketed as a formal proceeding, the delivery service provider  
24 shall file with the board a report outlining the expected  
25 expenses for litigating the case through the period allowed by  
26 the board in rendering a final decision. Within ten days  
27 after the conclusion of the delivery service provider's  
28 presentation of comments, testimony, or briefs, the delivery  
29 service provider shall submit to the board a listing of the  
30 delivery service provider's actual litigation expenses in the  
31 proceeding, excluding costs to be billed by the board and the  
32 consumer advocate. As part of the findings of the board, the  
33 board shall allow recovery of all reasonable costs of the  
34 litigation, including all costs billed by the board and the  
35 consumer advocate, over a reasonable period of time.

2/5

1 g. DISTRIBUTION SERVICE RATES AND CHARGES. Distribution  
2 service rates and charges and other unbundled rates and  
3 charges shall be based upon a cost of service method,  
4 performance-based incentives, or such other method of  
5 ratemaking as the board deems just and reasonable. If cost of  
6 service is used for establishing a component of unbundled  
7 rates, the method used to determine class cost of service, to  
8 the maximum extent practicable, should permit identification  
9 of cost differences attributable to variations in demand,  
10 energy, voltage delivery level, customer components of costs,  
11 and other factors. This chapter does not prohibit a delivery  
12 service provider from making provision for the automatic  
13 adjustment of a distribution service rate or charge or other  
14 rate or charge subject to the jurisdiction of the board,  
15 provided that a tariff setting forth the mechanism for  
16 automatic adjustment of a rate or charge is first filed with  
17 and approved by the board. Notice of such filing to end-use  
18 consumers and competitive electric service providers receiving  
19 service under board-approved tariffs or with whom the delivery  
20 service provider has distribution service contracts, whether  
21 or not written, shall be required, but adjustments pursuant to  
22 an approved mechanism shall not require further notice. The  
23 board may adopt rules regarding notification of other end-use  
24 consumers that may be affected by the automatic adjustment  
25 mechanism.

26 The board, in determining the value of materials or  
27 services to be included in valuations or costs of operations  
28 for ratemaking purposes, may disallow any unreasonable profit  
29 made in the sale of materials to or services supplied for any  
30 delivery service provider by a firm or corporation owned or  
31 controlled directly or indirectly by such delivery service  
32 provider or any affiliate, subsidiary, parent company,  
33 associate, or any corporation whose controlling stockholders  
34 are also controlling stockholders of such delivery service  
35 provider. The burden of proof is on the delivery service

1 provider to prove that no unreasonable profit is made.

2 h. FINDING BY BOARD. If, after hearing and decision on  
3 all issues presented for determination in the rate proceeding,  
4 the board finds the proposed rate, charge, schedule, or  
5 regulation to be unlawful or not just and reasonable, the  
6 board shall, by order, authorize and direct the delivery  
7 service provider to file a new or changed rate, charge,  
8 schedule, or regulation which, when approved by the board and  
9 placed in effect, will satisfy the requirements of this  
10 chapter. A rate, charge, schedule, or regulation so approved  
11 is lawful and effective upon its approval.

12 i. TEMPORARY AUTHORITY. Upon the request of a delivery  
13 service provider, the board, when required by this paragraph,  
14 shall grant temporary authority to place in effect any or all  
15 of a suspended rate, charge, schedule, or regulation. A  
16 delivery service provider shall file with the board a bond or  
17 other undertaking approved by the board conditioned upon the  
18 refund in a manner to be prescribed by the board of any  
19 amounts collected in excess of the amounts which would have  
20 been collected under a rate, charge, schedule, or regulation  
21 finally approved by the board. In determining that portion of  
22 the new or changed rate, charge, schedule, or regulation to be  
23 placed into effect prior to a final decision, the board shall  
24 apply previously established regulatory principles and, at a  
25 minimum, shall permit rates and charges which will allow the  
26 delivery service provider the opportunity to earn a return on  
27 common stock equity equal to that which the board held  
28 reasonable and just in the most recent rate case involving  
29 electric or distribution service. However, if the most recent  
30 final decision of the board in an applicable rate case was  
31 rendered more than twelve months prior to the date of filing  
32 of the request for temporary rates, the board, in addition,  
33 shall consider financial market data that is filed or that is  
34 otherwise available to the board and shall adjust the rate of  
35 return on common stock equity that was approved in that

1 decision upward or downward as necessary to reflect current  
 2 conditions. The board shall render a decision on a request  
 3 for temporary authority within ninety days after the date of  
 4 filing of the request. The decision shall be effective  
 5 immediately. If the board has not rendered a final decision  
 6 with respect to a suspended rate, charge, schedule, or  
 7 regulation upon the expiration of ten months after the filing  
 8 date, plus the length of any delay that necessarily results  
 9 either from the failure of the delivery service provider to  
 10 exercise due diligence in connection with the proceedings or  
 11 from intervening judicial proceedings, the portion of the  
 12 rate, charge, schedule, or regulation that was approved by the  
 13 board on a temporary basis shall be deemed finally approved by  
 14 the board and the delivery service provider may place that  
 15 portion of the rate, charge, schedule, or regulation into  
 16 effect on a permanent basis, and also may place into effect  
 17 subject to refund and until the final decision of the board  
 18 any portion of the suspended rate, charge, schedule, or  
 19 regulation not previously approved on a temporary basis by  
 20 filing with the board a bond or other undertaking approved by  
 21 the board.

22 The board shall determine the rate of interest to be paid  
 23 by a delivery service provider to persons receiving refunds.

24 j. INVESTIGATIONS. If a written request is filed with the  
 25 board by any person or body politic, or filed by the board  
 26 upon its own motion, requesting the board to determine the  
 27 reasonableness of a distribution service rate, charge,  
 28 schedule, or regulation or other unbundled rate, charge,  
 29 schedule, or regulation subject to the jurisdiction of the  
 30 board, or anything done or omitted to be done in contravention  
 31 of this chapter by a delivery service provider that is an  
 32 electric company, the written complaint shall be forwarded by  
 33 the board to the delivery service provider, which shall be  
 34 called upon to satisfy the complaint or to answer it in  
 35 writing within a reasonable time to be specified by the board.

1 Copies of the written complaint forwarded by the board to the  
2 delivery service provider and copies of all correspondence  
3 from the delivery service provider in response to the  
4 complaint shall be provided by the board in an expeditious  
5 manner to the consumer advocate. If the board determines the  
6 delivery service provider's response is inadequate and there  
7 appears to be any reasonable ground for investigating the  
8 complaint, the board shall promptly initiate a formal  
9 proceeding. If the consumer advocate determines the delivery  
10 service provider's response to the complaint is inadequate,  
11 the consumer advocate may file a petition with the board which  
12 shall promptly initiate a formal proceeding if the board  
13 determines that there is any reasonable ground for  
14 investigating the complaint. The complainant or the delivery  
15 service provider also may petition the board to initiate a  
16 formal proceeding, which petition shall be granted if the  
17 board determines that there is any reasonable ground for  
18 investigating the complaint. A formal proceeding may be  
19 initiated at any time by the board on its own motion. If a  
20 formal proceeding is initiated, the board shall set the case  
21 for hearing and give notice as it deems appropriate. If the  
22 board, after a hearing held after reasonable notice, finds a  
23 delivery service provider's rate, charge, schedule, or  
24 regulation subject to the jurisdiction of the board is unjust,  
25 unreasonable, discriminatory, or otherwise in violation of any  
26 law, the board shall determine a just, reasonable, and  
27 nondiscriminatory rate, charge, schedule, or regulation to be  
28 observed and enforced.

29 k. RATE COMPLAINTS BY CONSUMER ADVOCATE. If the consumer  
30 advocate files a complaint with the board alleging that a  
31 delivery service provider's regulated rates are excessive, the  
32 disputed amount shall be specified in the petition. The board  
33 shall promptly initiate a formal proceeding if it determines  
34 that there is any reasonable ground for investigating the  
35 complaint. If the board determines to initiate a formal

1 proceeding, the delivery service provider, within the time  
 2 prescribed by the board, shall file a bond or undertaking  
 3 approved by the board conditioned upon the refund in a manner  
 4 prescribed by the board of amounts collected after the date of  
 5 filing of the petition in excess of a rate or charge finally  
 6 determined by the board to be lawful. If after hearing the  
 7 board finds that the delivery service provider's regulated  
 8 rates are unlawful or not just and reasonable, the board shall  
 9 order a refund, with interest, of amounts collected after the  
 10 date of filing of the petition that are determined to be in  
 11 excess of the amounts which would have been collected under  
 12 the rates finally approved. However, the board shall not  
 13 order a refund that is greater than the amount specified in  
 14 the petition, plus interest, and if the board fails to render  
 15 a decision within ten months following the date of filing of  
 16 the petition, the board shall not order a refund of any excess  
 17 amounts that are collected after the expiration of that ten-  
 18 month period and prior to the date the decision is rendered.

19 1. PROSPECTIVE EFFECT. A determination by the board of a  
 20 distribution service rate or charge or another unbundled rate,  
 21 charge, schedule, or regulation pursuant to paragraph "i" or  
 22 "j" that is based upon a variance from previously established  
 23 regulatory principles shall apply prospectively from the date  
 24 of the decision.

25 m. RULES GOVERNING HEARINGS. The board shall adopt rules  
 26 to provide for the completion of proceedings under this  
 27 subsection within ten months after the date of the filing of  
 28 the application or complaint. The rules shall include  
 29 reasonable time limitations for the submission or completion  
 30 of comments, testimony, exhibits, briefs, and hearings, which  
 31 the board may extend upon the request of a party to the  
 32 proceeding for good cause shown. Additional time granted to a  
 33 party shall not extend the amount of time for which a delivery  
 34 service provider is required to file a bond or other  
 35 undertaking. If additional time is granted, the board may

1 extend the ten-month period during which a delivery service  
2 provider is prohibited from placing its entire rate increase  
3 request into effect, but an extension shall not exceed the  
4 aggregate amount of all additional time granted under this  
5 paragraph. The initial rules shall be proposed by March 1,  
6 2001.

7 n. CONSIDERATION OF CURRENT INFORMATION. The board shall  
8 adopt rules that require the board in rate proceedings under  
9 this subsection to consider the use of the most current test  
10 period possible in determining reasonable and just rates,  
11 subject only to the availability of existing and verifiable  
12 data with respect to costs and revenues, and in addition to  
13 consider verifiable data that exist as of the filing date of  
14 the application or complaint with respect to known and  
15 measurable changes in costs not associated with a different  
16 level of revenue, and known and measurable revenues not  
17 associated with a different level of costs, that are to occur  
18 at any time within twelve months after the date of the filing.  
19 This paragraph shall not limit the authority of the board to  
20 consider other evidence in proceedings under this subsection.  
21 The initial rules shall be proposed by March 1, 2001.

22 o. TARIFFS POSTED. A rate, charge, schedule, term,  
23 condition, or regulation applicable to distribution service or  
24 other unbundled service that has been approved by the board or  
25 is otherwise in effect pursuant to this subsection shall be  
26 posted on the board's website within twenty-four hours after  
27 being placed into effect.

28 p. ACCOUNTS RENDERED TO THE BOARD.

29 (1) A delivery service provider that is an electric  
30 company shall keep and render to the board, in the manner and  
31 form prescribed by rules of the board, uniform accounts of all  
32 business transacted.

33 (2) A delivery service provider that is an electric  
34 company and that is engaged directly or indirectly in any  
35 other business than that of the provision of delivery services

1 to the public, if required by rules adopted by the board,  
 2 shall keep and render separately to the board in like manner  
 3 and form the accounts of all such other business, in which  
 4 case this subsection shall apply to the books, accounts,  
 5 papers, and records of such other business and all profits and  
 6 losses may be taken into consideration by the board if deemed  
 7 relevant to the general fiscal condition of the delivery  
 8 service provider.

9 (3) A delivery service provider that is an electric  
 10 company is required to keep and render its books, accounts,  
 11 papers, and records accurately and faithfully in the manner  
 12 and form prescribed by rules of the board, and to comply with  
 13 all directions of the board relating to such books, accounts,  
 14 papers, and records.

15 (4) The board shall consult with other state and federal  
 16 regulatory bodies for the purpose of eliminating accounting  
 17 discrepancies with regard to the keeping of accounts before  
 18 prescribing any system of account to be kept by a delivery  
 19 service provider. The initial rules shall be proposed by  
 20 March 1, 2001.

21 q. JURISDICTION OVER DELIVERY SERVICE PROVIDERS. The  
 22 jurisdiction and powers of the board shall extend as provided  
 23 in this chapter to a delivery service business of an electric  
 24 company operating within this state to the full extent  
 25 permitted by the Constitution and laws of the United States.

26 r. AUDIT OF DELIVERY SERVICE OPERATIONS. The board shall  
 27 adopt rules to administer a program for the continuous review  
 28 of operations of a delivery service provider that is an  
 29 electric company with respect to all matters that affect rates  
 30 or charges for delivery service. The initial rules shall be  
 31 proposed by March 1, 2001.

32 s. LOBBYING COSTS. A delivery service provider that is an  
 33 electric company is prohibited from including either directly  
 34 or indirectly the costs of lobbying in the charges or rates  
 35 subject to the jurisdiction of the board.

1 t. LEGAL COSTS. Legal costs and attorney fees incurred by  
2 a delivery service provider that is an electric company in a  
3 judicial review proceeding in state or federal court involving  
4 the validity of any action of the board shall not be included  
5 either directly or indirectly in the charges or rates subject  
6 to the jurisdiction of the board except to the extent that  
7 recovery of legal costs and attorney fees is allowed by the  
8 board. The board shall allow recovery of the reasonable legal  
9 costs and attorney fees incurred in judicial review. The  
10 board may consider the degree of success of the legal  
11 arguments of the delivery service provider in determining the  
12 reasonable legal costs and attorney fees to be allowed.

13 u. ADVERTISING. Except as provided in this paragraph, a  
14 delivery service provider that is an electric company shall  
15 not include either directly or indirectly in the charges or  
16 rates subject to the jurisdiction of the board the costs of  
17 advertising other than advertising regarding public safety or  
18 advertising that is required by the board or by any other  
19 state or federal regulation. However, this restriction does  
20 not apply to advertising which is deemed by the board to be in  
21 the public interest and which is approved by the board.

22 An advertisement which is published, broadcast, or  
23 otherwise displayed or disseminated to the public by a  
24 delivery service provider that is an electric company, the  
25 costs of which will be included in the rates or charges  
26 subject to the jurisdiction of the board and which is not  
27 public safety advertising or advertising required by the board  
28 or by other state or federal regulation, shall include a  
29 statement in the advertisement that the costs of the  
30 advertisement are being charged to the users of delivery  
31 service. This paragraph does not apply to a delivery service  
32 provider's product or service that is or becomes subject to  
33 competition as determined by the board.

34 v. ANNUAL REPORTS OF DELIVERY SERVICE PROVIDERS. The  
35 board shall adopt rules prescribing the form and content of an

1 annual report to be filed with the board by a delivery service  
 2 provider, other than a consumer-owned utility. The board  
 3 shall review annual reports submitted pursuant to the rules.  
 4 The board may commence rate-review proceedings under this  
 5 chapter for an electric company if an annual report indicates  
 6 that its earnings are excessive. The initial rules shall be  
 7 proposed by March 1, 2001.

8 6. DELIVERY SERVICE RATE REGULATION FOR CONSUMER-OWNED  
 9 UTILITIES.

10 a. LOCAL REGULATION. The rates for delivery service and  
 11 other unbundled services provided by a consumer-owned utility  
 12 and all other matters not specifically reserved to the board  
 13 by statute shall be regulated by the consumer-owned utility's  
 14 local governing body. An election made pursuant to section  
 15 476.1A by the board of directors or the membership of an  
 16 electric cooperative corporation or association to have the  
 17 cooperative's rates regulated by the board is rescinded  
 18 effective June 1, 1999.

19 b. POSTING. Rates, terms, and conditions of applicable  
 20 distribution services and other unbundled services provided by  
 21 a consumer-owned utility shall be posted on the board's  
 22 website. Any change in rates, terms, or conditions shall be  
 23 posted no less than twenty-four hours prior to becoming  
 24 effective.

25 c. NOTICE OF CHANGES. A consumer-owned utility shall give  
 26 written notice of any proposed increase in delivery service  
 27 rates or charges or other unbundled rates or charges to all  
 28 applicable and directly affected end-use consumers and  
 29 competitive electric service providers at least thirty days  
 30 prior to the effective date of the increase.

31 d. DISCRIMINATION PROHIBITED. A consumer-owned utility  
 32 shall not make or grant to any person any unreasonable  
 33 preference or advantage as to delivery service rates,  
 34 services, terms, or conditions or subject any person to  
 35 unreasonable prejudice or disadvantage. This paragraph shall

1 not be construed to prohibit a municipal utility from  
2 providing preferential rates, terms, or conditions of services  
3 to any department or function of municipal government pursuant  
4 to section 384.91.

5 e. DISPUTES. The district court has original jurisdiction  
6 concerning disputes with respect to the distribution service  
7 rates and charges and other unbundled service rates of a  
8 consumer-owned utility and all other matters concerning a  
9 consumer-owned utility not specifically reserved to the board  
10 by this chapter or another statute.

11 f. ANNUAL REPORTS OF CONSUMER-OWNED DELIVERY SERVICE  
12 PROVIDERS. The board shall adopt rules prescribing the form  
13 and content of an annual report to be filed with the board by  
14 a consumer-owned delivery service provider. The initial rules  
15 shall be proposed by March 1, 2001.

16 7. CONTROL AREA OPERATIONS.

17 a. REGULATORY JURISDICTION. A rate, charge, term, and  
18 condition of distribution services provided within the state  
19 by a control area operator that is an electric company is  
20 subject to subsection 5 and to regulation by the board except  
21 to the extent such rate, charge, term, or condition is subject  
22 to the exclusive jurisdiction of the federal energy regulatory  
23 commission or another federal agency. Distribution services  
24 may include load profiling, financial settlement, distribution  
25 system scheduling, and ancillary services to the extent not  
26 subject to exclusive federal jurisdiction. The board shall  
27 approve rates, charges, terms, conditions, and processes for  
28 load profiling and financial settlement that are just,  
29 reasonable, and nondiscriminatory. The board shall adopt  
30 rules governing the filing and posting of control area  
31 operator's services, rates, charges, terms, conditions, and  
32 processes subject to its jurisdiction and changes in such  
33 services, rates, charges, terms, conditions, and processes.  
34 The initial rules shall be proposed by October 1, 1999.

35 b. NOTICE TO BOARD OF DEFAULT. If a control area operator

1 becomes aware that a competitive electric service provider has  
 2 substantially failed to schedule energy for two consecutive  
 3 twenty-four-hour periods, failed to deliver energy scheduled  
 4 with or committed to the control area operator for two  
 5 consecutive twenty-four-hour periods, or has otherwise  
 6 substantially defaulted upon its obligations to or agreements  
 7 with the control area operator, the control area operator  
 8 shall notify the board and the affected delivery service  
 9 provider of such occurrence as soon as practicable. A control  
 10 area operator shall use reasonable commercial efforts to  
 11 provide power supply services on an emergency basis to end-use  
 12 consumers if a competitive electric service provider defaults.  
 13 However, a control area operator shall not be liable to an  
 14 end-use consumer for failure to provide emergency power supply  
 15 services.

16 The board shall adopt rules addressing the failure of a  
 17 competitive electric service provider to comply with the  
 18 terms, conditions, and obligations of control area services.  
 19 The rules shall provide for finding a replacement competitive  
 20 electric service provider or competitive electric service  
 21 providers to serve the end-use consumers of the defaulting  
 22 competitive electric service provider as soon as feasible in  
 23 order to eliminate the burden on the control area operator to  
 24 provide power supply services for such consumers. The rules  
 25 shall include a provision for the board or an entity  
 26 designated by the board to notify affected end-use consumers  
 27 if a need exists for the end-use consumers to select a new  
 28 competitive electric service provider. The rules shall also  
 29 include a provision that permits a control area operator to  
 30 recover all reasonable costs incurred by the control area  
 31 operator in remedying the competitive electric service  
 32 provider's failure and providing service to the end-use  
 33 consumers of the competitive electric service provider to the  
 34 extent the competitive electric service provider fails to pay  
 35 such costs. The initial rules shall be proposed by October 1,

1 2000.

2 8. STANDARDS OF CONDUCT.

3 a. DELIVERY SERVICE PROVIDERS. No later than November 1,  
4 2001, each delivery service provider shall post on the board's  
5 website standards of conduct, to be effective May 1, 2002,  
6 that require the delivery service provider to do all of the  
7 following:

8 (1) Apply all tariff provisions in a nondiscriminatory and  
9 comparable service manner to similarly situated persons.

10 (2) Process requests for delivery service in a  
11 nondiscriminatory manner.

12 (3) Make available any distribution service discounts,  
13 rebates, or waiver of fees on a nondiscriminatory basis to all  
14 similarly situated persons.

15 (4) Comply with section 476B.6, subsection 4, paragraph  
16 "k".

17 (5) Deny to any competitive electric service provider  
18 preferential access to information related to the distribution  
19 of electricity which is not otherwise made publicly available,  
20 except information regarding the competitive electric service  
21 provider's own end-use consumers.

22 (6) Not represent that any advantages accrue to end-use  
23 consumers or others in the use of the delivery service  
24 provider's services as a result of that end-use consumer or  
25 others dealing with any particular competitive electric  
26 service provider.

27 (7) Establish a complaint procedure applicable to the  
28 standards of conduct, and process and resolve complaints in  
29 accordance with such procedure.

30 (8) Develop written agreements with generating plant  
31 operators as needed to maintain distribution system  
32 reliability.

33 (9) Abide by the applicable federal energy regulatory  
34 commission standards of conduct when providing delivery  
35 service subject to the jurisdiction of the federal energy

1 regulatory commission.

2 (10) Take reasonable steps to keep its delivery system in  
3 operation in emergency circumstances affecting system  
4 reliability.

5 (11) Prohibit discrimination in the extension or repair of  
6 the delivery system facilities.

7 (12) If the delivery service provider is an electric  
8 company, maintain separate books, records, and accounts for  
9 distribution service operations. If the delivery service  
10 provider is a consumer-owned utility, maintain records in such  
11 a manner as to enable delivery service data to reasonably be  
12 separated from data that do not pertain to delivery services.

13 (13) With respect to distribution service and control area  
14 operator employees engaged in receiving requests from a  
15 competitive electric service provider for reservation or  
16 scheduling of energy over the distribution system, prohibit  
17 the sharing of such employees with a competitive electric  
18 service provider and physically separate such employees from a  
19 competitive electric service provider.

20 A consumer-owned utility shall not be required to comply  
21 with subparagraph (13), but shall be required to comply with  
22 paragraph "b", subparagraph (7), with respect to employees  
23 engaged in receiving requests from a competitive electric  
24 service provider for reservation or scheduling of energy over  
25 the delivery system.

26 The board shall review any posting of an electric company  
27 and, if it concludes there are reasonable grounds to do so,  
28 may hold a hearing to determine if the standards comply with  
29 this subsection.

30 b. CONTROL AREA OPERATORS. No later than November 1,  
31 2001, each control area operator that engages in retail  
32 electric sales within a control area, either directly or  
33 through its own corporate structure or an affiliate, shall  
34 post on the board's website standards of conduct, to be  
35 effective May 1, 2002, that require the control area operator

1 to do all of the following:

2 (1) Disclose tariff information to users of the control  
3 area and apply all tariff provisions on a nondiscriminatory  
4 basis to similarly situated persons.

5 (2) If the control area operator is an electric company,  
6 maintain separate books of accounts and financial records from  
7 any competitive electric service provider. If the control  
8 area operator is a consumer-owned utility, maintain records in  
9 such a manner as to enable control area service data to  
10 reasonably be separated from other data.

11 (3) Prohibit the tying of the provision of any control  
12 area services to the selection of any particular competitive  
13 electric service provider or the selection of a product or  
14 service from any particular competitive electric service  
15 provider.

16 (4) Deny a competitive electric service provider  
17 preferential access to information related to control area  
18 operations which is not otherwise made publicly available,  
19 except with respect to information regarding the competitive  
20 electric service provider's own end-use consumers.

21 (5) Solicit, from time to time, competitive bids for  
22 ancillary services, to the extent not inconsistent with any  
23 applicable federal requirements.

24 (6) Administer energy balancing and financial settlement  
25 performed by the control area in a nondiscriminatory manner.

26 (7) Develop and administer a method for maintaining the  
27 integrity of proprietary and confidential information.

28 (8) Develop and post on the board's website a system for  
29 reporting declared emergencies. However, a control area  
30 operator shall not declare an emergency situation for the  
31 purpose of unreasonably discriminating against any other  
32 person.

33 The board shall review the posting of standards of conduct  
34 of an electric company and, if it concludes there are  
35 reasonable grounds to do so, may hold a hearing to determine

1 if the standards comply with the provisions of this  
2 subsection.

3 c. INFORMATIONAL FILING AND ADDITIONAL STANDARDS FOR  
4 ELECTRIC COMPANIES. A delivery service provider or control  
5 area operator that is an electric company shall submit to the  
6 board such information as the board may require in order to  
7 evaluate the actual effectiveness of the standards of conduct  
8 in fulfilling the purposes of this chapter. The board, upon  
9 its own motion or upon receipt of a complaint from any person  
10 alleging a violation of the standards of conduct, may  
11 investigate a delivery service provider's or control area  
12 operator's compliance with the standards of conduct. In  
13 addition, the board may add new standards of conduct by rule,  
14 if it determines the existing standards are not sufficient to  
15 ensure open access and comparable and nondiscriminatory  
16 service.

17 9. ADHERENCE TO SCHEDULES. A delivery service provider  
18 shall not directly or indirectly charge a greater compensation  
19 for its services than that prescribed in its tariffs, and a  
20 delivery service provider shall not make or grant any  
21 unreasonable preferences or advantages as to rates, charges,  
22 or services to any person, or subject any person to any  
23 unreasonable prejudice or disadvantage.

24 10. AFFILIATES OF DELIVERY SERVICE PROVIDERS.

25 a. Except as provided in this section or as otherwise  
26 approved by the board, a delivery service provider that is an  
27 electric company shall not directly or indirectly include in  
28 regulated rates or charges any costs or expenses of an  
29 affiliate engaged in any business other than delivery service  
30 unless the affiliate provides goods or services to the  
31 delivery service provider in accordance with rules adopted  
32 pursuant to this subsection. Any costs included in regulated  
33 rates or charges shall be reasonably necessary and appropriate  
34 for the delivery service business.

35 b. A delivery service provider that is an electric company

1 shall provide services as described in subsection 11 only in a  
2 manner that minimizes the possibility of cross-subsidization  
3 or unfair competitive advantage.

4 c. A delivery service provider that is an electric company  
5 shall keep and render to the board upon request delivery  
6 service records and records pertaining to services as  
7 described in subsection 11 separate from affiliates or  
8 operations that do not provide delivery service.

9 d. For a delivery service provider that is an electric  
10 company, the board, for delivery service ratemaking purposes,  
11 may inquire as to and prescribe the allocation of  
12 capitalization, earnings, debts, shared corporate services,  
13 and expenses related to ownership, operation, or management of  
14 affiliates.

15 e. Not later than October 1, 2000, the board shall propose  
16 rules identifying those services that may be shared between a  
17 delivery service provider or control area operator that is an  
18 electric company and an affiliated competitive electric  
19 service provider. Such rules shall not prevent a delivery  
20 service provider or control area operator from using the  
21 following shared corporate services, even when shared with an  
22 affiliated competitive electric service provider: corporate  
23 oversight; governance; administrative services, including  
24 travel administration, security, printing, graphics, custodial  
25 services, secretarial support, mail services and records  
26 management; financial management services, including  
27 accounting, treasury, internal audit, tax and financial  
28 reporting and planning; data processing; shareholder services;  
29 strategic corporate planning; human resources; employee  
30 benefits; regulatory services; legal services; lobbying; and  
31 nonmarket research and development activities. Such rules  
32 shall not prevent a delivery service provider or control area  
33 operator from using such shared corporate services even when  
34 shared with an affiliated competitive electric service  
35 provider. This paragraph shall not be construed to limit the

1 authority of the board to determine the amount of shared  
2 corporate service costs, if any, to be included in regulated  
3 rates for distribution service and other unbundled services  
4 under section 476B.4 and this section.

5 f. A contract or arrangement providing for the furnishing  
6 or receiving of goods and services between a delivery service  
7 provider that is an electric company and an affiliate shall be  
8 filed with the board in a time frame established by rule of  
9 the board. The initial rules shall be proposed by March 1,  
10 2001.

11 g. A contract or arrangement for the purchase, sale,  
12 lease, or exchange of any property, right, or thing between a  
13 delivery service provider that is an electric company and any  
14 affiliate shall be filed with the board in a time frame  
15 established by rule by the board. The initial rules shall be  
16 proposed by March 1, 2001.

17 h. A contract or arrangement providing for a loan of money  
18 or an extension or renewal of a loan of money or any similar  
19 transaction between a delivery service provider that is an  
20 electric company and an affiliate, whether as guarantor,  
21 endorser, surety, or otherwise, shall be filed with the board  
22 in a time frame established by rule of the board. The initial  
23 rules shall be proposed by March 1, 2001.

24 i. A contract or agreement filed pursuant to paragraph  
25 "f", "g", or "h" and determined by the board to be a  
26 confidential record pursuant to section 22.7 shall be returned  
27 to the delivery service provider filing the confidential  
28 record within sixty days after the contract or agreement is  
29 filed.

30 j. The board shall adopt rules excluding from the filing  
31 requirements of paragraphs "f", "g", and "h", the filing of a  
32 contract or agreement for a transaction with an affiliate  
33 where the amount of consideration involved does not exceed a  
34 threshold level of annual distribution and transmission  
35 revenues of the delivery service provider. The initial rules

1 to be adopted pursuant to this paragraph shall be proposed by  
2 March 1, 2001.

3 k. In a proceeding involving the rates, charges, or  
4 practices of a delivery service provider that is an electric  
5 company, the board may exclude from rates or charges any  
6 unreasonable payment or compensation to an affiliate made  
7 pursuant to a contract or arrangement whether or not filed  
8 under this subsection. For ratemaking purposes, the board may  
9 exclude the payment of compensation to an affiliate or adjust  
10 the revenue received from an affiliate associated with any  
11 contract or arrangement required to be filed with the board if  
12 the contract or arrangement is not so filed.

13 l. The board has the same jurisdiction over modification  
14 of or amendment to a contract or arrangement filed under this  
15 subsection as it has over the original contracts or  
16 arrangements. A modification of or amendment to a contract or  
17 arrangement shall also be filed in a time frame as determined  
18 by the board.

19 m. The board shall consult with other state and federal  
20 regulatory agencies for the purpose of eliminating duplicate  
21 or conflicting filing requirements and may adopt rules which  
22 provide that comparable information required to be filed with  
23 other state or federal regulatory agencies may be accepted by  
24 the board in lieu of information required by this subsection.

25 n. The board may adopt rules or issue orders which exempt  
26 a class of contracts or arrangements from this subsection, or  
27 waive the requirements of this subsection if the board finds  
28 that the exemption or waiver is in the public interest.

29 o. The board may periodically retain a nationally or  
30 regionally recognized independent auditing firm to conduct an  
31 audit of the transactions between a delivery service provider  
32 that is an electric company and its affiliates to investigate  
33 compliance with this subsection. An affiliate transaction  
34 audit shall not be conducted more frequently than twelve  
35 months after the conclusion of the most recently completed

1 audit, unless ordered by the board for good cause after notice  
2 and opportunity for hearing. The cost of the audit shall be  
3 paid by the delivery service provider to the independent  
4 auditing firm and shall be included in its regulated rates and  
5 charges, unless otherwise ordered by the board for good cause  
6 after providing the delivery service provider the opportunity  
7 for a hearing.

8 p. A delivery service provider that is a consumer-owned  
9 utility shall keep and render to the board upon request  
10 delivery service records in a manner as to enable delivery  
11 service data to reasonably be separated from affiliates' data.  
12 This subsection shall not be construed to authorize the board  
13 to impose rates on a consumer-owned utility. Information  
14 rendered to the board pursuant to this paragraph and  
15 determined by the board to be a confidential record pursuant  
16 to section 22.7 shall be returned to the delivery service  
17 provider rendering the confidential record within sixty days  
18 after rendering the confidential record or at the end of the  
19 investigation or proceeding. Except as provided in this  
20 subsection, a consumer-owned delivery service provider shall  
21 not directly or indirectly include in delivery service rates  
22 or charges any costs or expenses of an affiliate engaged in  
23 any business other than delivery service unless the affiliate  
24 provides goods and services to the delivery service provider.  
25 Any costs included in rates or charges shall be reasonably  
26 necessary and appropriate for the delivery service business,  
27 and shall be market priced and directly related to such goods  
28 or services in a manner that avoids cross-subsidization or  
29 unfair competitive advantage.

30 11. CROSS-SUBSIDIZATION PROHIBITED. A delivery service  
31 provider that is an electric company shall not directly or  
32 indirectly include in distribution service rates or charges  
33 any costs or expenses attributable to the sale, lease, or  
34 other conveyance of commercial and residential electric  
35 appliances, interior lighting systems or fixtures, or electric

1 heating, ventilating, or air conditioning systems and  
2 component parts, or the servicing, repair, or maintenance of  
3 such equipment. Except for contracts existing as of July 1,  
4 1996, a delivery service provider that is an electric company,  
5 or its affiliate, shall not use the delivery service  
6 provider's vehicles, service tools and instruments, or  
7 employees, the costs, salaries, or benefits of which are  
8 recoverable in regulated rates for distribution service, to do  
9 either of the following:

10 a. Install, service, or repair residential or commercial  
11 electric heating, ventilating, or air conditioning systems, or  
12 interior lighting systems and fixtures.

13 b. Sell at retail electric heating, ventilating, air  
14 conditioning, or interior lighting equipment.

15 For purposes of this subsection, "commercial" means a place  
16 of business primarily used for the storage or sale, at  
17 wholesale or retail, of goods, wares, services, or  
18 merchandise. This subsection shall not be construed to  
19 prohibit a delivery service provider from using its vehicles,  
20 service tools and instruments, and employees to market its  
21 systems, services, and equipment or to eliminate an emergency  
22 or threat to public safety.

23 12. REORGANIZATION OF DELIVERY SERVICE PROVIDERS THAT ARE  
24 ELECTRIC COMPANIES.

25 a. For purposes of this subsection, "reorganization" means  
26 any of the following:

27 (1) The acquisition, sale, lease, or any other  
28 disposition, directly or indirectly, including by merger or  
29 consolidation, of the whole or any substantial part of the  
30 regulated delivery service assets of an electric company.

31 (2) Until the cessation of standard offer service under  
32 section 476B.8, subsection 1, the sale by an electric company  
33 to any person, or the transfer by an electric company to any  
34 of its unregulated affiliates, of any interest in a generation  
35 unit located in this state, the costs of which have been

1 included in the standard offer service rates.

2 (3) The purchase or other acquisition or sale or other  
3 disposition of the controlling capital stock of any delivery  
4 service provider that is an electric company, either directly  
5 or indirectly.

6 b. A reorganization shall not take place unless the board  
7 approves. Prior to reorganization, an applicant shall file  
8 with the board a proposal for reorganization with supporting  
9 testimony and evidence addressing the items specified in  
10 paragraph "d".

11 c. A proposal for reorganization shall be approved or  
12 disapproved within ninety days after its filing. However, the  
13 board may extend the time for its decision by no more than an  
14 additional ninety-day period for good cause. The board shall  
15 provide for notice and opportunity for hearing on the  
16 proposal. The notice of hearing shall be provided no later  
17 than fifty days after the proposal for reorganization has been  
18 filed.

19 d. In its review of a proposal for reorganization, the  
20 board shall consider all of the following:

21 (1) Whether the board will have reasonable access to  
22 books, records, documents, and other information relating to  
23 the delivery service provider or any affiliates with which the  
24 delivery service provider has contracts.

25 (2) Whether the delivery service provider's ability to  
26 attract capital on reasonable terms, including the maintenance  
27 of a reasonable capital structure, is impaired.

28 (3) Whether the ability of the delivery service provider  
29 to provide safe, reasonable, and adequate delivery service is  
30 impaired.

31 (4) Whether users of the delivery service are  
32 detrimentally affected.

33 (5) Whether the public interest is detrimentally affected,  
34 including, but not limited to, whether the proposed  
35 reorganization is likely to have a significant adverse effect

1 on competition in this state.

2 e. The board may adopt rules or issue orders which exempt  
3 a class of reorganization from this subsection if the board  
4 finds, with respect to the class of reorganization, that  
5 review is not necessary in the public interest. The board may  
6 waive any or all of the requirements of this subsection, if  
7 the board finds that board review is not necessary in the  
8 public interest.

9 f. In approving any proposed reorganization pursuant to  
10 this subsection, the board may impose such terms, conditions,  
11 or requirements as in its judgment are necessary to protect  
12 the financial and operational integrity of the delivery  
13 service provider.

14 13. JOINT ADVERTISING PROHIBITED.

15 a. No later than May 1, 2002, a delivery service provider  
16 that is an electric company shall use a name that is distinct  
17 from any affiliated competitive electric service provider. An  
18 affiliated competitive electric service provider may use any  
19 name and logo of its choosing, including that of the incumbent  
20 provider or parent company. The board shall determine whether  
21 the name of the delivery service provider is distinct from any  
22 affiliated competitive electric service provider. Except as  
23 provided in rules adopted by the board, the delivery service  
24 provider shall not identify its affiliation with a competitive  
25 electric service provider or the parent of a competitive  
26 electric service provider either through a tag line or other  
27 means, except that a common logo may be used.

28 b. A delivery service provider or a control area operator  
29 of an electric company shall neither jointly advertise nor  
30 jointly market its services or products with an affiliated  
31 competitive electric service provider. However, this  
32 subsection does not preclude a delivery service provider from  
33 having joint meetings and contacts with end-use consumers and  
34 competitive electric service providers, including affiliated  
35 competitive electric service providers, for legitimate

1 business purposes. The board shall adopt rules regarding such  
2 meetings and purposes. The initial rules shall be proposed by  
3 October 1, 2000.

4 Sec. 10. NEW SECTION. 476B.10 RESPONSIBILITIES AND  
5 RIGHTS OF COMPETITIVE ELECTRIC SERVICE PROVIDERS.

6 1. GENERAL. The responsibilities and rights of a licensed  
7 competitive electric service provider include those specified  
8 in this section and elsewhere in this chapter.

9 2. RESPONSIBILITIES AND RIGHTS.

10 a. A competitive electric service provider may do any of  
11 the following:

12 (1) To the extent permitted by its license, offer and  
13 enter into contracts to provide competitive electric services  
14 to end-use consumers.

15 (2) Purchase delivery services from a delivery service  
16 provider that is an electric company to sell to end-use  
17 consumers, subject to this chapter and any applicable delivery  
18 service tariffs and board rules.

19 (3) Purchase delivery services from a delivery service  
20 provider that is a consumer-owned utility at the discretion of  
21 the consumer-owned utility and subject to the terms and  
22 conditions of the consumer-owned utility.

23 (4) Consistent with the rules adopted pursuant to section  
24 476B.6, subsection 4, require a money deposit from an end-use  
25 consumer as a condition of service, with any deposit so  
26 required becoming part of the contract between the end-use  
27 consumer and the competitive electric service provider.

28 (5) Contract to sell competitive electric services to  
29 other licensed competitive electric service providers.

30 (6) Bill for services in accordance with section 476B.12.

31 (7) With the agreement of an end-use consumer, install,  
32 own, maintain, and read a meter in accordance with section  
33 476B.11.

34 b. A competitive electric service provider shall do all of  
35 the following:

1 (1) Comply with all applicable environmental, safety, and  
2 service standards.

3 (2) Be able to demonstrate the truth of any claim that it  
4 makes to end-use consumers regarding types of fuel used to  
5 produce energy.

6 (3) Pay a delivery service provider for services provided  
7 and charges assessed to a competitive electric service  
8 provider or to an end-use consumer for whom the competitive  
9 electric service provider has agreed to assume payment  
10 responsibility, without regard to whether the competitive  
11 electric service provider receives payment from the end-use  
12 consumer.

13 (4) Pay a delivery service provider for services provided  
14 to an end-use consumer and charges assessed to an end-use  
15 consumer for which the delivery service provider has  
16 authorized the competitive electric service provider to bill  
17 and collect, without regard to whether the competitive  
18 electric service provider receives payment from the end-use  
19 consumer.

20 (5) If requested, provide to each delivery service  
21 provider, schedules and schedule changes submitted for  
22 deliveries to the delivery service provider at the same time  
23 that they are submitted to the control area operator.

24 c. A competitive electric service provider shall not be  
25 required to provide individual end-use consumer information,  
26 including metering information, to other competitive electric  
27 service providers.

28 d. This chapter is not intended to affect the activities  
29 of a licensed competitive electric service provider in the  
30 provision of goods and services other than the sale of  
31 competitive electric services at retail in this state.

32 e. The board shall not regulate the rates or charges of  
33 competitive electric services of or a competitive electric  
34 service provider with the exception of the rates or charges  
35 for standard offer service under section 476B.8, subsection 1.

1     Sec. 11. NEW SECTION. 476B.11 METERING AND METER  
2 INFORMATION.

3     1. An existing meter owned by an incumbent provider shall  
4 remain the property of the delivery service provider.

5     2. A delivery service provider may install, own, and  
6 maintain metering as deemed necessary. However, this chapter  
7 shall not be construed to require a delivery service provider  
8 to provide, install, own, or maintain meters that are not  
9 necessary for the purpose of providing delivery service.

10    3. A delivery service provider or a control area operator  
11 shall not require interval metering as a condition for  
12 residential end-use consumers and nonresidential end-use  
13 consumers using fewer than twenty-five thousand kilowatt-hours  
14 annually to exercise the option to choose competitive  
15 services.

16    4. A meter owned by the delivery service provider shall be  
17 installed by that delivery service provider regardless of the  
18 location of the meter.

19    5. An end-use consumer may install metering not owned by  
20 the delivery service provider on the consumer's side of the  
21 main disconnect, subject to the reasonable connection  
22 requirements of the delivery service provider and the rules of  
23 the board. The end-use consumer is subject to the board's  
24 rules regarding standards, installation, maintenance, and  
25 testing of meters used for billing if the end-use consumer  
26 chooses to own the meter. The delivery service provider may  
27 disconnect electric service at such meter subject to board  
28 rules.

29    6. An end-use consumer or such consumer's competitive  
30 electric service provider may request that metering and  
31 associated hardware be installed on the electric facilities of  
32 the delivery service provider or on the delivery service  
33 provider's side of the main disconnect, to enable the consumer  
34 to take advantage of competitive service offerings. The meter  
35 and associated hardware shall comply with applicable board

1 rules, and the costs of the meter shall be borne by the end-  
2 use consumer or the competitive electric service provider.  
3 The installation of the meter and associated hardware shall be  
4 performed by the delivery service provider in accordance with  
5 its requirements and the rules of the board. The delivery  
6 service provider may charge a reasonable, cost-based fee for  
7 the installation. The delivery service provider shall have  
8 reasonable discretion in prescribing the location and  
9 necessary connection equipment for the installation of meters  
10 and associated hardware under this subsection.

11 7. If the meter will be owned by the end-use consumer or  
12 the competitive electric service provider and will be  
13 installed on the end-use consumer's side of the main  
14 disconnect, the delivery service provider may offer to, but is  
15 not required to, install the meter.

16 8. The board shall adopt rules relating to installation of  
17 meters, uniform metering standards and practices, inspection  
18 and testing programs, accuracy requirements, data transmission  
19 protocols, load profiling, and maintenance of meter reading  
20 records. The board shall not preclude the use of accurate  
21 prepaid meters by a competitive electric service provider. In  
22 addition, the board shall require a competitive electric  
23 service provider and an end-use consumer owning a meter to  
24 provide meter access to the delivery service provider for  
25 disconnections, and may require a presence for meter testing.  
26 The initial rules shall be proposed by October 1, 2000.

27 9. A person is entitled to read meters that the person  
28 owns. A delivery service provider is entitled to reasonable  
29 access to any meters connected to the delivery service  
30 provider's system without regard to ownership. A competitive  
31 electric service provider is responsible for obtaining the  
32 meter information necessary to bill such provider's end-use  
33 consumers. With the consent of the end-use consumer, a  
34 competitive electric service provider serving the end-use  
35 consumer is entitled to reasonable access to read any meters

1 owned by the delivery service provider on the end-use  
2 consumer's premises for this purpose.

3 10. A delivery service provider is not required to read  
4 meters but, to the extent such provider does so, the delivery  
5 service provider shall make the meter information needed for  
6 billing available to a competitive electric service provider  
7 serving the metered premises. A delivery service provider may  
8 assess the competitive electric service provider a reasonable  
9 charge for making such information available to the  
10 competitive electric service provider.

11 11. To avoid unnecessary reading of an end-use consumer's  
12 meter, a competitive electric service provider responsible for  
13 meter information gathering shall make end-use consumer usage  
14 information needed for billing and financial settlement  
15 available to the delivery service provider at a charge if the  
16 competitive electric service provider so chooses. It shall  
17 also make necessary information available to the control area  
18 operator serving the metered premises.

19 Sec. 12. NEW SECTION. 476B.12 BILLING.

20 1. Subject to subsections 3 and 4, a delivery service  
21 provider and a control area operator may bill an end-use  
22 consumer and a competitive electric service provider for the  
23 services each provides. A delivery service provider or a  
24 control area operator shall not be required to bill for  
25 services provided by a competitive electric service provider  
26 except as provided in subsection 3, but either may do so at  
27 its option for a cost-based charge.

28 2. A competitive electric service provider may bill an  
29 end-use consumer for services it provides, subject to section  
30 476B.6, subsection 2, and other applicable provisions of this  
31 chapter and board rules.

32 3. An end-use consumer receiving delivery service from an  
33 electric company is entitled to request a single consolidated  
34 bill for competitive electric services, delivery services, and  
35 control area services. Unless otherwise agreed by the

1 affected service providers, such consolidated billing is the  
2 responsibility of the competitive electric service provider  
3 selling competitive billing services.

4 4. An end-use consumer receiving delivery service from a  
5 consumer-owned utility shall receive a bill from the consumer-  
6 owned utility for services rendered and a bill from the  
7 competitive electric service provider for competitive electric  
8 services, unless otherwise agreed to by the affected service  
9 providers. Any consolidated billing for an end-use consumer  
10 receiving delivery service from a consumer-owned utility shall  
11 be the responsibility of the consumer-owned utility, unless  
12 otherwise agreed to by the consumer-owned utility and affected  
13 competitive electric service providers. If a delivery service  
14 provider that is a consumer-owned utility provides all billing  
15 services for its associated licensed competitive electric  
16 service provider function within its assigned service area,  
17 such consumer-owned utility shall provide comparable service  
18 within its assigned service area for all other competitive  
19 electric service providers.

20 5. Not later than March 1, 2000, the board shall propose  
21 rules related to billing services consistent with this  
22 chapter. Except as provided in this chapter, the board shall  
23 not restrict a delivery service provider or a control area  
24 operator from contracting with a competitive electric service  
25 provider to provide or receive billing services.

26 Sec. 13. NEW SECTION. 476B.13 SYSTEM BENEFIT PROGRAMS.

27 1. LOW-INCOME AFFORDABILITY AND ENERGY EFFICIENCY  
28 PROGRAMS.

29 a. PURPOSE. For purposes of this subsection, "division"  
30 means the division of community action agencies within the  
31 department of human rights or its successor. A low-income  
32 affordability program and a low-income energy efficiency  
33 program are created to be administered by the division. The  
34 purpose of the low-income affordability program is to  
35 encourage the competitive market to serve the electric needs

1 of low-income, end-use consumers. The purpose of the low-  
2 income energy efficiency program is to reduce the consumption  
3 of electricity by low-income, end-use consumers through energy  
4 efficiency improvements.

5 b. APPORTIONMENT. Low-income affordability and low-income  
6 energy efficiency assistance shall be distributed statewide.  
7 However, an electric company or consumer-owned utility shall  
8 not receive in the first two years of the program an  
9 apportionment of funding that is less than eighty percent of  
10 the total amount of funding paid by end-use consumers in such  
11 company's or utility's assigned service area under this  
12 subsection, as determined by the division. Commencing in the  
13 third year of the program and biannually after that year, if  
14 the apportionment of funding to low-income, end-use consumers  
15 in an assigned service area would be less than eighty percent  
16 of the funds collected pursuant to paragraph "f" in that  
17 assigned service area, the division shall return or direct the  
18 return of the difference between the amount apportioned and  
19 eighty percent of the amount collected to the appropriate  
20 delivery service provider. The delivery service provider  
21 shall return to end-use consumers in its assigned service area  
22 the above amount in a manner that reflects the proportion of  
23 collections. The board shall approve the mechanism for return  
24 for electric companies. Consumer-owned utilities shall  
25 determine the return mechanism.

26 c. ELIGIBILITY. Eligibility for the low-income  
27 affordability and low-income energy efficiency programs shall  
28 be determined as follows:

29 (1) A residential end-use consumer with a household income  
30 at or below one hundred fifty percent of the federal poverty  
31 level, as determined annually by the United States department  
32 of health and human services, is eligible to receive low-  
33 income affordability assistance.

34 (2) A residential end-use consumer with a household income  
35 at or below one hundred fifty percent of the federal poverty

1 level, as determined annually by the United States department  
2 of health and human services, is eligible to receive low-  
3 income energy efficiency program assistance, regardless of  
4 their eligibility to receive low-income affordability  
5 assistance.

6 d. LOW-INCOME AFFORDABILITY PROGRAM. The community action  
7 agencies shall qualify a consumer for participation in the  
8 low-income affordability program and shall notify a person  
9 billing the end-use consumer of the consumer's monthly fixed  
10 credit and the duration for which the monthly fixed credit is  
11 authorized. The monthly fixed credit is the amount necessary  
12 to reduce the consumer's total electric bill to an affordable  
13 percentage of income in accordance with rules adopted by the  
14 division. The affordable percentage of income shall be tiered  
15 to reflect the ratio of the consumer's household income to the  
16 federal poverty level, with greater assistance provided to  
17 those at lower poverty levels, as determined by rules of the  
18 division.

19 Program benefits shall be distributed as a monthly fixed  
20 credit applied toward a consumer's delivery service bill for  
21 provision of electricity. A person billing an end-use  
22 consumer shall subtract the amount of the credit from the  
23 amount of the consumer's bill each month, or an equivalent  
24 amount if a different billing cycle is utilized. If the  
25 monthly fixed credit exceeds the portion of the bill related  
26 to delivery service, the excess shall be applied toward the  
27 cost of the consumer's competitive power supply services. A  
28 person billing the end-use consumer shall bill the appropriate  
29 community action agency for the sum of the total amount of  
30 fixed credits provided to the consumer and the division shall  
31 be timely reimburse the person for all credited amounts. Only  
32 those credits that are authorized in accordance with this  
33 subsection shall be reimbursed.

34 e. LOW-INCOME ENERGY EFFICIENCY PROGRAM. Energy  
35 efficiency assistance shall be prioritized based on the end-

1 use consumers with the largest kilowatt-hours of annual use.  
2 Moneys allocated to the low-income energy efficiency program  
3 may be used for space heating as allowed pursuant to the  
4 federal weatherization assistance program or nonspace heating  
5 as determined by the weatherization assistance program as  
6 necessary and appropriate to provide maximum comprehensive  
7 cost-effective energy efficiency treatment to low-income  
8 households.

9 f. FUNDING. For the first three years the low-income  
10 affordability program and the low-income energy efficiency  
11 program are in effect, funds for the programs shall be  
12 provided by all end-use consumers through a nonbypassable  
13 surcharge on distribution service to be collected by the  
14 person billing the end-use consumer for such distribution  
15 service. The monthly charge shall commence with bills issued  
16 on February 1, 2002, and shall be as follows:

17 (1) Seventy cents for all residential electric accounts.

18 (2) Seventy cents for nonresidential electric accounts  
19 with an annual usage of less than twenty-five thousand  
20 kilowatt-hours in the prior calendar year.

21 (3) Two dollars and fifty cents for nonresidential  
22 electric accounts with an annual usage of twenty-five thousand  
23 kilowatt-hours to one hundred thousand kilowatt-hours in the  
24 prior calendar year.

25 (4) Ten dollars for nonresidential electric accounts with  
26 annual usage of more than one hundred thousand kilowatt-hours  
27 to four hundred thousand kilowatt-hours in the prior calendar  
28 year.

29 (5) Forty dollars for nonresidential electric accounts  
30 with annual usage of more than four hundred thousand kilowatt-  
31 hours to one million five hundred thousand kilowatt-hours in  
32 the prior calendar year.

33 (6) One hundred fifty dollars for nonresidential electric  
34 accounts with annual usage of more than one million five  
35 hundred thousand kilowatt-hours to six million kilowatt-hours

1 in the prior calendar year.

2 (7) Six hundred dollars for nonresidential electric  
3 accounts with annual usage of more than six million kilowatt-  
4 hours in the prior calendar year.

5 For the purpose of determining the monthly charge, the term  
6 "accounts" may be interpreted by the board in appropriate  
7 circumstances to mean end-use consumers. During the second  
8 and third twelve-month periods that the program is in effect,  
9 the monthly charges shall be adjusted as necessary to yield no  
10 less than twenty-three million dollars annually. For  
11 nonresidential consumers with no prior calendar-year usage the  
12 delivery service provider may use a reasonable estimate of the  
13 consumer's usage.

14 All moneys collected pursuant to this subsection shall be  
15 remitted to the treasurer of state. The treasurer shall make  
16 disbursements from this fund as appropriate. The unencumbered  
17 or unobligated moneys remaining at the end of any fiscal year  
18 from the appropriations made in this subsection shall not  
19 revert but shall be available for expenditure during  
20 subsequent fiscal years until expended for the purposes for  
21 which originally appropriated. Interest or earnings on  
22 investments or time deposits of the moneys remitted under this  
23 section shall be retained for the purposes designated in this  
24 section.

25 After the third year of the program, the board shall  
26 annually establish levels of charges on electric accounts  
27 based on the total program budget developed by the division.  
28 When determining the per account charge, the board shall not  
29 substantially deviate from the cost allocation among consumer  
30 groups reflected in the initial funding charges. Any increase  
31 in monthly charges as provided in this paragraph shall not go  
32 into effect without prior approval by joint resolution as  
33 adopted by the general assembly.

34 g. PROGRAM ALLOCATIONS, ADMINISTRATION, AND BUDGETS.

35 (1) Amounts allocated to the low-income affordability

1 program shall be based on participation rates from prior years  
 2 and the level of credits necessary to maintain affordable  
 3 energy burdens. Low-income energy efficiency program  
 4 allocations shall be based on the level of funding necessary  
 5 to deliver adequate energy efficiency to participating  
 6 households, as determined by the weatherization assistance  
 7 program. The level of funding allocated for the low-income  
 8 energy efficiency program shall not exceed twenty percent of  
 9 total low-income affordability program funding. The level of  
 10 funding allocated for administration shall not exceed ten  
 11 percent of the amounts allocated for the sum of the low-income  
 12 affordability program and the low-income energy efficiency  
 13 program.

14 (2) The division shall administer the program.  
 15 Administration of the program shall include contracting with  
 16 community action agencies, enrolling low-income, end-use  
 17 consumers in the program, providing outreach and consumer  
 18 education, notifying consumers and answering consumer  
 19 inquiries, and keeping records relating to the numbers of  
 20 program participants and program expenditures.

21 (3) The division shall develop a budget for the low-income  
 22 affordability program and the low-income energy efficiency  
 23 program on an annual basis.

24 h. IMPLEMENTATION PLAN. Within ninety days after the  
 25 effective date of this chapter, the division shall convene an  
 26 initial meeting of persons interested in participating in the  
 27 development of an implementation plan. Additional meetings  
 28 shall be scheduled by the division as necessary. The plan, at  
 29 a minimum, shall include the requirements identified in this  
 30 subsection.

31 i. DELIVERY SERVICE PROVIDER REPORT. A delivery service  
 32 provider shall report to the board annually the number of end-  
 33 use consumer accounts in its assigned service area eligible  
 34 for each program under paragraph "c".

35 j. BOARD RULES. The board shall propose rules by October

1 1, 2000, applicable to a delivery service provider and  
2 competitive electric service provider concerning the  
3 collection of funds pursuant to paragraph "f".

4 k. EVALUATION AND PLAN. Every other year, the division,  
5 in consultation with the board, shall evaluate the performance  
6 and effectiveness of the low-income affordability program  
7 through use of an independent third party and develop a low-  
8 income needs and resources plan for the state which shall  
9 include a statewide assessment of the need for low-income  
10 affordability assistance and low-income energy efficiency  
11 assistance; an identification of the public and private  
12 resources available to meet the identified needs; and  
13 recommendations on how to coordinate the available resources  
14 to most effectively address the identified needs, taking into  
15 account the difference between short-term and long-term  
16 effectiveness.

17 Upon completion, the evaluation and the plan shall be  
18 submitted to the general assembly.

19 2. CONTRIBUTION FUND.

20 a. A delivery service provider and a licensed competitive  
21 electric service provider may establish a fund whose purposes  
22 shall include receiving contributions to assist consumers with  
23 weatherization measures to improve energy efficiency related  
24 to winter heating and summer cooling and to supplement other  
25 energy assistance sources for the payment of electric bills.

26 b. The delivery service provider or competitive electric  
27 service provider establishing the fund may be reimbursed by  
28 the fund for the reasonable administrative costs of the  
29 billings, disbursements, notices to potential contributors,  
30 and financial recordkeeping. However, such reimbursement  
31 shall not exceed five percent of the total contributions  
32 collected.

33 3. ENVIRONMENTAL ASSESSMENT.

34 a. On and after May 1, 2002, the board shall direct all  
35 delivery service providers with an assigned service area to

1 collect from each end-use consumer in the assigned service  
2 area, directly or through the competitive electric service  
3 provider billing the end-use consumer, the following  
4 nonbypassable monthly charge, with the proceeds to be remitted  
5 to the treasurer of state as follows:

6 (1) Six cents for all residential electric accounts.

7 (2) Six cents for a nonresidential electric account with  
8 an annual usage of less than twenty-five thousand kilowatt-  
9 hours in the prior calendar year.

10 (3) Twenty cents for a nonresidential electric account  
11 with an annual usage of twenty-five thousand kilowatt-hours to  
12 one hundred thousand kilowatt-hours in the prior calendar  
13 year.

14 (4) Eighty cents for a nonresidential electric account  
15 with annual usage of more than one hundred thousand kilowatt-  
16 hours to four hundred thousand kilowatt-hours in the prior  
17 calendar year.

18 (5) Three dollars and twenty cents for a nonresidential  
19 electric account with annual usage of more than four hundred  
20 thousand kilowatt-hours to one million five hundred thousand  
21 kilowatt-hours in the prior calendar year.

22 (6) Twelve dollars for a nonresidential electric account  
23 with annual usage of more than one million five hundred  
24 thousand kilowatt-hours to six million kilowatt-hours in the  
25 prior calendar year.

26 (7) Forty-eight dollars for a nonresidential electric  
27 account with annual usage of more than six million kilowatt-  
28 hours in the prior calendar year.

29 For the purpose of determining the monthly charge, the term  
30 "accounts" may be interpreted by the board in appropriate  
31 circumstances to mean end-use consumers. The board shall, by  
32 rule, provide a schedule for remittances. The initial rules  
33 shall be proposed by March 1, 2001. The board shall allow  
34 inclusion of the remittance amounts in unbundled distribution  
35 service rates. Eighty-five percent of the remittances

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1 collected pursuant to this subsection is appropriated to the  
2 Iowa energy center created in section 266.39C. Fifteen  
3 percent of the remittances collected pursuant to this  
4 subsection is appropriated to the center for global and  
5 regional environmental research established by the state board  
6 of regents.

7 Notwithstanding section 8.33, any unexpended moneys  
8 remitted to the treasurer of state under this subsection shall  
9 not revert and shall be retained by the centers for the  
10 purposes designated. Notwithstanding section 12C.7,  
11 subsection 2, interest or earnings on investments or time  
12 deposits of the moneys remitted under this subsection shall be  
13 retained and used for the purposes designated.

14 The Iowa energy center and the center for global and  
15 regional environmental research shall each provide a written  
16 annual report to the board which describes each center's  
17 activities and the results that each center has accomplished.  
18 Each report shall include an explanation of initiatives and  
19 projects of importance to the state.

20 4. ENERGY EFFICIENCY PROGRAMS. This chapter shall not be  
21 interpreted to preclude a delivery service provider from  
22 offering energy efficiency programs and tree planting  
23 programs. Such tree planting programs need not be cost  
24 effective.

25 Sec. 14. NEW SECTION. 476B.14 COMPLAINTS.

26 1. A competitive electric service provider, a delivery  
27 service provider, and a control area operator shall develop  
28 and post on the board's website the procedures for filing and  
29 resolving complaints regarding their services and operations.

30 2. The board is authorized to hear all complaints subject  
31 to its jurisdiction by and against an end-use consumer, a  
32 competitive electric service provider, a delivery service  
33 provider, and a control area operator. This subsection does  
34 not confer exclusive jurisdiction in collection matters upon  
35 the board.

1 3. The district court has original jurisdiction concerning  
 2 disputes with respect to all rates and charges of a consumer-  
 3 owned utility and all other matters concerning a consumer-  
 4 owned utility not specifically reserved to the board by this  
 5 chapter or another statute. A complaint shall be filed in the  
 6 district court for the county in which the complainant resides  
 7 or if the complainant is a nonresident in the district court.

8 4. The board shall render a decision upon a complaint as  
 9 soon as practicable. A person aggrieved by the board's  
 10 decision may seek judicial review pursuant to chapter 17A.

11 Sec. 15. NEW SECTION. 476B.15 TRANSITION CHARGES.

12 1. COSTS OF GENERATION AND CONTRACTS FOR POWER AND ENERGY.

13 An electric company is entitled, but not required, to  
 14 implement transition charges under this subsection. If an  
 15 electric company elects to implement transition charges, such  
 16 charges shall be nonbypassable charges collected from each  
 17 end-use consumer within the incumbent provider's assigned  
 18 service area. However, transition charges shall not increase  
 19 the rates for electric service provided under section 476B.8.  
 20 Transition charges under this subsection shall be billed by an  
 21 electric company to end-use consumers, directly or through a  
 22 competitive electric service provider, commencing with service  
 23 rendered on May 1, 2002, and concluding with service rendered  
 24 on December 31, 2005.

25 Transition charges shall be calculated for each bundled  
 26 retail rate group or code existing on the date the electric  
 27 company files its unbundled rates pursuant to section 476B.4.  
 28 Transition charges shall be calculated each year in which the  
 29 electric company is entitled to implement such charges.  
 30 Transition charges in cents per kilowatt-hour shall be  
 31 calculated by rate group or code by first subtracting the  
 32 market price from the cost of generation, and then multiplying  
 33 that result times a mitigation factor, the percentage of which  
 34 varies by calendar year as follows:

- 35 a. Eighty percent applicable to 2002.

1 b. Seventy percent applicable to 2003.

2 c. Sixty percent applicable to 2004.

3 d. Fifty percent applicable to 2005.

4 Under no circumstance shall a charge under this subsection  
5 be less than zero.

6 For purposes of this subsection, the cost of generation  
7 shall be stated in cents per kilowatt-hour included in a  
8 bundled rate group or code on the effective date of this  
9 chapter. The cost of generation shall include the return on  
10 plant investment allowed in the most recent rate proceeding,  
11 but shall exclude that portion of regulatory assets to be  
12 recovered under subsection 3 that are attributable to  
13 generation costs, and the amount of nuclear decommissioning  
14 expenses included in the rate group or code.

15 For purposes of this subsection, the market price shall be  
16 stated in cents per kilowatt-hour an electric company should  
17 reasonably be expected to receive for demand and energy from a  
18 rate group or code when sold in a competitive power market.  
19 At a minimum, separate values shall be determined by the board  
20 for firm and interruptible sales. The market price shall be  
21 determined by the board by no later than January 1, 2002, and  
22 shall be updated annually. In determining the market price,  
23 the board shall consider relevant wholesale and retail  
24 contracts for demand and energy sales and purchases,  
25 recognizing such factors as the time differentiation of price  
26 levels in the contracts and whether the prices in the  
27 contracts are for firm or interruptible service. The board  
28 shall also consider other relevant information from power  
29 exchanges, trading hubs, and similar sources.

30 An electric company that elects to implement transition  
31 charges under this subsection shall file tariffs with the  
32 board that identify the cost of generation to be included in  
33 the calculation of transition charges to be paid by end-use  
34 consumers in each bundled rate group or code at the time it  
35 files its initial unbundled rates under section 476B.4. Rate

1 groups or codes, for purposes of calculating transition  
2 charges, shall be defined in tariffs included in the electric  
3 company's filing under section 476B.4, subsection 1. The  
4 board shall issue its decision regarding the transition charge  
5 tariffs at the same time it issues its order regarding the  
6 initial unbundled rates filed under section 476B.4. Charges  
7 approved by the board shall be posted on its website starting  
8 no later than November 1, 2001.

9 2. DIVESTITURE OPTION. The board may permit, but shall  
10 not require, an incumbent provider that is an electric company  
11 to divest itself of its generation assets and contracts for  
12 power and energy.

13 No later than January 1, 2000, an incumbent provider,  
14 including, for the purposes of this subsection, any affiliated  
15 incumbent provider, may submit an election to divest to the  
16 board. The election shall be accompanied by the submittal of  
17 a divestiture plan to the board, which shall review the plan.  
18 By July 1, 2000, the board shall issue an order approving or  
19 modifying the plan. The incumbent provider may revoke its  
20 election within ninety days of the board's order approving or  
21 modifying the plan. If the incumbent provider does not revoke  
22 its election, the incumbent provider shall divest its  
23 generation assets and contracts for power and energy in  
24 accordance with the board's order. Such divestiture must be  
25 completed by December 31, 2001, unless such time is extended  
26 for good cause as determined by the board.

27 If an incumbent provider makes an election to divest, the  
28 incumbent provider shall divest of all generation assets and  
29 contracts for power and energy that are included in the  
30 incumbent provider's most recent board-determined Iowa revenue  
31 requirement except to the extent such divestiture is found by  
32 a court of proper jurisdiction to be impermissible. All  
33 generation assets and contracts for power and energy not  
34 included in the incumbent provider's most recent board-  
35 determined Iowa revenue requirement shall be subject to a

1 determination by the board as to whether divestiture is in the  
2 public interest, except to the extent such divestiture is  
3 found by a court of proper jurisdiction to be impermissible.

4 The board shall not allow any supply contracts, for which  
5 bids are sought as part of the divestiture plan to satisfy an  
6 incumbent provider's standard offer service obligation  
7 pursuant to section 476B.8, to extend beyond December 31,  
8 2005.

9 The board may allow the divestiture plan to include  
10 transfer of the decommissioning responsibility for any nuclear  
11 generation asset to the purchaser if such transfer of  
12 responsibility is deemed by the board to be in the public  
13 interest.

14 For each incumbent provider electing divestiture under this  
15 subsection, the board shall determine the sum of the following  
16 amounts:

17 a. The net of an incumbent provider's generation-related  
18 regulatory assets and liabilities.

19 b. The difference between net plant investment associated  
20 with an incumbent provider's generation assets and the market  
21 value of the generation assets.

22 c. The difference between future contract payments and the  
23 market value of an incumbent provider's purchased power  
24 contracts.

25 When determining the market value of generation assets and  
26 existing purchase power contracts, the board shall rely solely  
27 on the market information resulting from the sale of the  
28 generation assets and the rights to energy and demand under  
29 contracts held by the incumbent provider including the supply  
30 contracts to meet the incumbent provider's standard offer  
31 service obligation.

32 To the extent that the divestiture realizes an amount less  
33 than the sum of the amounts determined in paragraphs "a", "b",  
34 and "c," beginning no later than May 1, 2002, the board shall  
35 provide an incumbent provider a reasonable opportunity to

1 recover all costs not recovered through the sale of generation  
2 assets and the contracts for energy and demand through  
3 nonbypassable charges. This cost recovery opportunity must be  
4 equal to the incumbent provider's opportunity to recover costs  
5 before the effective date of this chapter.

6 To the extent that the divestiture realizes an amount  
7 greater than the sum of the amounts determined in paragraphs  
8 "a", "b", and "c", such difference shall be applied to reduce  
9 end-use consumers' responsibility for nuclear decommissioning  
10 costs held by the incumbent provider after divestiture. To  
11 the extent that the divestiture realizes an amount greater  
12 than the sum of the amounts determined in paragraphs "a", "b",  
13 and "c", and no responsibility for nuclear decommissioning  
14 costs remains with the incumbent provider, the incumbent  
15 provider shall be entitled to retain the remaining amounts.

16 Nothing in this chapter shall be construed to give an  
17 incumbent provider a greater or lesser opportunity to recover  
18 all costs than existed prior to the effective date of this  
19 chapter.

20 This subsection, including the treatment of proceeds from  
21 divestiture, shall not be construed to apply to any other  
22 provision of this chapter or to any regulatory or legal  
23 proceeding not pertaining to this specific subsection.

24 All costs that are afforded recovery as a result of  
25 generation asset divestiture pursuant to this subsection shall  
26 qualify for securitization as set forth in section 476B.17.  
27 All savings from this securitization shall flow back to end-  
28 use consumers through a reduction in the nonbypassable charge  
29 required under this subsection.

30 3. REGULATORY ASSETS AND LIABILITIES.

31 a. Regulatory assets and regulatory liabilities exist  
32 because regulators have allowed recovery of certain costs in  
33 different time periods than normally recognized under  
34 generally accepted accounting principles, with assurances to  
35 an incumbent provider that is an electric company of ultimate

1 recovery. An incumbent provider that is an electric company  
2 shall be permitted, but not required, to recover all of its  
3 net regulatory assets attributable to electric operations in  
4 this state. For purposes of this subsection, net regulatory  
5 assets equals regulatory assets less regulatory liabilities.  
6 For the purpose of this paragraph, regulatory assets shall  
7 include but not be limited to the costs of programs offered  
8 under section 476.6, subsections 17 and 19, and the costs of  
9 contracts or arrangements entered into under section 476.43.

10 b. Recovery of net regulatory assets shall be accomplished  
11 through charges on all delivery services within the electric  
12 company's assigned service area, including electricity  
13 delivered under rates or charges charged pursuant to section  
14 476B.8. The rates or charges may vary by type of delivery  
15 service to the extent such variation is just, reasonable, and  
16 based upon relevant cost factors. The board may require that  
17 such charges be nonbypassable. Collection of the net  
18 regulatory asset charges shall commence on May 1, 2002.

19 c. An electric company electing to recover net regulatory  
20 assets shall annually file with the board its estimates of the  
21 unamortized amount of regulatory assets and liabilities. The  
22 initial estimates shall be filed with the initial unbundled  
23 rate filing pursuant to section 476B.4, followed by annual  
24 filings until the amortization of these net assets is  
25 completed. Such filing shall include a proposed amortization  
26 period or periods over which the net assets are to be  
27 recovered, estimated sales in kilowatt-hours in its assigned  
28 service area during the first year of the proposed  
29 amortization period, and any proposed variation in charges by  
30 type of delivery service. The electric company shall also  
31 file supporting documentation for its proposals. If it does  
32 not approve the electric company's filing, the board after  
33 notice and opportunity for hearing shall determine the  
34 regulatory assets and regulatory liabilities of the electric  
35 company eligible for recovery; the appropriate periods over

1 which net regulatory assets shall be recovered, which shall  
 2 not exceed fifteen years; and the charges applicable to each  
 3 type of delivery service. In determining net regulatory  
 4 assets, the board shall not combine or net assets or  
 5 liabilities that would be recorded on the electric company's  
 6 books absent regulation or that would cause violation of the  
 7 normalization provisions of the Internal Revenue Code. The  
 8 board shall issue its decision regarding the regulatory asset  
 9 filing at the time it issues its order regarding the initial  
 10 unbundled rates filed under section 476B.4. Charges approved  
 11 by the board shall be posted on its website starting on  
 12 November 1, 2001.

13 4. START-UP COSTS OF DELIVERY SERVICE PROVIDERS. The  
 14 board shall permit a delivery service provider that is an  
 15 electric company to recover one hundred percent of its  
 16 reasonable start-up costs caused by the transition to  
 17 competition, including the reasonable costs associated with  
 18 implementing the requirements of this chapter and the board  
 19 orders issued and rules adopted pursuant to this chapter.  
 20 Start-up costs to be considered by the board shall include,  
 21 but are not limited to, costs associated with new computer  
 22 information systems, changes in computer information systems,  
 23 new and existing metering, and costs incurred pursuant to  
 24 section 476B.24. The board may require that recoverable  
 25 start-up costs be amortized over a period not to exceed ten  
 26 years. Start-up cost charges under this subsection shall not  
 27 be applicable to the rates for electric service provided under  
 28 section 476B.8.

29 An electric company electing to recover start-up costs  
 30 shall file estimates of the start-up costs and a tariff for  
 31 recovery of the costs with the board at the time it files its  
 32 initial unbundled rates pursuant to section 476B.4. The board  
 33 shall issue its decision regarding the start-up cost filing at  
 34 the time it issues its order regarding the initial unbundled  
 35 rate filing. Charges approved by the board shall be posted on

1 its website starting on November 1, 2001. Collection of  
2 start-up cost charges shall commence on May 1, 2002. Electric  
3 companies shall file annually with the board a reconciliation  
4 of start-up costs actually collected versus estimated start-up  
5 costs. The first reconciliation filing shall be made no later  
6 than March 31, 2003, reflecting costs and revenues for the  
7 period ending December 31, 2002. The board shall allow the  
8 electric company to adjust its cost recovery factors to  
9 reflect any differences, with the intent of allowing one  
10 hundred percent recovery of reasonable costs incurred. The  
11 board shall have ninety days to issue its decision on the  
12 reconciliation factors.

13 5. CONSUMER-OWNED UTILITY TRANSITION COSTS.

14 a. ELECTRIC COOPERATIVES. The local governing body of an  
15 electric cooperative shall determine the nature and amount of  
16 transition costs which shall be paid by its respective  
17 members. The local governing body shall have the sole  
18 authority to determine the manner, rates, charges, terms, and  
19 conditions of recovery. A member electric cooperative is  
20 authorized, but not required, to collect the transition costs  
21 through nonbypassable charges on all end-use consumers in its  
22 assigned service area. The calculation of transition costs by  
23 an electric cooperative shall consider the market value of  
24 capacity and energy. The transition cost recovery shall be  
25 reconciled periodically.

26 b. MUNICIPAL UTILITIES. The local governing body of a  
27 municipal utility shall determine the nature and amount of  
28 transition costs which shall be paid through nonbypassable  
29 charges by the end-use consumers in its assigned service area.  
30 The local governing body shall have the sole authority to  
31 determine the manner, rates, charges, terms, and conditions of  
32 recovery. Each municipal utility is authorized, but not  
33 required, to collect the transition costs on all end-use  
34 consumers in its assigned service area. The calculation of  
35 transition costs by a municipal utility shall consider the

1 market value of capacity and energy. The transition cost  
2 recovery shall be reconciled periodically.

3 Sec. 16. NEW SECTION. 476B.16 NUCLEAR DECOMMISSIONING.

4 1. RECOVERY OF NUCLEAR DECOMMISSIONING CHARGES. An  
5 incumbent provider or electric cooperative, and its successors  
6 or assigns, owning an interest in or having responsibility as  
7 a matter of contract, statute, or energy purchase agreement  
8 for the nuclear decommissioning costs of the Duane Arnold  
9 energy center, quad-cities nuclear power station, Cooper  
10 nuclear station, or La Crosse boiling water reactor shall be  
11 allowed to recover nuclear decommissioning costs. An electric  
12 company shall be allowed to recover nuclear decommissioning  
13 costs allocated to Iowa through nonbypassable charges,  
14 including charges on service provided pursuant to section  
15 476B.8. The tariffs of an electric company for the nuclear  
16 decommissioning charges shall conform to subsection 2. An  
17 electric company shall file its nuclear decommissioning  
18 tariffs with the board as part of the filing of initial  
19 unbundled rates under section 476B.4. The local governing  
20 body of each consumer-owned utility shall determine the amount  
21 of and method and timing for recovery of nuclear  
22 decommissioning costs and shall post that information as  
23 provided in section 476B.4. All nuclear decommissioning  
24 tariffs of electric companies under this section and the  
25 initial charges under such tariffs shall become effective May  
26 1, 2002.

27 2. DESIGN OF NUCLEAR DECOMMISSIONING TARIFF FOR ELECTRIC  
28 COMPANIES. The nuclear decommissioning tariffs of an  
29 incumbent provider that is an electric company shall provide  
30 for the nonbypassable charges to be collected from each end-  
31 use consumer within the incumbent provider's assigned service  
32 area and in each assigned service area in Iowa of any  
33 affiliated incumbent provider. The decommissioning charges  
34 shall be a surcharge upon unbundled distribution service rates  
35 and rates charged pursuant to section 476B.8. Decommissioning

1 charges shall be billed to each end-use consumer, directly or  
2 through a competitive electric service provider, commencing  
3 with bills issued on and after May 1, 2002. The allocation of  
4 decommissioning charges among end-use consumers shall be  
5 subject to approval by the board. The decommissioning charges  
6 in such tariffs shall be set at a level that will ensure the  
7 incumbent provider recovery of its nuclear decommissioning  
8 costs, with the objective of achieving full recovery as of the  
9 date on which decommissioning is commenced for a unit or  
10 units. The decommissioning charges shall be adjusted  
11 periodically to reflect increases or decreases in the  
12 estimated costs of decommissioning the nuclear unit or units,  
13 irrespective of any increases or decreases in other costs or  
14 revenues of the incumbent provider or delivery service  
15 provider. The decommissioning charges shall cease when the  
16 nuclear plant is fully decommissioned or the incumbent  
17 provider no longer has a responsibility for nuclear  
18 decommissioning costs. All revenues collected under the  
19 tariff shall be contributed to appropriate decommissioning  
20 trust funds to be used to decommission the nuclear unit or  
21 units or to reduce the amounts to be charged under such  
22 tariffs in the future. All material changes to the trust fund  
23 agreements, including a change in the trustee, shall be filed  
24 with the board for approval. Decommissioning charges in such  
25 tariffs shall be considered the equivalent of "cost of  
26 service" amounts for purposes of determining contributions  
27 deductible by the incumbent provider pursuant to section 468A  
28 of the Internal Revenue Code.

29 3. ADJUSTMENT OF CHARGES FOR ELECTRIC COMPANIES. Nuclear  
30 decommissioning tariffs filed with the board under this  
31 section by an electric company shall provide that no increase  
32 in charges under the decommissioning tariffs may take effect  
33 until approved by the board. Notice to end-use consumers and  
34 competitive electric service providers served under delivery  
35 service tariffs or with whom the delivery service provider has

1 delivery service contracts, whether or not written, shall not  
2 be required. The board may suspend the filing and hold  
3 hearings as provided in section 476B.9, subsection 5.

4 Sec. 17. NEW SECTION. 476B.17 SECURITIZATION.

5 1. FINDINGS. The general assembly finds and declares all  
6 of the following:

7 a. Securitization is a common financing technique which  
8 has been used by other states as an effective tool to mitigate  
9 transition costs.

10 b. It is in the state's interest to allow securitization  
11 because it will help incumbent providers manage their costs  
12 without increasing rates paid by end-use consumers.

13 c. Securitization will not create obligations of the state  
14 or any of its political subdivisions.

15 2. DEFINITION. For purposes of this section, "incumbent  
16 provider" includes a delivery service provider who was an  
17 incumbent provider prior to May 1, 2002.

18 3. ISSUANCE OF TRANSITIONAL FUNDING ORDERS.

19 a. Upon application of an incumbent provider, the board is  
20 authorized to issue transitional funding orders to create,  
21 establish, and grant rights in, to, and under intangible  
22 transition property in and to any grantee, incumbent provider,  
23 issuer, or assignee in accordance with the terms of such  
24 application.

25 b. After the effective date of this chapter, an incumbent  
26 provider may file any number of applications for transitional  
27 funding orders. An application for a transitional funding  
28 order shall contain the incumbent provider's detailed proposal  
29 for all of the following:

30 (1) The assignment, sale, pledge, or other transfer of, or  
31 the establishment, creation, and granting of rights in, to, or  
32 under intangible transition property.

33 (2) The issuance of transitional funding instruments.

34 (3) The amount of transitional funding instruments to be  
35 issued which amount shall not exceed four hundred million

1 dollars in the aggregate for any incumbent provider.

2 (4) The method for calculating the amount of instrument  
3 funding charges to be collected.

4 (5) The method for allocating such instrument funding  
5 charges among classes of responsible end-use consumers.

6 (6) The time to maturity for the transitional funding  
7 instruments.

8 (7) The incumbent provider's planned use of the proceeds  
9 from the issuance.

10 c. After notice, the board shall hold a hearing to  
11 determine whether the application and requested transitional  
12 funding order are in compliance with this section. The board  
13 shall complete its review of the application and issue its  
14 final transitional funding order no later than ninety days  
15 after the filing of such application. The order shall create  
16 and establish the proposed intangible transition property and  
17 approve the proposed sale, pledge, assignment, or other  
18 transfer of, or the establishment, creation, and granting of  
19 rights in, to, or under intangible transition property; the  
20 proposed issuance of transitional funding instruments; and the  
21 proposed imposition and collection of the corresponding  
22 instrument funding charges. Such transitional funding order  
23 shall be issued if the board finds that each of the following  
24 conditions are met:

25 (1) The application provides that the incumbent provider  
26 will apply all savings not to exceed two million dollars  
27 annually, from the issuance of the transitional funding  
28 instruments during the term of the transitional funding  
29 instruments to reduce the funding surcharges for the low-  
30 income programs established under section 476B.13, subsection  
31 1. If savings exceed two million dollars annually, the  
32 incumbent provider shall use the amounts in excess of two  
33 million dollars to compensate the incumbent provider for  
34 transition costs associated with generation assets and  
35 contracts for power and energy not recovered under section

1 476B.15, subsection 1, and if a savings remain during the  
2 period ending December 31, 2005, to use the remaining savings  
3 to reduce charges under section 476B.15, subsections 3 and 4.  
4 Any remaining savings may be retained by the incumbent  
5 provider and used for any lawful purpose. If the incumbent  
6 provider issues transitional funding instruments prior to May  
7 1, 2002, any savings associated with the period prior to May  
8 1, 2002, shall be amortized in equal annual amounts in  
9 accordance with the above purposes over the period from May 1,  
10 2002, through the remaining term of the transitional funding  
11 instruments. Incumbent providers choosing to divest their  
12 generation assets under section 476B.15, subsection 2, shall  
13 first use the savings from securitization to compensate  
14 themselves for any losses which may result from divestiture.

15 (2) The expected maturity date for the transitional  
16 funding instruments, and the final date on which the incumbent  
17 provider, grantee, or assignee is entitled to charge and  
18 collect instrument funding charges, shall each be set to occur  
19 no later than December 31, 2011, subject to subsection 4,  
20 paragraph "m".

21 (3) The instrument funding charges authorized in such  
22 order will be deducted and stated separately from eligible  
23 rates, all as provided in subsection 4, paragraph "d", and in  
24 a manner conforming to the allocation of the instrument  
25 funding charges implemented pursuant to subparagraph (4).

26 (4) The proposed method for allocating such instrument  
27 funding charges among all classes of responsible end-use  
28 consumers is just and reasonable.

29 (5) The issuance of the transitional funding instruments  
30 will not cause eligible rates to increase over the rates which  
31 would otherwise be chargeable from time to time in the absence  
32 of such issuance.

33 (6) Use of transitional funding proceeds shall not result  
34 in the common equity component of the incumbent provider's  
35 capital structure, exclusive of the portion of its capital

1 structure that consists of obligations representing  
2 transitional funding instruments, as measured by the most  
3 recently available thirteen-month average when adjusted for  
4 the use of proceeds, being reduced below the lesser of forty-  
5 two and one-half percent or the common equity percentage as of  
6 December 31, 1998. The incumbent provider shall not use the  
7 proceeds from transitional funding instruments to repay or  
8 retire obligations incurred by any affiliate of the incumbent  
9 provider without the consent of the board. However, consent  
10 is not required to repay or retire debt or equity securities  
11 of the incumbent provider which are held by the parent company  
12 of the incumbent provider. A disbursement out of retained  
13 earnings from the incumbent provider to its parent will not be  
14 treated as repayment or retirement of an obligation of an  
15 affiliate for purposes of this section.

16 (7) The incumbent provider will use the net proceeds of  
17 the sale and issuance of the transitional funding instruments  
18 to repay or refinance debt and equity, or to replenish cash  
19 used for such purposes.

20 d. A transitional funding order issued by the board shall  
21 become effective in accordance with its terms only after the  
22 incumbent provider files with the board its written consent to  
23 all terms and conditions of such order. After the issuance of  
24 a transitional funding order, the incumbent provider, grantee,  
25 or assignee shall retain sole discretion regarding whether to  
26 cause transitional funding instruments to be issued, including  
27 the right to defer or postpone such issuance or to change the  
28 terms of such instruments as allowed by such order.

29 4. TERMS AND PROVISIONS OF TRANSITIONAL FUNDING ORDERS.

30 a. CREATION OF INTANGIBLE TRANSITION PROPERTY. A  
31 transitional funding order shall create intangible transition  
32 property in favor of an incumbent provider or grantee  
33 representing the right to impose and collect instrument  
34 funding charges necessary to pay principal and interest on the  
35 transitional funding instruments authorized in the order

1 together with premium, servicing fees and other fees, costs,  
 2 and charges related to such funding instruments, and to fund  
 3 or maintain any required reserves, after giving effect to  
 4 delays in bill collections and uncollectibles. The party in  
 5 whose favor such rights are granted and any assignee of such  
 6 rights shall be granted the power to levy general tariffs on  
 7 responsible end-use consumers of an incumbent provider or any  
 8 other person required to pay an instrument funding charge in  
 9 order to collect the instrument funding charges authorized in  
 10 such order and in order to facilitate the issuance of  
 11 transitional funding instruments authorized in such order.  
 12 The board may create, establish, and grant such rights under  
 13 this paragraph in and to such party with or without receiving  
 14 consideration from such party.

15     b. BASIC TERMS. The transitional funding order shall  
 16 authorize the establishment, creation, and granting of rights  
 17 in and to intangible transition property; any requested sale,  
 18 pledge, assignment, or other transfer of such rights; the  
 19 issuance of a specific dollar amount of transitional funding  
 20 instruments by or on behalf of an incumbent provider,  
 21 assignee, issuer, or grantee, as the case may be in an amount  
 22 not exceeding the limits set forth in subsection 3, paragraph  
 23 "b"; and the imposition and collection of instrument funding  
 24 charges projected to be sufficient to pay when due the  
 25 principal of and interest on the corresponding transitional  
 26 funding instruments, in each case, together with premium,  
 27 servicing fees and other fees, costs, and charges related to  
 28 such funding instruments, and to fund or maintain any required  
 29 reserves. The transitional funding order shall require that  
 30 the proceeds from the issuance of transitional funding  
 31 instruments be used for the purposes set forth in subsection  
 32 3, paragraph "c". Except where this section specifically  
 33 requires otherwise, the collection of instrument funding  
 34 charges and the allocation of any such collections as among  
 35 holders, assignees, issuers, grantees, and any other parties

1 entitled to receive portions of such collections, may be  
2 accomplished according to the applicable transitional funding  
3 order, or, if the order is silent on any such matters,  
4 according to the documents relating to the pertinent  
5 transitional funding instruments.

6 c. FLEXIBILITY -- CREDIT AND COLLECTION POLICIES. The  
7 board, in a transitional funding order, shall afford  
8 flexibility in establishing the terms and conditions of the  
9 transitional funding instruments including repayment  
10 schedules, collateral, required debt service and other  
11 reserves, interest rates and other financing costs, and the  
12 ability of the incumbent provider, at its option, to effect a  
13 series of issuances of transitional funding instruments and  
14 correlated assignments, sales, pledges, or other transfers of  
15 intangible transition property. At the request of an  
16 incumbent provider, the board in its transitional funding  
17 order may establish such terms with respect to credit and  
18 collection policies to be followed by persons collecting  
19 instrument funding charges as the incumbent provider may  
20 reasonably demonstrate are likely to be required for at least  
21 two nationally recognized statistical rating agencies to rate  
22 the transitional funding instruments in the highest rating  
23 category assigned by such agencies to securities of comparable  
24 maturities.

25 d. TARIFFS. Concurrently with the issuance of  
26 transitional funding instruments, an incumbent provider,  
27 grantee, issuer, or an assignee shall begin to impose and  
28 collect the specified instrument funding charges from  
29 responsible end-use consumers, classes of responsible end-use  
30 consumers, and any other persons or groups of persons as set  
31 forth in the relevant transitional funding order and shall  
32 file tariffs in accordance with this paragraph. As a  
33 precondition to the imposition of any instrument funding  
34 charges, an incumbent provider shall file tariffs directing  
35 that the amount of such instrument funding charges be

1 deducted, stated, and collected separately from the amounts  
2 otherwise billed by such incumbent provider for eligible rates  
3 as set forth in the transitional funding order. Upon the  
4 effectiveness of such tariffs, the amounts of instrument  
5 funding charges thereby deducted and to be deducted become  
6 intangible transition property as specified in the  
7 transitional funding order and the rights to such intangible  
8 transition property shall constitute a current property right.  
9 The board shall not review such tariffs except to confirm that  
10 the instrument funding charges authorized in the transitional  
11 funding order have been deducted and stated separately from  
12 eligible rates in effect at such time, and the filing of any  
13 such tariff shall not be suspended for any other reason.  
14 Deductions referred to in this paragraph shall not be  
15 construed as a change in or otherwise require a recalculation  
16 of the authorized amounts of eligible rates. Instrument  
17 funding charges shall be recoverable with respect to services  
18 for which the deductions provided in this paragraph have  
19 become effective and such deductions shall not be effective  
20 with respect to any services or power in respect of which  
21 instrument funding charges have not been so authorized and  
22 imposed.

23 e. PERIODIC ADJUSTMENTS. The board shall provide in any  
24 transitional funding order for a procedure for periodic  
25 adjustments to the instrument funding charges to ensure  
26 adequate revenues from such instrument funding charges for  
27 repaying principal of the transitional funding instruments in  
28 accordance with their expected amortization schedule, for  
29 paying interest and related fees and expenses, and for funding  
30 and maintaining required reserves on a timely basis. If so  
31 requested by an incumbent provider in an application for a  
32 transitional funding order, the transitional funding order may  
33 specify a dollar or percentage amount of variation from the  
34 projected revenues within which no such adjustment will be  
35 required, set forth a maximum adjustment amount for the

1 instrument funding charges, or both. If an adjustment  
2 described in this paragraph is required, such adjustment shall  
3 be implemented by the incumbent provider, grantee, assignee,  
4 or issuer, as applicable, with prior written notice to the  
5 board. Any such adjustment shall be calculated to include  
6 amounts necessary for recovery of any additional costs  
7 incurred by the incumbent provider, grantee, assignee, or  
8 issuer as a result of the relevant delay in collections of  
9 instrument funding charges. If any such adjustment would  
10 cause the amount of any instrument funding charge to exceed  
11 the eligible rates from which such instrument funding charge  
12 is to be deducted, the relevant incumbent provider may ratably  
13 allocate the deficiency to other responsible end-use consumers  
14 as part of the adjustment mechanism set forth in this  
15 paragraph and in the relevant transitional funding order. If,  
16 as a result of any adjustment, the amount of any instrument  
17 funding charge, as adjusted, will exceed an amount greater  
18 than the amount of the instrument funding charge initially  
19 authorized by the board in its transitional funding order, the  
20 relevant incumbent provider shall be obligated to file  
21 amendatory tariffs in compliance with paragraph "f".

22 f. AMENDATORY TARIFFS. If an adjustment under paragraph  
23 "e" results in the amount of any instrument funding charge as  
24 so adjusted exceeding the amount of the instrument funding  
25 charge initially authorized by the board in its transitional  
26 funding order, the relevant incumbent provider shall file  
27 amendatory tariffs reducing the amounts otherwise billed by  
28 such incumbent provider for eligible rates by the amount of  
29 such excess. Such amendatory tariff shall be subject to the  
30 provisions of paragraph "d", except that the failure of such  
31 amendatory tariff to become effective for any reason shall not  
32 delay or impair the effectiveness of the adjustments required  
33 under paragraph "e" and the obligation of responsible end-use  
34 consumers and other persons or groups of persons to pay  
35 instrument funding charges as so adjusted shall not be subject

1 to any defense, counterclaim, or right of setoff arising as a  
2 result of failure by the incumbent provider to comply with  
3 this paragraph. This paragraph does not restrict any  
4 responsible end-use consumer or other person from bringing any  
5 suit in any court or from exercising any other legal or  
6 equitable remedy against an incumbent provider for any failure  
7 by such incumbent provider to comply with this paragraph.

8 g. NONRECOURSE STATUS -- NO DEFENSE, COUNTERCLAIM, OR  
9 SETOFF. Except as otherwise specifically set forth in the  
10 transitional funding order, the transitional funding  
11 instruments issued pursuant to such order shall be nonrecourse  
12 to the credit or to any assets of the incumbent provider other  
13 than any assets comprising intangible transition property.  
14 The obligation of responsible end-use consumers and other  
15 persons to pay instrument funding charges shall be contingent  
16 upon the receipt by such responsible end-use consumers and  
17 other persons of delivery service or other services related to  
18 the provision of electric power for which eligible rates may  
19 be assessed, but the transitional funding order shall  
20 specifically provide that such instrument funding charges will  
21 not be subject to any defense, counterclaim, or right of set-  
22 off arising as a result of failure by the incumbent provider,  
23 upon whose application the intangible transition property was  
24 created, to perform or provide past, present, or future  
25 services.

26 h. TRANSFER AND SERVICING. On such conditions as the  
27 board may approve in the relevant transitional funding order,  
28 the interest of any party in intangible transition property  
29 may be assigned, sold or otherwise transferred, in whole or in  
30 part, and may, in whole or in part, be pledged or assigned as  
31 security to or for the benefit of a holder or holders. To the  
32 extent that any such interest or portion of such interest is  
33 assigned, sold, pledged, or otherwise transferred or is  
34 established, created, and granted to a party other than the  
35 incumbent provider, the board, in the relevant transitional

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1 funding order, shall authorize the incumbent provider or any  
2 affiliate of the incumbent provider to contract with any owner  
3 or pledgee of such intangible transition property and any  
4 holders of the relevant transitional funding instruments to  
5 collect the applicable instrument funding charges for the  
6 benefit and account of such persons, and such incumbent  
7 provider or affiliate shall, except as otherwise specified in  
8 the transitional funding order, account for and remit the  
9 applicable instrument funding charges, without the obligation  
10 to remit any investment earnings on such charges, to or for  
11 the account of the relevant persons. The obligation of such  
12 incumbent provider or affiliate to collect and remit the  
13 applicable instrument funding charges shall continue  
14 irrespective of whether such incumbent provider is providing  
15 the services to which such instrument funding charges relate.  
16 If the documents creating the transitional funding instruments  
17 so provide, such obligations, in the event of a default by the  
18 incumbent provider or affiliate in performing such  
19 obligations, shall be undertaken and performed by any other  
20 entity selected by the grantee, assignee or any holder, group  
21 of holders or trustee or agent on behalf of such holder or  
22 holders, as the case may be. However, a failure by the  
23 designated party to perform such obligations shall not affect  
24 the existence of the intangible transition property or the  
25 instrument funding charges or the validity or enforceability  
26 of the instrument funding charges in accordance with their  
27 terms.

28 i. REPORTING. An incumbent provider shall file a  
29 statement of the final terms of the issuance of any series of  
30 transitional funding instruments with the board within ninety  
31 days of the receipt of proceeds from such issuance. In  
32 addition, the board may require an incumbent provider to file  
33 periodic reports on its use of the proceeds at intervals of  
34 not less than one year.

35 j. REFINANCING. Any adjustment to instrument funding

1 charges that is necessary due to subsequent refinancing of  
 2 transitional funding instruments shall be authorized by the  
 3 board in a supplemental order. Unless specifically requested  
 4 by the incumbent provider in the application for such  
 5 supplemental order, no refinancing of previously issued  
 6 transitional funding instruments shall be deemed a new  
 7 issuance to be counted towards the dollar limitations set  
 8 forth in subsection 3, paragraph "b".

9 k. NO REDUCTION, POSTPONEMENT, IMPAIRMENT, OR TERMINATION.

10 A transitional funding order, the intangible transition  
 11 property created and established by such order, or the  
 12 instrument funding charges authorized to be imposed and  
 13 collected under such order, shall not be subject to reduction,  
 14 postponement, impairment, or termination by any subsequent  
 15 action of the board. However, a party to the board's  
 16 proceeding relating to the transitional funding order may seek  
 17 judicial review of such transitional funding order in  
 18 accordance with the provisions of other applicable law.

19 l. ONGOING VALIDITY. A transitional funding order shall  
 20 remain valid notwithstanding the invalidation of any portion  
 21 of this chapter. A transitional funding instrument,  
 22 instrument funding charge, intangible transition property,  
 23 lien, or other right established pursuant to a transitional  
 24 funding order is valid and binding in accordance with terms of  
 25 such order, notwithstanding that such order or any portion of  
 26 this chapter is later vacated, modified, or otherwise held to  
 27 be wholly or partly invalid.

28 m. CONTINUATION OF INTANGIBLE TRANSITION PROPERTY. The  
 29 intangible transition property created under a transitional  
 30 funding order and the authority of the grantee, assignee,  
 31 issuer, incumbent provider, or other person authorized under  
 32 such order to impose and collect instrument funding charges  
 33 and to exercise its rights under a transitional funding order,  
 34 including the right to make periodic adjustments pursuant to  
 35 paragraph "e", shall continue beyond the final date set forth

1 in the applicable transitional funding order until such time  
2 as all transitional funding instruments authorized in such  
3 order have been paid in full. Upon the later of the final  
4 date set forth in the applicable transitional funding order  
5 for the imposition and collection of instrument funding  
6 charges or the repayment in full of any transitional funding  
7 instruments, as applicable, authorized in such order, the  
8 authority to impose and collect the related instrument funding  
9 charges shall cease and any instrument funding charges  
10 collected in excess of the amount required for the repayment  
11 of the transitional funding instruments shall be paid to the  
12 owner of such intangible transition property, and the relevant  
13 incumbent provider shall be entitled to file tariffs revoking  
14 any deductions from eligible rates which were granted in  
15 connection with such instrument funding charges pursuant to  
16 paragraph "d" or "f". The board shall not review such tariffs  
17 except to determine that the rates and charges resulting from  
18 such revocation do not exceed the applicable eligible rates  
19 which would otherwise have been in effect at the time of such  
20 revocation had no instrument funding charges ever been  
21 deducted from such rates.

22 5. RELATIONSHIP TO STATE AND OTHER LAW.

23 a. The state pledges to, and agrees with, the holders of  
24 any transitional funding instruments who may enter into  
25 contracts with an incumbent provider, grantee, assignee, or  
26 issuer pursuant to this section that the state will not in any  
27 way limit, alter, impair, or reduce the value of intangible  
28 transition property created by, or instrument funding charges  
29 approved by, a transitional funding order so as to impair the  
30 terms of any contract made by such incumbent provider,  
31 grantee, assignee, or issuer with such holders or in any way  
32 impair the rights and remedies of such holders until the  
33 pertinent transitional funding instruments and interest,  
34 premium and other fees, costs, and charges related to such  
35 funding instruments, are fully paid and discharged. An

1 incumbent provider, grantee, or issuer is authorized to  
 2 include these pledges and agreements of the state in any  
 3 contract with the holders of transitional funding instruments  
 4 or with any assignees pursuant to this section, and any  
 5 assignees are similarly authorized to include these pledges  
 6 and agreements of the state in any contract with any issuer,  
 7 holder, or any other assignee. This section shall not  
 8 preclude the state from requiring adjustments as may otherwise  
 9 be allowed by law to eligible rates, so long as any such  
 10 adjustment does not directly affect or impair any instrument  
 11 funding charges previously authorized by a transitional  
 12 funding order issued by the board.

13     b. A transitional funding instrument issued under this  
 14 section does not constitute debt or liability of the state or  
 15 of any political subdivision, and transitional funding orders  
 16 authorizing such issuance do not constitute a pledge of the  
 17 full faith and credit of the state or of any political  
 18 subdivision. The issuance of transitional funding instruments  
 19 shall not directly, indirectly, or contingently obligate the  
 20 state or any political subdivision to levy or to pledge any  
 21 form of taxation or to make any appropriation for the payment  
 22 of such funding instruments. A transitional funding  
 23 instrument shall be payable solely from the intangible  
 24 transition property or from such other proceeds or property as  
 25 may be pledged for such funding instrument. This section  
 26 shall not be construed to prevent the state or any political  
 27 subdivision from owning any interest in a grantee, assignee,  
 28 or issuer or to prevent any incumbent provider, grantee,  
 29 issuer, or assignee from selling, pledging, or assigning  
 30 intangible transition property or from providing recourse or  
 31 guarantees or any other third-party credit enhancement in  
 32 connection with such sale, pledge, or assignment.

33     c. The procedures set forth in this section shall  
 34 constitute the sole procedures by which rights in, to, or  
 35 under intangible transition property may be created,

1 established, and granted, and no other approvals shall be  
2 required under other law for such creation, establishment,  
3 grant, or for the issuance of transitional funding  
4 instruments. The rights of incumbent providers, grantees,  
5 assignees, and holders in and to any such intangible  
6 transition property shall be interpreted in accordance with  
7 this section, which shall supersede any other law, rule, or  
8 regulation to the contrary.

9 6. SECURITY INTERESTS IN INTANGIBLE TRANSITION PROPERTY.

10 a. Intangible transition property or any right, title, or  
11 interest in such intangible transition property shall not  
12 constitute property in which a security interest may be  
13 created under the uniform commercial code. Additionally, such  
14 property, or any such right, title, or interest in such  
15 property shall not be deemed proceeds of any property which is  
16 not intangible transition property. For purposes of this  
17 paragraph, the terms "account" and "general intangible", as  
18 defined under section 554.9106 of the uniform commercial code,  
19 and the term "instrument", as used in the uniform commercial  
20 code, shall be deemed to exclude any such intangible  
21 transition property or any right, title, or interest in such  
22 intangible transition property.

23 b. The granting, perfection, and enforcement of security  
24 interests in intangible transition property shall be governed  
25 by this section and not by the uniform commercial code.

26 c. A valid and enforceable security interest in intangible  
27 transition property shall attach and be perfected only as  
28 follows:

29 (1) To the extent a transitional funding instrument is  
30 purported to be secured by intangible transition property as  
31 specified in the applicable transitional funding order, the  
32 lien of the transitional funding instrument shall attach  
33 automatically to such intangible transition property from the  
34 time of issuance of the transitional funding instrument. Such  
35 lien shall be a valid and enforceable security interest in the

1 intangible transition property securing the transitional  
 2 funding instruments and shall be continuously perfected if,  
 3 before the date of issuance of the applicable transitional  
 4 funding instrument or within no more than ten days after such  
 5 issuance, a filing has been made by or on behalf of the holder  
 6 with the executive secretary of the board stating that such  
 7 transitional funding instrument has been or is to be issued.  
 8 Any such filing made with the board in respect to such  
 9 transitional funding instrument shall take precedence over any  
 10 subsequent filing except as may otherwise be provided in the  
 11 applicable transitional funding order.

12 (2) A lien under this paragraph is enforceable against the  
 13 incumbent provider, any grantee, issuer, or assignee, and any  
 14 third party, including a judicial lien creditor, subject only  
 15 to the rights of a third party holding a security interest in  
 16 the intangible transition property previously perfected in the  
 17 manner described in this subsection if value has been given by  
 18 the purchaser of a transitional funding instrument. A  
 19 perfected lien in intangible transition property is a  
 20 continuously perfected security interest in all then existing  
 21 or future revenues and proceeds arising with respect to the  
 22 associated intangible transition property whether or not the  
 23 electric power and related services included in the  
 24 calculation of such revenues and proceeds have been provided.  
 25 A lien created under this paragraph is perfected, and ranks  
 26 prior to any other lien, including a judicial lien, which  
 27 subsequently attaches to the intangible transition property  
 28 and to any other rights created by the transitional funding  
 29 order or any revenues or proceeds of the foregoing. The  
 30 relative priority of a lien created under this subsection is  
 31 not defeated or adversely affected by changes to the  
 32 transitional funding order or to the instrument funding  
 33 charges payable by a responsible end-use consumer, class of  
 34 responsible end-use consumers, or other person or group of  
 35 persons obligated to pay such charges.

1 (3) The relative priority of a lien created under this  
2 subsection is not defeated or adversely affected by the  
3 commingling of revenues arising with respect to intangible  
4 transition property with funds of the incumbent provider or  
5 other funds of the assignee, issuer, or grantee.

6 (4) If a default occurs under a transitional funding  
7 instrument, the holders of such instrument or their authorized  
8 representative, as secured parties, may foreclose or otherwise  
9 enforce the lien in the intangible transition property  
10 securing the transitional funding instrument, subject to the  
11 rights of any third parties holding prior security interests  
12 in the intangible transition property previously perfected as  
13 provided in this subsection. Upon application by a holder or  
14 such holder's authorized representative, without limiting any  
15 other remedies, the board shall order the sequestration and  
16 payment to such holder or authorized representative of  
17 revenues arising with respect to the intangible transition  
18 property pledged to the holder. An order under this  
19 subsection shall remain in full force and effect  
20 notwithstanding any bankruptcy, reorganization, or other  
21 insolvency proceeding with respect to the incumbent provider,  
22 grantee, assignee, or issuer.

23 (5) The board shall maintain segregated records which  
24 reflect the date and time of receipt of all filings made under  
25 this subsection. The board may provide that transfers of  
26 intangible transition property be filed in accordance with the  
27 same system.

28 7. TRUE SALE CHARACTERIZATION OF TRANSFER.

29 A sale, assignment, grant, or other transfer of intangible  
30 transition property in a transaction approved in a  
31 transitional funding order, unless otherwise provided in the  
32 documents governing such transaction, shall be irrevocable as  
33 against the incumbent provider requesting such transitional  
34 funding order and shall be treated as an absolute transfer of  
35 all of the transferor's right, title, and interest in, to, and

1 under such intangible transition property, or, in the case of  
 2 a grant to a grantee, as an absolute vesting of such property  
 3 in the name of the grantee. Any such sale, assignment, grant,  
 4 or other transfer is perfected as against third persons,  
 5 including judicial lien creditors, when the sale, assignment,  
 6 grant, or other transfer has become effective as between the  
 7 parties, and shall place such intangible transition property  
 8 beyond the reach of the transferor or incumbent provider and  
 9 their respective creditors, as in a true sale, and not as a  
 10 pledge or other financing, of such intangible transition  
 11 property. The characterization of a sale, assignment, grant,  
 12 or other transfer as an absolute transfer or vesting and the  
 13 corresponding characterization of the grantee's or  
 14 transferee's property interest shall not be defeated or  
 15 adversely affected by, among other things, any of the  
 16 following: the commingling of revenues arising with respect  
 17 to intangible transition property with funds of the incumbent  
 18 provider or other funds of the assignee, issuer, or grantee;  
 19 the granting to holders of transitional funding instruments a  
 20 preferred right to the intangible transition property, whether  
 21 direct or indirect; the provision by the incumbent provider,  
 22 grantee, assignee, or issuer of any recourse, collateral, or  
 23 credit enhancement with respect to transitional funding  
 24 instruments; the retention by the assigning party of a partial  
 25 interest in any intangible transition property, whether direct  
 26 or indirect, or whether subordinate or otherwise; or the  
 27 incumbent provider's responsibilities for collecting  
 28 instrument funding charges and any retention of bare legal  
 29 title for the purpose of such collection activities. The  
 30 treatment of any such sale, assignment, grant, or other  
 31 transfer for federal tax purposes shall be governed by  
 32 applicable law without regard to this section.

33 8. TREATMENT OF TRANSITIONAL FUNDING INSTRUMENTS IN  
 34 REGULATED RATES. The debt associated with a transitional  
 35 funding instrument shall not be included in the regulated

1 capital structure for the purpose of determining regulated  
2 rates for any service.

3 9. ACTIONS WITH RESPECT TO INTANGIBLE TRANSITION PROPERTY  
4 AND RELATED INSTRUMENT FUNDING CHARGES.

5 a. The board shall have exclusive jurisdiction over any  
6 dispute arising out of the obligations to impose and collect  
7 instrument funding charges. This section does not prevent a  
8 holder from bringing an action in any court or from exercising  
9 any other legal or equitable remedy against an incumbent  
10 provider for failure to distribute collections of instrument  
11 funding charges or for any other failure by the incumbent  
12 provider to perform the contractual obligations agreed to by  
13 the incumbent provider under any documents pertaining to, or  
14 executed in connection with, a transitional funding instrument  
15 issued by or on behalf of the incumbent provider.

16 b. An incumbent provider, issuer, assignee, grantee, or  
17 holder is expressly permitted to bring an action against a  
18 responsible end-use consumer or other person for nonpayment of  
19 any instrument funding charges constituting a part of the  
20 intangible transition property then held by the incumbent  
21 provider, issuer, assignee, grantee, or holder. Any such  
22 action shall be subject to any and all applicable consumer  
23 credit protection laws and other laws relating to origination,  
24 collection, and reporting of consumer credit obligations.

25 10. TAXATION OF TRANSFERS OF INTANGIBLE TRANSITION  
26 PROPERTY. A sale, grant, pledge, assignment, or other  
27 transfer of intangible transition property is exempt from any  
28 state or local sales, income, transfers, gains, receipts, or  
29 similar taxes. A transfer of intangible transition property  
30 shall be treated as a pledge or other financing for state tax  
31 purposes, including state and local income and franchise  
32 taxes, unless the documents governing such transfer  
33 specifically state that the transfer is intended to be treated  
34 otherwise.

35 Sec. 18. NEW SECTION. 476B.18 RECIPROCITY.

1 A person with an assigned service area in this state,  
2 including an affiliate of such person, shall not offer  
3 competitive power supply services within another person's  
4 assigned service area in this state until the former person  
5 allows the latter person a reasonable opportunity to offer  
6 competitive power supply services in the former person's  
7 assigned service area in this state. If the board suspends  
8 the dates for commencement of the option to choose competitive  
9 electric service pursuant to section 476B.7, the board shall  
10 determine the manner and extent to which this section applies.

11 Sec. 19. NEW SECTION. 476B.19 APPLICABILITY OF AUTHORITY  
12 -- CONSUMER-OWNED UTILITIES.

13 An electric cooperative and a municipal utility are not  
14 subject to regulation by the board except as specifically  
15 provided in this chapter.

16 Sec. 20. NEW SECTION. 476B.20 REMEDIES AND PENALTIES.

17 1. The board, after notice and opportunity for hearing,  
18 may impose the following penalties and remedies for the  
19 following violations:

20 a. The board may impose a civil penalty of up to two  
21 thousand dollars for each nonmaterial violation of a licensing  
22 requirement, including all board rules and orders, governing a  
23 competitive electric service provider. The maximum aggregate  
24 penalty per person pursuant to this paragraph shall not exceed  
25 twenty thousand dollars per calendar year.

26 b. The board may impose a civil penalty of up to ten  
27 thousand dollars for each material violation of a licensing  
28 requirement, including all board rules and orders, governing a  
29 competitive electric service provider. The maximum aggregate  
30 penalty per person pursuant to this paragraph shall not exceed  
31 two hundred thousand dollars per calendar year.

32 c. The board may impose a civil penalty of up to twenty-  
33 five thousand dollars for each repeat violation of a licensing  
34 requirement, including all board rules and orders, governing a  
35 competitive electric service provider if the board finds the

1 violation to be substantial. The maximum aggregate penalty  
2 per person under this paragraph shall not exceed one million  
3 dollars per calendar year.

4 d. For repeat violations of licensing requirements,  
5 including board rules and orders, governing a competitive  
6 electric service provider, the board may by order prohibit the  
7 competitive electric service provider or any other person  
8 acting on behalf of the competitive electric service provider  
9 from billing charges directly associated with the violation.

10 e. For repeat substantial violations under paragraph "c"  
11 occurring within a twenty-four-month period, the board may  
12 revoke the competitive electric service provider's license if  
13 the board determines that no less severe remedy is likely to  
14 correct the competitive electric service provider's conduct.

15 A repeat violation for the purpose of this paragraph means  
16 that the occurrence of the second applicable violation takes  
17 place subsequent to the date the board has issued a notice of  
18 violation in a contested case on the initial violation, and  
19 the board finds that the same provision of this chapter, or  
20 the same requirement of a board rule or order, has been  
21 violated in both contested cases. The written notice of  
22 violation given by the board under this paragraph shall  
23 specify an appropriate and reasonable time for compliance.

24 f. The board may issue a cease and desist order if the  
25 board finds a competitive electric service provider has  
26 engaged in conduct to monopolize in the relevant competitive  
27 market, including, but not limited to predatory pricing as  
28 defined by applicable law. The board's determination of  
29 predatory pricing shall be given no weight in any legal action  
30 brought in court, except with respect to judicial review of a  
31 ruling brought pursuant to section 476B.23. For a repeat  
32 violation of a cease and desist order issued pursuant to this  
33 paragraph, the board may revoke a competitive electric service  
34 provider's license if the board determines that no less severe  
35 remedy is likely to result in a change in the competitive

1 electric service provider's conduct. This paragraph shall not  
2 be construed as creating an exemption from federal or state  
3 antitrust laws.

4 g. If a competitive electric service provider  
5 substantially defaults on its obligations such that a control  
6 area operator or other person provides emergency supply to  
7 serve a customer of the defaulting competitive electric  
8 service provider, the board may impose a monetary penalty on  
9 the competitive electric service provider which does not  
10 exceed three times the cost of the emergency supply and may  
11 also revoke a competitive electric service provider's license  
12 if the board determines that no less severe remedy is likely  
13 to result in a change in the competitive electric service  
14 provider's conduct.

15 h. The board may issue a cease and desist order if any  
16 competitive electric service provider has engaged or is  
17 engaging in any act or practice in violation of this chapter  
18 or rule or order of the board. Such order is effective when  
19 issued unless otherwise specified in the order. For a  
20 violation of a cease and desist order issued pursuant to this  
21 paragraph, the board may revoke a competitive electric service  
22 provider's license if the board determines that no less severe  
23 remedy is likely to result in a change of the competitive  
24 electric service provider's conduct.

25 i. The board may impose a civil penalty of up to five  
26 thousand dollars for each nonmaterial violation of this  
27 chapter, or a board rule or order, governing delivery service  
28 providers. The maximum aggregate penalty to which a delivery  
29 service provider may be subject pursuant to this paragraph  
30 shall not exceed twenty thousand dollars per calendar year.

31 j. The board may impose a civil penalty of up to ten  
32 thousand dollars for a material violation of this chapter, or  
33 a board rule or order, by a delivery service provider. The  
34 maximum aggregate penalty to which a delivery service provider  
35 may be subject pursuant to this paragraph shall not exceed two

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1 hundred thousand dollars per calendar year.

2 k. The board may impose a civil penalty of up to twenty-  
3 five thousand dollars for each repeat violation of this  
4 chapter, or a board rule or order, by a delivery service  
5 provider if the board finds the violation to be substantial.  
6 The maximum aggregate penalty to which a person may be subject  
7 pursuant to this paragraph shall not exceed one million  
8 dollars per calendar year.

9 1. For a violation of this chapter, or a board rule or  
10 order, by a delivery service provider, in addition to the  
11 penalties and remedies in this subsection, the board may issue  
12 a cease and desist order and disallow cost recovery of any  
13 associated costs in electric company rate proceedings. Such  
14 cease and desist order is effective when issued unless  
15 otherwise specified in the order.

16 2. The board may issue a cease and desist order in an  
17 emergency, without hearing or notice, if the board receives a  
18 written verified complaint or affidavit showing that a person  
19 is selling competitive electric services without being duly  
20 licensed or is engaging in conduct that creates an immediate  
21 danger to the public safety or reliability of the delivery  
22 system or is reasonably expected to cause significant,  
23 imminent, and irreparable public injury. An emergency cease  
24 and desist order is effective immediately and continues in  
25 force and effect until further order of the board or until  
26 stayed by a court of competent jurisdiction. A hearing shall  
27 be held by the board within ten business days of the issuance  
28 of the emergency cease and desist order in which the board  
29 shall in a final order affirm, modify, or set aside the  
30 emergency cease and desist order.

31 3. The board, after notice and opportunity for hearing,  
32 may order restitution for a person injured by a violation of  
33 the board's rules concerning deceptive, abusive, and unfair  
34 sales practices. The board shall not have authority to order  
35 special, incidental, consequential, or punitive damages.

1 4. The board, after written notice and opportunity for  
 2 hearing, may impose a civil penalty of up to twenty-five  
 3 thousand dollars per occurrence upon a delivery service  
 4 provider for an excessive number of delivery-related outages,  
 5 excessive outage durations, or failure to undertake reasonable  
 6 and prudent maintenance measures to avoid outages. For  
 7 purposes of this subsection, an occurrence does not mean per  
 8 day or per consumer affected by an occurrence. The board  
 9 shall adopt rules specifying the circumstances under which  
 10 penalties would apply and shall give due consideration to  
 11 conditions beyond the control of the delivery service  
 12 provider. Delivery service providers that are electric  
 13 companies shall not include such civil penalties in regulated  
 14 rates. The initial rules shall be proposed by November 1,  
 15 2001.

16 5. A person, after previously having been found by the  
 17 board to have violated a provision of this chapter or a rule  
 18 or order of the board, who willfully violates the same  
 19 provision of this chapter, the same rule or provision of an  
 20 order, shall after notice and opportunity for hearing be  
 21 subject to a civil penalty of up to twenty-five thousand  
 22 dollars per violation. For the purposes of this subsection,  
 23 "willful" means knowing and deliberate, with a specific intent  
 24 to violate.

25 6. Except as provided in subsection 4, each violation is a  
 26 separate offense, and in the case of a continuing violation,  
 27 each day a violation continues, after a reasonable time  
 28 specified for compliance in the written notice by the board,  
 29 is a separate and distinct offense. A civil penalty assessed  
 30 under this section may be compromised below the maximum by the  
 31 board. In determining the amount of the penalty, or the  
 32 amount agreed upon in the compromise, the board may consider  
 33 the appropriateness of the penalty in relation to the  
 34 financial resources of the person being penalized, the gravity  
 35 of the violation, the good faith of the person in attempting

1 to achieve compliance following notification of a violation,  
2 and any other relevant factors. The board shall not impose a  
3 civil penalty for any single violation in excess of fifty  
4 thousand dollars and for any continuing violation in excess of  
5 five hundred thousand dollars.

6 7. Civil penalties collected by the board under this  
7 section shall be forwarded to the treasurer of state.

8 8. The board may apply to the district court of any county  
9 of the state to enforce any order made or action taken by the  
10 board pursuant to this section or to have a violation stopped  
11 or prevented by injunction, mandamus, or other appropriate  
12 remedy.

13 9. The board may award costs of litigation, including  
14 reasonable attorney and expert witness fees, actually incurred  
15 by a person found by the board to have materially contributed  
16 to the enforcement of the remedies or penalties provided for  
17 in this section. Litigation costs, in an amount approved by  
18 the board and not to exceed twenty-five thousand dollars,  
19 shall be paid by the person or persons found by the board to  
20 be in violation of this chapter. In determining the award,  
21 the board may consider the financial resources of such person.

22 Sec. 21. NEW SECTION. 476B.21 REHEARINGS BEFORE THE  
23 BOARD.

24 Notwithstanding chapter 17A, a party, as defined in the  
25 rules adopted by the board, to a contested case before the  
26 board may within twenty days after the issuance of the final  
27 decision apply for a rehearing. The board shall either grant  
28 or refuse an application for rehearing within thirty days  
29 after the filing of the application or, after giving the  
30 interested parties notice and opportunity to be heard and  
31 after consideration of all the facts, including those arising  
32 since the making of the order, may abrogate or modify its  
33 order. A failure by the board to act upon the application for  
34 rehearing within the thirty-day period shall be deemed a  
35 denial of the application. Neither the filing of an

1 application for rehearing nor the granting of the application  
2 shall stay the effectiveness of an order unless the board so  
3 directs.

4 Sec. 22. NEW SECTION. 476B.22 JUDICIAL REVIEW.

5 1. Notwithstanding chapter 17A, the district court for  
6 Polk county has exclusive venue for the judicial review under  
7 chapter 17A of actions of the board pursuant to section  
8 476B.4, subsection 1, section 476B.8, subsections 1, 2, and 3,  
9 and section 476B.9, subsections 5 and 7.

10 2. Upon the filing of a petition for judicial review  
11 pursuant to subsection 1, the clerk of the district court  
12 shall notify the chief justice of the supreme court for  
13 purposes of assignment of a district judge under section  
14 602.1212. The judicial review proceeding shall be heard by  
15 the district judge appointed by the supreme court under  
16 section 602.1212, but in the court of venue under subsection  
17 1.

18 3. Notwithstanding chapter 17A, if a delivery service  
19 provider that is an electric company seeks judicial review of  
20 an order approving rates for the delivery service provider,  
21 the level of rates that may be collected, under bond and  
22 subject to refund, while the judicial review proceeding is  
23 pending is limited to the level of the temporary rates set by  
24 the board, or the level of the final rates set by the board,  
25 whichever is greater. During the period the judicial review  
26 proceeding is pending, the board shall retain jurisdiction to  
27 determine the rate of interest to be paid on any refunds  
28 eventually required on rates collected during judicial review.

29 Sec. 23. NEW SECTION. 476B.23 CONTRACT RIGHTS.

30 Except as provided in this section, this chapter shall not  
31 affect the rights and duties of parties under a contract for  
32 electric service in effect on the effective date of this  
33 chapter. Notwithstanding a provision in a contract to the  
34 contrary, contracts for bundled electric service executed  
35 before the effective date of this chapter between an incumbent

1 provider and a nonresidential end-use consumer that uses fewer  
2 than one hundred thousand kilowatt-hours in 2001 or a  
3 residential end-use consumer may be terminated without penalty  
4 by the consumer on or after May 1, 2002, upon thirty days  
5 prior written notice.

6 Sec. 24. NEW SECTION. 476B.24 UTILITY EMPLOYEE  
7 TRANSITION SERVICES AND BENEFITS.

8 1. The general assembly finds, based on experience in  
9 other industries that have undergone similar transitions, that  
10 the introduction of competition into the state's electric  
11 utility industry may result in workforce reductions by  
12 electric companies which may adversely affect persons who have  
13 been employed by this state's electric utilities in functions  
14 important to the public convenience and welfare. The general  
15 assembly further finds that the impacts on employees and their  
16 communities of any necessary reductions in the utility  
17 workforce directly caused by this restructuring of the  
18 electric industry shall be mitigated to the extent practicable  
19 through such means as offers of voluntary severance,  
20 retraining, early retirement, outplacement, and related  
21 benefits. Therefore, before any such reduction in the  
22 workforce during the period between the effective date of this  
23 chapter and January 1, 2006, an electric utility shall present  
24 to its employees or their representatives a workforce  
25 reduction plan outlining the means by which the electric  
26 utility intends to mitigate the impact of such workforce  
27 reduction on its employees. For the purpose of this section,  
28 the term "electric utility" means the electric delivery  
29 service operations in Iowa and the electric generating  
30 operations and units located in Iowa of incumbent providers  
31 other than consumer-owned utilities.

32 2. In the event of a sale, purchase, or any other transfer  
33 of ownership by an electric utility, during the period from  
34 the effective date of this chapter to January 1, 2006, of one  
35 or more Iowa divisions, business units, generating stations,

1 or generating units located in Iowa, the electric utility's  
2 contract or agreement with the acquiring person shall require  
3 that the acquiring person hire a sufficient number of  
4 nonsupervisory employees to operate and maintain the station,  
5 division, or unit by initially making offers of employment to  
6 the nonsupervisory workforce of the electric utility's  
7 division, or unit by initially making offers of employment to  
8 the nonsupervisory workforce of the electric utility's  
9 division, business unit, generating stations, or generating  
10 unit at no less than the wage rates and substantially  
11 equivalent fringe benefits and terms and conditions of  
12 employment that are in effect at the time of transfer of  
13 ownership of the division, business unit, generating station,  
14 or generating units. The wage rates and substantially  
15 equivalent fringe benefits and terms and conditions of  
16 employment shall continue for at least thirty months from the  
17 time of the transfer of ownership unless the parties mutually  
18 agree to different terms and conditions of employment within  
19 that thirty-month period. The electric utility shall offer a  
20 transition plan to those nonsupervisory employees who are not  
21 offered jobs by the acquiring person because that person has a  
22 need for fewer workers. If there is litigation concerning the  
23 sale or other transfer of ownership of the electric utility's  
24 divisions, business units, generating stations, or generating  
25 units, the thirty-month period will begin on the date the  
26 acquiring person takes control or management of the divisions,  
27 business units, generating stations, or generating units of  
28 the electric utility.

29 3. If an electric utility transfers ownership of one or  
30 more of its divisions, business units, generating stations, or  
31 generating units located in Iowa to an affiliate, during the  
32 period from the effective date of this chapter to January 1,  
33 2006, that affiliate shall comply with the transition  
34 provisions in subsection 2. If ownership of the affiliate is  
35 subsequently sold or transferred to another person during the

1 transition period, the transition provisions in subsection 2  
2 shall continue to apply.

3 Sec. 25. NEW SECTION. 476B.25 REPORTS TO GENERAL  
4 ASSEMBLY.

5 1. After providing an opportunity for public input, the  
6 board shall submit to the secretary of the senate and the  
7 chief clerk of the house of representatives for transmittal to  
8 the Iowa senate and house of representatives a report on or  
9 before January 10, 2005, which includes both of the following:

10 a. An evaluation of the effectiveness of competition in  
11 the market for each competitive electric service.

12 b. Recommendations, if any, that the general assembly  
13 should consider to increase the effectiveness of competition  
14 in the markets for all competitive electric services.

15 2. On or before January 10, 2005, the consumer advocate  
16 shall provide a written report to the general assembly that  
17 sets forth the consumer advocate's conclusions regarding the  
18 effectiveness of competition in the market for competitive  
19 electric services. The report may include any recommendations  
20 which the consumer advocate believes the general assembly  
21 should consider in light of the conclusions.

22 Sec. 26. NEW SECTION. 28F.15 POWERS -- CONFLICTING  
23 PROVISIONS.

24 In addition to the powers conferred elsewhere in this  
25 chapter, an electric power agency may exercise all other  
26 powers reasonably necessary or appropriate for or incidental  
27 to the effectuation of its authorized purposes including  
28 without limitation, the powers enumerated in chapters 6A and  
29 6B for purposes of constructing or acquiring electric power  
30 facilities within this state. The failure of a city to comply  
31 with requirements of section 28F.1, relating to joining an  
32 electric power agency for the purpose of financing electric  
33 power facilities, shall not limit the ability of that electric  
34 power agency to jointly finance open access transmission  
35 facilities pursuant to this subchapter. An electric power

1 agency may exercise in connection with its property and  
2 affairs, and in connection with property within its control,  
3 any and all powers which might be exercised by a natural  
4 person or a private corporation in connection with similar  
5 property and affairs. The enumeration of specific powers and  
6 functions in this subchapter is not a limitation of the powers  
7 of a public agency or an electric power agency as otherwise  
8 provided by law. For purposes of this subchapter, open access  
9 transmission facilities are those available for use by others  
10 in a manner comparable to the use of transmission facilities  
11 of a public utility subject to the federal Power Act.

12 Sec. 27. NEW SECTION. 28F.16 ISSUANCE OF BONDS AND NOTES  
13 -- PURPOSES.

14 An electric power agency may from time to time issue its  
15 bonds or notes in such principal amounts as the electric power  
16 agency deems necessary to provide sufficient funds to carry  
17 out the following corporate purposes and powers:

18 a. The construction of open access transmission facilities  
19 to be owned or leased by the electric power agency, or the  
20 acquisition of any interest or any right to capacity in such  
21 facilities constructed on or after July 1, 1999.

22 b. The funding or refunding of the principal of, or  
23 interest or redemption premiums on, any bonds or notes issued  
24 by the electric power agency whether or not the bonds or notes  
25 or interest to be funded or refunded has become due.

26 c. The establishment or increase of reserves to secure or  
27 to pay the bonds or notes, or interest on such bonds or notes.

28 d. The payment of all other costs or expenses of the  
29 electric power agency incident to and necessary to carry out  
30 the foregoing corporate purposes and powers.

31 Sec. 28. NEW SECTION. 28F.17 BONDS AND NOTES AUTHORIZED  
32 BY RESOLUTION OF BOARD -- TERMS.

33 1. Bonds or notes of an electric power agency shall be  
34 authorized by resolution of its board of directors and may be  
35 issued under the resolution or under a trust indenture or

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1 other security agreement, in one or more series, which shall  
2 include all of the following:

- 3 a. Date of issue.
- 4 b. Date of maturity.
- 5 c. Rate of interest.
- 6 d. Amount of denomination.

7 2. The terms and conditions in the resolution, trust  
8 indenture, or other security agreement shall provide for all  
9 of the following:

- 10 a. The form of the bond or note, either coupon or  
11 registered.
- 12 b. Conversion, registration, and exchange privileges.
- 13 c. Rank or priority.
- 14 d. Execution requirements.
- 15 e. Medium and place of payment.
- 16 f. Terms of redemption with or without premium.
- 17 g. Such other terms and conditions as the resolution,  
18 trust indenture, or other security agreement may provide.
- 19 3. Bonds and notes issued pursuant to this subchapter  
20 shall not be restricted by any other law limiting the amounts,  
21 maturities, interest rates, or other terms of obligation of  
22 public agencies or private persons. Chapter 75 shall not  
23 apply to such bonds or notes.

24 **Sec. 29. NEW SECTION. 28F.18 BONDS AND NOTES PAYABLE**  
25 **SOLELY FROM AGENCY REVENUES OR FUNDS.**

26 The principal of and interest upon any bonds or notes  
27 issued by an electric power agency shall be payable solely  
28 from the revenues or funds pledged or available for their  
29 payment as authorized in this subchapter. Each bond and note  
30 shall contain a statement that the principal or interest  
31 associated with such bond or note is payable solely from  
32 revenues or funds of the electric power agency, and that the  
33 state, any political subdivision of the state other than the  
34 electric power agency, or any public agency which is a member  
35 of the electric power agency is not obligated to pay the

1 principal or interest and that neither the full faith and  
2 credit or the taxing power of the state, any political  
3 subdivision of the state, or any such public agency is not  
4 pledged to the payment of the principal of or the interest on  
5 the bonds or notes.

6 Sec. 30. NEW SECTION. 28F.19 BONDS AND NOTES -- TYPES --  
7 SOURCES FOR PAYMENT -- SECURITY.

8 Except as may be otherwise expressly provided by this  
9 subchapter or by the electric power agency, every issue of  
10 bonds or notes of the electric power agency shall be payable  
11 out of any revenues or funds of the electric power agency,  
12 subject only to any agreements with the holders of particular  
13 bonds or notes pledging any particular revenues or funds. An  
14 electric power agency may issue types of bonds or notes as it  
15 may determine, including bonds or notes as to which the  
16 principal and interest are payable exclusively from the  
17 revenues from one or more projects, or from an interest in  
18 such projects or a right to capacity of such projects, or from  
19 one or more revenue-producing contracts made by the electric  
20 power agency with any person, or from its revenues generally.  
21 Any bonds or notes may be additionally secured by a pledge of  
22 any grant, subsidy, or contribution from any public agency or  
23 other person, or a pledge of any income or revenues, funds, or  
24 moneys of the electric power agency from any source  
25 whatsoever.

26 Sec. 31. NEW SECTION. 28F.20 BONDS, NOTES, AND RATES FOR  
27 DEBT SERVICE NOT SUBJECT TO STATE APPROVAL.

28 Bonds or notes of an electric power agency may be issued  
29 under this subchapter, and rents, rates, and charges may be  
30 established pursuant to section 28F.5 and pledged for the  
31 security of bonds or notes, and interest and redemption  
32 premiums on such bonds or notes, without obtaining the consent  
33 of any department, division, commission, board, bureau, or  
34 agency of the state and without any other proceeding or the  
35 happening of any other condition or occurrence except as

1 specifically required by this subchapter.

2 Sec. 32. NEW SECTION. 28F.21 BONDS AND NOTES TO BE  
3 NEGOTIABLE.

4 All bonds and notes of an electric power agency shall be  
5 negotiable within the meaning and for all the purposes of the  
6 uniform commercial code, subject only to any registration  
7 requirement.

8 Sec. 33. NEW SECTION. 28F.22 VALIDITY OF BONDS AND NOTES  
9 AT DELIVERY -- TEMPORARY BONDS.

10 Any bonds or notes may be issued and delivered,  
11 notwithstanding that one or more of the officers executing  
12 them shall have ceased to hold office at the time when the  
13 bonds or notes are actually delivered. Pending preparation of  
14 definitive bonds, an electric power agency may issue temporary  
15 bonds which shall be exchanged for the definitive bonds.

16 Sec. 34. NEW SECTION. 28F.23 PUBLIC OR PRIVATE SALE OF  
17 BONDS AND NOTES.

18 Bonds or notes of an electric power agency may be sold at  
19 public or private sale for a price and in a manner as  
20 determined by the agency.

21 Sec. 35. NEW SECTION. 28F.24 BONDS AND NOTES SUITABLE  
22 INVESTMENTS FOR GOVERNMENTAL UNITS, FINANCIAL INSTITUTIONS,  
23 AND FIDUCIARIES.

24 A bank, trust company, savings bank, building and loan  
25 association, savings and loan association, credit union,  
26 investment company, insurance company, insurance association,  
27 executor, guardian, trustee, and other fiduciaries responsible  
28 for the investment of funds, may legally invest any debt  
29 service funds, money, or other funds belonging to them or  
30 within their control in any bonds or notes issued pursuant to  
31 this subchapter, and the bonds or notes shall be authorized  
32 security for any and all public deposits.

33 Sec. 36. NEW SECTION. 28F.25 RESOLUTION, TRUST  
34 INDENTURE, OR SECURITY AGREEMENT CONSTITUTES CONTRACT --  
35 PROVISIONS.

1 1. The resolution, trust indenture, or other security  
2 agreement under which any bonds or notes are issued shall  
3 constitute a contract with the holders of the bonds or notes,  
4 and may contain provisions, among others, prescribing any of  
5 the following:

6 a. The terms and provisions of the bonds or notes.

7 b. The mortgage or pledge of and the grant of a security  
8 interest in any real or personal property and all or any part  
9 of the revenue from any project or any revenue-producing  
10 contract made by the electric power agency with any person to  
11 secure the payment of bonds or notes, subject to any  
12 agreements with the holders of bonds or notes which might then  
13 exist.

14 c. The custody, collection, securing, investment, and  
15 payment of any revenues, assets, money, funds, or property  
16 with respect to which the electric power agency may have any  
17 rights or interest.

18 d. The rates or charges for electric energy sold by, or  
19 services rendered by, the electric power agency, the amount to  
20 be raised by the rates or charges, and the use and disposition  
21 of any or all revenue.

22 e. The creation of reserves or debt service funds and the  
23 regulation and disposition of such reserves or funds.

24 f. The purposes to which the proceeds from the sale of any  
25 bonds or notes to be issued may be applied, and the pledge of  
26 the proceeds to secure the payment of the bonds or notes.

27 g. Limitations on the issuance of any additional bonds or  
28 notes, the terms upon which additional bonds or notes may be  
29 issued and secured, and the refunding of outstanding bonds or  
30 notes.

31 h. The rank or priority of any bonds or notes with respect  
32 to any lien or security.

33 i. The creation of special funds or moneys to be held in  
34 trust or otherwise for operating expenses, payment, or  
35 redemption of bonds or notes, reserves or other purposes, and

1 the use and disposition of moneys held in these funds.

2 j. The procedure by which the terms of any contract with  
3 or for the benefit of the holders of bonds or notes may be  
4 amended or abrogated, the amount of bonds or notes the holders  
5 of which must consent to such amendment or abrogation, and the  
6 manner in which consent may be given.

7 k. The definition of the acts or omissions to act which  
8 shall constitute a default in the duties of the electric power  
9 agency to holders of its bonds or notes, and the rights and  
10 remedies of the holders in the event of default including, if  
11 the electric power agency so determines, the right to  
12 accelerate the due date of the bonds or notes or the right to  
13 appoint a receiver of the property or revenues subject to the  
14 lien of the resolution, trust indenture, or other security  
15 agreement.

16 l. Any other or additional agreements with or for the  
17 benefit of the holders of bonds or notes or any covenants or  
18 restrictions necessary or desirable to safeguard the interests  
19 of the holders.

20 m. The custody of any of its properties or investments,  
21 the safekeeping of such properties or investments, the  
22 insurance to be carried on such properties or investments, and  
23 the use and disposition of insurance proceeds.

24 n. The vesting in a trustee, within or outside the state,  
25 of such properties, rights, powers, and duties in trust as the  
26 electric power agency may determine; or the limiting or  
27 abrogating of the rights of the holders of any bonds or notes  
28 to appoint a trustee, or the limiting of the rights, powers,  
29 and duties of such trustee.

30 o. The appointment of, and the establishment of the duties  
31 and obligations of, any paying agent or other fiduciary within  
32 or outside the state.

33 Sec. 37. NEW SECTION. 28F.26 MORTGAGE OR TRUST DEED TO  
34 SECURE BONDS.

35 For the security of bonds or notes issued, or to be issued,

1 by an electric power agency, the electric power agency may  
2 mortgage or execute deeds of trust of the whole or any part of  
3 its property.

4 Sec. 38. NEW SECTION. 28F.27 NO PERSONAL LIABILITY ON  
5 BONDS OR NOTES.

6 An official, director, or member of an electric power  
7 agency, or any person executing bonds or notes pursuant to  
8 this subchapter shall not be liable personally on the bonds or  
9 notes or be subject to any personal liability or  
10 accountability by reason of the issuance of such bonds or  
11 notes.

12 Sec. 39. NEW SECTION. 28F.28 REPURCHASE OF SECURITIES.

13 An electric power agency may purchase, out of any funds  
14 available for such purchase, bonds or notes, and may hold,  
15 pledge, cancel, or resell the bonds or notes, subject to and  
16 in accordance with any agreements with the holders.

17 Sec. 40. NEW SECTION. 28F.29 PLEDGE OF REVENUE AS  
18 SECURITY.

19 An electric power agency may pledge its rates, rents, and  
20 other revenues, or any part of such rates, rents, or other  
21 revenues, as security for the repayment, with interest and  
22 redemption premiums, if any, of the moneys borrowed by it or  
23 advanced to it for any of its authorized purposes and as  
24 security for the payment of amounts due and owed by it under  
25 any contract.

26 Sec. 41. Section 384.24, subsection 4, Code 1999, is  
27 amended by adding the following new paragraph:

28 NEW PARAGRAPH. j. The acquisition of competitive electric  
29 services, as defined in chapter 476B, to meet the demands of  
30 city residents.

31 Sec. 42. Section 384.84, subsection 1, Code 1999, is  
32 amended to read as follows:

33 1. The governing body of a city utility, combined utility  
34 system, city enterprise, or combined city enterprise may  
35 establish, impose, adjust, and provide for the collection of

1 rates and charges to produce gross revenues at least  
2 sufficient to pay the expenses of operation and maintenance of  
3 the city utility, combined utility system, city enterprise, or  
4 combined city enterprise. When revenue bonds or pledge orders  
5 are issued and outstanding pursuant to this division, the  
6 governing body shall establish, impose, adjust, and provide  
7 for the collection of rates to produce gross revenues at least  
8 sufficient to pay the expenses of operation and maintenance of  
9 the city utility, combined utility system, city enterprise, or  
10 combined city enterprise, and to leave a balance of net  
11 revenues sufficient to pay the principal of and interest on  
12 the revenue bonds and pledge orders as they become due and to  
13 maintain a reasonable reserve for the payment of principal and  
14 interest, and a sufficient portion of net revenues must be  
15 pledged for that purpose. Rates must be established by  
16 ordinance of the council or by resolution of the trustees,  
17 published in the same manner as an ordinance. However, prices  
18 for electric services subject to direct competition under  
19 chapter 476B may be changed in accordance with a policy that  
20 has been adopted in the same manner as rates.

21 Sec. 43. Section 388.6, Code 1999, is amended to read as  
22 follows:

23 388.6 DISCRIMINATION IN RATES.

24 A city utility or a combined utility system may not provide  
25 use or service at a discriminatory rate, except to the city or  
26 its agencies, as provided in section 384.91. However, the  
27 pricing of competitive electric services, as defined in  
28 section 476B.3, at market rates is not prohibited.

29 Sec. 44. Section 474.9, Code 1999, is amended by striking  
30 the section and inserting in lieu thereof the following:

31 474.9 GENERAL JURISDICTION OF UTILITIES BOARD.

32 1. The board shall have broad general powers to effect the  
33 purposes of this chapter and chapters 476, 476A, 476B, 478,  
34 479, 479A, and 479B. The board may issue subpoenas and pay  
35 the same fees and mileage as are payable to witnesses in the

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1 courts of record of general jurisdiction. The board shall  
2 adopt rules pursuant to chapter 17A to govern the exercise of  
3 its powers and duties, the practice and procedure before it,  
4 and to govern the form, contents, and filing of reports,  
5 documents, and other papers as required.

6 2. The board shall employ at rates of compensation  
7 consistent with current standards in industry, such  
8 professionally trained economists, engineers, accountants,  
9 attorneys, and skilled examiners and inspectors, secretaries,  
10 clerks, and other employees as it may find necessary for the  
11 full and efficient discharge of its duties and  
12 responsibilities as required by this chapter and chapters 476,  
13 476A, 476B, 478, 479, 479A, and 479B.

14 3. The board may intervene in any proceedings before the  
15 federal energy regulatory commission or any other federal or  
16 state regulatory body when it finds that any decision of the  
17 commission would adversely affect the costs of regulated or  
18 competitive utility services within this state.

19 4. The board shall have authority to inquire into the  
20 management of the business of all public utilities and  
21 delivery service providers that are electric companies, and  
22 shall keep itself informed as to the manner and method in  
23 which the same is conducted, and may obtain from any public  
24 utility or delivery service provider all necessary information  
25 to enable the board to perform its duties.

26 5. To the maximum extent fair and equitable, the board  
27 shall directly charge its expenses and those of the consumer  
28 advocate to the person causing the board or consumer advocate  
29 to incur those expenses in accomplishing the purposes of the  
30 board. No part of such expenses shall be charged to persons,  
31 who without expanding the scope of the proceeding, intervene  
32 in good faith in a board proceeding initiated by an entity  
33 subject to the board's rate and licensing jurisdiction, the  
34 consumer advocate, or the board on its own motion. For  
35 allocations in complaint proceedings, the board may consider

1 the financial resources of the parties and the contribution to  
2 the public interest.

3 6. a. In order to carry out the duties imposed upon it by  
4 law, the board may allocate the expenses attributable to such  
5 duties to the parties to proceedings before the board or to  
6 persons participating in other matters before the board. The  
7 board shall ascertain the certified expenses incurred by the  
8 consumer advocate division of the department of justice in the  
9 performance of its duties under the law and may allocate those  
10 expenses that are directly chargeable.

11 b. The board shall ascertain the total of the division's  
12 expenditures during each year which is reasonably attributable  
13 to the performance of its duties under the law. The board  
14 shall add to this total the certified expenses of the consumer  
15 advocate as provided under section 475A.6 and shall deduct all  
16 amounts chargeable directly to any person under any law. The  
17 remainder shall be assessed by the board to an entity  
18 providing service over which the board has jurisdiction in  
19 proportion to its respective gross operating revenues during  
20 the last calendar year derived from its intrastate operations  
21 over which the board has jurisdiction. If any portion of the  
22 remainder can be identified with a specific type of utility  
23 service, the board may allocate those expenses to the  
24 corresponding entities over which the board has jurisdiction.  
25 Assessments may be made quarterly based upon estimates of the  
26 expenditures for the fiscal year of the utilities division and  
27 the consumer advocate. Not more than ninety days following  
28 the close of the fiscal year, the utilities division shall  
29 conform the amount of the prior fiscal year's assessments to  
30 the requirements of this section. The total amount that may  
31 be assessed to an entity under authority of this paragraph  
32 shall not exceed six-tenths of one percent of the total gross  
33 operating revenues during the calendar year derived from  
34 intrastate operations over which the board has jurisdiction.  
35 For public utilities exempted from board rate regulation

1 pursuant to chapter 476 and delivery service providers that  
 2 are incumbent provider consumer-owned utilities pursuant to  
 3 chapter 476B, the assessments under this paragraph shall be  
 4 computed at one-half the rate used in computing the assessment  
 5 for other utilities and delivery service providers that are  
 6 electric companies.

7 c. A person subject to assessment shall pay the division  
 8 the amount assessed against it within thirty days from the  
 9 time the division mails notice to it of the amount due unless  
 10 it shall file with the board objections in writing setting out  
 11 the grounds upon which it claims that such assessment is  
 12 excessive, erroneous, unlawful, or invalid. Upon the filing  
 13 of such objections the board shall set the matter down for  
 14 hearing and issue its order in accordance with its findings in  
 15 such proceeding, which order shall be subject to review as  
 16 provided in this chapter. All amounts collected by the  
 17 division pursuant to this section shall be deposited with the  
 18 treasurer of state and credited to the general fund of the  
 19 state.

20 d. Whenever the board deems it necessary in order to carry  
 21 out the duties imposed by law, the board may expend additional  
 22 sums beyond those sums appropriated. However, the authority  
 23 to add additional personnel or contract for additional  
 24 assistance must first be approved by the director of the  
 25 department of management. The costs of any additional  
 26 employees and contract services shall be assessed and paid in  
 27 the same manner as other expenses are paid under this section.  
 28 There is appropriated out of any funds in the state treasury  
 29 not otherwise appropriated, such sums as may be necessary to  
 30 enable the board to hire additional staff and contract for  
 31 services under this section. The authority to hire additional  
 32 temporary or permanent staff that is granted to the board by  
 33 this section shall not be subject to limitation by an  
 34 administrative or executive order or decision that restricts  
 35 the number of state employees or the filling of employee

1 vacancies, and shall not be subject to limitation by any law  
2 of this state that restricts the number of state employees or  
3 the filling of employee vacancies unless that law is made  
4 applicable by express reference to this section. Fees paid to  
5 the utilities division shall be deposited in the general fund  
6 of the state. These funds, upon appropriation by the general  
7 assembly, shall be used for payment of the expenses of the  
8 utilities division and the consumer advocate division.

9 Subject to this section, the utilities division or the  
10 consumer advocate division may keep on hand with the treasurer  
11 of state funds in excess of the current needs of the utilities  
12 division or the consumer advocate division.

13 e. The administrator and consumer advocate shall account  
14 for receipts and disbursements according to the separate  
15 duties imposed upon the utilities division and the consumer  
16 advocate division by the laws of this state and each separate  
17 duty shall be fiscally self-sustaining.

18 f. All fees and other moneys collected under this section  
19 shall be deposited into the general fund of the state and  
20 expenses required to be paid under this section shall be paid  
21 from funds appropriated for those purposes. Moneys deposited  
22 into the general fund of the state pursuant to this section  
23 shall be used in accordance with section 8.60.

24 Sec. 45. Section 476.1, subsection 1, Code 1999, is  
25 amended to read as follows:

26 1. Furnishing gas by piped distribution system or  
27 electricity to the public for compensation.

28 Sec. 46. Section 476.1, Code 1999, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 4. Furnishing electricity to the public  
31 for compensation, except to the extent inconsistent with  
32 chapter 476B, as follows:

33 a. (1) Until May 1, 2002, for an electric company, as  
34 defined in section 476B.3.

35 (2) Until the date selected by the governing body of each

1 consumer-owned utility, as defined in section 476B.3.

2 b. Except as provided in paragraph "c", after the dates  
3 specified in paragraph "a", an electric company and a  
4 consumer-owned utility, as so defined, shall be subject  
5 exclusively to regulation under chapter 476B.

6 c. The dates specified in paragraph "a" shall be adjusted,  
7 if necessary, consistent with an action of the board  
8 suspending the dates for commencement of the option to choose  
9 competitive electric services pursuant to section 476B.7,  
10 subsection 4.

11 Sec. 47. Section 476A.6, Code 1999, is amended to read as  
12 follows:

13 476A.6 DECISION -- CRITERIA.

14 The board shall render a decision on the application in an  
15 expeditious manner. A certificate shall be issued to the  
16 applicant if the board finds ~~at least~~ both of the following:

17 ~~1. The services and operations resulting from the~~  
18 ~~construction of the facility are required by the present or~~  
19 ~~future public convenience, use and necessity.~~

20 2. 1. The applicant is willing to perform such services  
21 and construct, maintain, and operate the facility pursuant to  
22 the provisions of the certificate and this chapter.

23 3. 2. The construction, maintenance, and operation of the  
24 facility will cause minimum adverse land use, environmental,  
25 and aesthetic impact and are consonant with reasonable  
26 utilization of air, land, and water resources ~~for beneficial~~  
27 ~~purposes considering available technology and the economics of~~  
28 ~~available alternatives.~~

29 ~~4. The applicant, if a public utility as defined in~~  
30 ~~section 476.17, has in effect a comprehensive energy management~~  
31 ~~program designed to reduce peak loads and to increase~~  
32 ~~efficiency of use of energy by all classes of customers of the~~  
33 ~~utility, and the facility in the application is necessary~~  
34 ~~notwithstanding the existence of the comprehensive energy~~  
35 ~~management program. As used in this subsection, a~~

1 "comprehensive-energy-management-program"-includes-at-a  
2 minimum-the-following:

3 a.--Establishment-of-load-management-and-interruptible  
4 service-programs, where-cost-effective.

5 b.--Development-of-wheeling-agreements-and-other-energy  
6 sharing-agreements, where-cost-effective-with-utilities-that  
7 have-available-capacity.

8 c.--Establishment-of-cost-effective-energy-efficiency-and  
9 renewable-energy-services-and-programs.

10 d.--Compliance-with-board-rules-on-energy-management  
11 procedures.

12 5.--The-applicant, if-a-public-utility-as-defined-in  
13 section-476.17, shall-demonstrate-to-the-board-that-the-utility  
14 has-considered-sources-for-long-term-electric-supply-from  
15 either-purchase-of-electricity-or-investment-in-facilities  
16 owned-by-other-persons.

17 6.--The-applicant, if-a-public-utility-as-defined-in  
18 section-476.17, has-considered-all-feasible-alternatives-to-the  
19 proposed-facility-including-nongeneration-alternatives, has  
20 ranked-those-alternatives-by-cost, has-implemented-the-least-  
21 cost-alternatives-first, and-the-facility-in-the-application  
22 is-necessary-notwithstanding-the-implementation-of-these  
23 alternatives.

24 Sec. 48. Section 476A.7, subsection 1, paragraph b, Code  
25 1999, is amended to read as follows:

26 b. Gives To the extent the applicant proves the location  
27 of generation at the site is required to maintain or enhance  
28 the reliability of the delivery system serving the public,  
29 gives the applicant the power of eminent domain to-the-extent  
30 and under such conditions as the board may approve, prescribe,  
31 and find necessary for-the-public-convenience, use-and  
32 necessity, proceeding in the manner of works of internal  
33 improvement under chapter 6B. The burden of proving the  
34 necessity for the exercise of the power of eminent domain  
35 shall be on the person issued seeking the certificate.

1 Sec. 49. Section 476A.15, Code 1999, is amended to read as  
2 follows:

3 476A.15 WAIVER.

4 The board, if it determines that the public interest would  
5 not be adversely affected, may waive any of the requirements  
6 of this chapter ~~for facilities with a capacity of one hundred~~  
7 ~~or fewer megawatts.~~

8 Sec. 50. Section 478.3, subsection 1, paragraph h, Code  
9 1999, is amended to read as follows:

10 h. An allegation that the proposed construction is  
11 necessary to serve a public use. This allegation may be  
12 satisfied by the filing of an order of the federal energy  
13 regulatory commission or its successor directing that the  
14 project be constructed.

15 Sec. 51. NEW SECTION. 478.34 RELATIONSHIP TO COMPETITIVE  
16 SERVICES.

17 The rights and powers conferred under this chapter,  
18 including the right of eminent domain, shall be interpreted  
19 and exercised in a manner consistent with the provisions of  
20 chapter 476B.

21 Sec. 52. Section 499.14A, Code 1999, is amended to read as  
22 follows:

23 499.14A ELECTRIC COOPERATIVE ASSOCIATION MEMBERSHIPS.

24 An electric ~~generation-and-transmission~~ cooperative  
25 association may have one or more classes of members.  
26 Qualifications, requirements, methods of acceptance, terms,  
27 conditions, termination, and other incidents of membership  
28 shall be set forth in the bylaws of the association. An  
29 ~~electric-utility-as-defined-in-section-476-22-and-a-person-who~~  
30 ~~generates-or-transmits-electric-power-for-sale-at-wholesale-to~~  
31 ~~an-electric-utility-may-become-a-member-in-accordance-with-the~~  
32 ~~bylaws.~~

33 Sec. 53. Section 499.30, subsection 5, Code 1999, is  
34 amended to read as follows:

35 5. Notwithstanding an association's articles of

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1 incorporation, for each taxable year of the association, the  
2 association shall allocate all remaining net earnings to the  
3 account of each member, including subscribers described in  
4 section 499.16, ratably in proportion to the business the  
5 member did with the association during that year. The  
6 directors shall determine, or the articles of incorporation or  
7 bylaws of the association may specify, the percentage or the  
8 amount of the allocation to be currently paid in cash.

9 However, for a cooperative association, other than an electric  
10 cooperative association other-than-a-public-utility-as-defined  
11 in-section-476-1, the amount to be currently payable in cash  
12 shall not exceed twenty percent of the allocation during any  
13 period when unpaid local deferred patronage dividends of  
14 deceased members for prior years are outstanding.

15 Notwithstanding the twenty percent allocation limitation, the  
16 directors of a cooperative association or the articles of  
17 incorporation or bylaws of the association may specify any  
18 percentage or amount to be currently paid in cash to the  
19 estates of deceased natural persons who were members. All the  
20 remaining allocation not paid in cash shall be transferred to  
21 a revolving fund as provided in section 499.33 and credited to  
22 the members and subscribers. The credits in the revolving  
23 fund are referred to in this chapter as deferred patronage  
24 dividends.

25 Sec. 54. Section 499.33, subsection 2, paragraphs a and b,  
26 Code 1999, are amended to read as follows:

27 a. Prior to other payments of deferred patronage dividends  
28 or redemption of preferred stock held by members, the  
29 directors of a cooperative association, other than a an  
30 electric cooperative association which-is-a-public-utility-as  
31 defined-in-section-476-1, shall pay local deferred patronage  
32 dividends and redeem local deferred patronage preferred stock  
33 of deceased natural persons who were members, and may pay  
34 deferred patronage dividends or may redeem preferred stock of  
35 deceased natural persons who were members or of members who

1 become ineligible, without reference to the order of priority.

2 b. The directors of a an electric cooperative association  
3 ~~which-is-a-public-utility-as-defined-in-section-476-1~~ may pay  
4 deferred patronage dividends and redeem preferred stock of  
5 deceased natural persons who were members, and may pay all  
6 other deferred patronage dividends or redeem preferred stock  
7 of members without reference to priority.

8 Sec. 55. STATUTORY CONSTRUCTION. This Act shall not be  
9 construed to invalidate any proceedings under statutes  
10 existing prior to the effective date of this Act.  
11 Additionally, this Act shall not affect any action,  
12 litigation, or appeal pending prior to the effective date of  
13 this Act.

14 Sec. 56. DIRECTIONS TO CODE EDITOR. The Code editor shall  
15 codify sections 28F.15 through 28F.29, as enacted in this Act,  
16 as a separate subchapter of chapter 28F.

17 Sec. 57. EFFECTIVE DATE. This Act takes effect on June 1,  
18 1999.

19 EXPLANATION

20 This bill creates new Code chapter 476B, which provides for  
21 consumer choice with respect to portions of the electric  
22 utility industry.

23 New Code section 476B.1 sets forth the title of the new  
24 Code chapter.

25 New Code section 476B.2 sets forth the legislative  
26 findings.

27 New Code section 476B.3 establishes definitions for key  
28 terms used in the new Code chapter.

29 New Code section 476B.4 provides for the unbundling of  
30 electric rates and services.

31 New Code section 476B.5 creates a consumer education  
32 program associated with the changes in the retail electric  
33 market and establishes a funding mechanism for the program.

34 New Code section 476B.6 establishes consumer protections,  
35 as well as defining the rights of consumers with respect to

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1 competitive electric services.

2 New Code section 476B.7 establishes the dates when the  
3 option to choose competitive electric services and providers  
4 will occur.

5 New Code section 476B.8 establishes price and service  
6 protections for certain consumers.

7 New Code section 476B.9 sets forth the rights and  
8 responsibilities of delivery service providers.

9 New Code section 476B.10 sets forth the rights and  
10 responsibilities of competitive electric service providers.

11 New Code section 476B.11 establishes certain rights and  
12 requirements with respect to metering and meter information.

13 New Code section 476B.12 sets forth requirements related to  
14 the billing of consumers.

15 New Code section 476B.13 establishes low-income  
16 affordability and energy efficiency programs.

17 New Code section 476B.14 provides that a competitive  
18 electric service provider, a delivery service provider, and a  
19 control area operator shall develop procedures for filing and  
20 resolving complaints regarding the services and operations of  
21 such a provider or operator.

22 New Code section 476B.15 provides for the imposition and  
23 collection of transition charges related to current power  
24 generation and contracts for power and energy.

25 New Code section 476B.16 provides for the recovery of  
26 certain costs associated with the decommissioning of a nuclear  
27 generating facility.

28 New Code section 476B.17 establishes a method for the  
29 securitization of transitional funding by an electric company  
30 or a consumer-owned utility.

31 New Code section 476B.18 provides for reciprocity and  
32 prohibits a consumer-owned utility from providing competitive  
33 power supply services in the assigned area of an electric  
34 company until such time as the consumer-owned utility permits  
35 consumers in its assigned area to choose competitive electric

1 services.

2 New Code section 476B.19 provides that a consumer-owned  
3 utility is not subject to the regulatory authority of the  
4 board except as specifically provided in the new Code chapter.

5 New Code section 476B.20 establishes penalties and  
6 remedies.

7 New Code section 476B.21 provides for rehearings before the  
8 board.

9 New Code section 476B.22 provides for judicial review of  
10 board orders and decisions.

11 New Code section 476B.23 establishes certain contractual  
12 rights and provides that certain end-use consumers may  
13 terminate a contract for electric service in effect before the  
14 effective date of the new Code chapter.

15 New Code section 476B.24 provides for the employment  
16 transition of certain utility employees.

17 New Code section 476B.25 provides for certain reports on  
18 the effectiveness of competition to be made to the general  
19 assembly.

20 New Code sections 28F.15 through 28F.29 provide for the  
21 funding of construction of open access transmission facilities  
22 to be owned or leased by an electric power agency.

23 Certain conforming and transitional amendments are made to  
24 existing Code sections.

25 The bill takes effect on June 1, 1999.

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MAR 22 1999

Place On Calendar

HOUSE FILE 740  
BY COMMITTEE ON COMMERCE  
AND REGULATION

(SUCCESSOR TO HSB 218)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the restructuring of the electric utility  
2 industry by providing for consumer choice for certain electric  
3 services, providing penalties, and providing an effective  
4 date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 740

1 Section 1. NEW SECTION. 476B.1 TITLE.

2 This chapter shall be known and may be cited as the  
3 "Electric Choice and Competition Act".

4 Sec. 2. NEW SECTION. 476B.2 LEGISLATIVE FINDINGS.

5 The general assembly finds and declares all of the  
6 following:

7 1. Electricity is essential and vital to the health and  
8 well-being of all citizens of this state.

9 2. The citizens of the state are dependent upon the  
10 availability of reliable, low-cost electricity, which is  
11 essential to sustained economic development and the continued  
12 quality of life now enjoyed by Iowans.

13 3. Advances in electric generation technology and federal  
14 initiatives to introduce competition into the wholesale  
15 electric market favor and compliment the introduction of  
16 competition into the retail electric market in Iowa.

17 4. Restructuring the electric industry to provide greater  
18 competition and more efficient regulation is a nationwide  
19 trend, and Iowa must pursue restructuring and increased  
20 consumer choice to introduce competitive incentives to provide  
21 electric service at fair and reasonable prices to the  
22 businesses and citizens of this state.

23 5. It is in the public interest to allow and encourage the  
24 development of competitive markets for electric generation and  
25 other electric services in both rural and urban Iowa because a  
26 competitive market may be more effective than regulation in  
27 determining the efficient price for these services and in  
28 promoting efficiency in operations.

29 6. A competitive electric market holds the potential for  
30 end-use consumers of electricity to have access to reliable  
31 and safe competitive electric services at fair and reasonable  
32 prices while providing for competitive choice, more effective  
33 use of resources, and an improved quality and variety of  
34 competitive electric services.

35 7. A competitive electric industry shall have adequate and

1 reasonable safeguards to protect the public interest.

2 Residential and small commercial consumer service safeguards  
3 and protections shall be maintained or improved.

4 8. Encouraging the development of a competitive market can  
5 be accomplished in a manner that protects the environment.

6 9. A competitive market encourages economic development by  
7 permitting competitive markets to determine the most efficient  
8 use of resources.

9 10. The needs of Iowa's low-income consumers of electric  
10 services, including the need for economic energy efficiency  
11 improvements and programs, can be met while restructuring the  
12 electric industry.

13 11. Recognizing that the full costs of generation, fuel,  
14 power, and energy owned or purchased by an incumbent provider  
15 or consumer-owned utility, to the extent included in regulated  
16 rates, have been determined to be just, reasonable, prudent,  
17 and used and useful, incumbent providers and consumer-owned  
18 utilities should be afforded an opportunity to prepare for the  
19 transition from regulation to competition and afforded an  
20 opportunity to recover a reasonable amount of the costs of the  
21 transition.

22 12. Consumer-owned utilities can participate successfully  
23 in a competitive electric environment by retaining their local  
24 control over their own governance, including setting rates,  
25 terms, and conditions for products and services.

26 13. Facilities and personnel needed to maintain the safety  
27 of the electric supply, as well as all other competitive and  
28 regulated electric services, must remain available and  
29 operational.

30 14. The establishment of competitive electric markets  
31 should be undertaken in a manner that mitigates any  
32 detrimental effect on the safety and reliability of the  
33 electric system and on utility employees.

34 15. Delivery services should remain regulated. In  
35 recognition of their exclusive assigned service areas,

1 delivery service providers should have an obligation to extend  
2 the delivery grid to all consumers within the assigned service  
3 area. Standards of conduct for delivery service providers and  
4 provisions regarding transactions between delivery service  
5 providers and their affiliates shall be implemented.

6 16. Full and fair competition in the markets for  
7 generation and electric services other than delivery service  
8 should be encouraged and promoted. It is not the intent of  
9 this chapter to displace applicable antitrust and unfair  
10 competition laws and the enforcement of the same with respect  
11 to competitive electric services or to weaken regulation with  
12 respect to delivery services subject to the jurisdiction of  
13 the Iowa utilities board.

14 Sec. 3. NEW SECTION. 476B.3 DEFINITIONS.

15 As used in this chapter, unless the context otherwise  
16 requires:

17 1. "Affiliate" means a person, other than a municipal  
18 utility or other political subdivision, that directly, or  
19 indirectly, through one or more intermediaries, controls, is  
20 controlled by, or is under common control with another person.

21 2. "Aggregation" means the process of organizing end-use  
22 consumers into a group for the acquisition of competitive  
23 electric services.

24 3. "Aggregator" means a person that organizes end-use  
25 consumers into a group and arranges for the acquisition of  
26 competitive electric services from a competitive electric  
27 service provider without taking title to those services.

28 4. "Alliance" means a group of electric cooperatives or  
29 their consumer-owned affiliates.

30 5. "Alternative energy" means electric energy measured in  
31 kilowatt-hours produced from an alternative energy facility.

32 6. "Alternative energy facility" means an electric  
33 generating unit whose energy input is derived, in whole or in  
34 part, from solar, wind, geothermal, landfill gas, refuse-  
35 derived fuel, agricultural crops or residues, wood, or other

- 1 renewable energy sources as determined by the board.  
2 "Alternative energy facility" also includes a hydroelectric  
3 generating unit with a nameplate capacity, or a contract for  
4 hydroelectric capacity, no greater than one hundred megawatts.
- 5 7. "Ancillary services" means those services that are  
6 necessary to support the transmission of demand and energy  
7 from generation to the point of usage while maintaining  
8 reliable operation of the delivery system in accordance with  
9 good operating practices. Ancillary services, as defined by  
10 the federal energy regulatory commission as of the effective  
11 date of this chapter, include all of the following:
- 12 a. Scheduling, system control, and dispatch.  
13 b. Reactive supply and voltage control from generation  
14 sources.  
15 c. Regulation and frequency response.  
16 d. Energy imbalance.  
17 e. Operating reserve -- spinning.  
18 f. Operating reserve -- supplemental.
- 19 8. "Assigned service area" means a geographic area  
20 designated by the board within which a designated person has  
21 the exclusive right to provide bundled electric services prior  
22 to May 1, 2002, or unbundled delivery services on or after May  
23 1, 2002.
- 24 9. "Assignee" means a person, other than an incumbent  
25 provider or grantee, to which an interest in intangible  
26 transition property is assigned, sold, or transferred.
- 27 10. "Balancing" means the responsibility of a control area  
28 operator to make necessary changes in the output of the  
29 sources of generation under its control to maintain the  
30 required voltage and frequency of the grid under its control.
- 31 11. "Basic energy service" means power supply services  
32 provided by a consumer-owned utility to an end-use consumer  
33 who has not chosen a competitive electric service provider or  
34 is otherwise without a competitive electric service provider.
- 35 12. "Bilateral contract" means a contract between two

1 persons.

2 13. "Board" means the Iowa utilities board within the  
3 department of commerce created in section 474.1.

4 14. "Board's website" means an electronic posting site  
5 maintained or approved by the board.

6 15. "Bundled electric service" means combining generation,  
7 transmission, distribution, and other electric services, and  
8 pricing the combination as an undifferentiated package rather  
9 than as individual services.

10 16. "Business unit" means a division or other economic  
11 unit of a person and is considered to be an affiliate of other  
12 business units of the person.

13 17. "Capacity" means a measurement of the electrical  
14 output of a generating plant usually expressed in kilowatts or  
15 megawatts.

16 18. "Comparable service" means regulated services provided  
17 to any person on the same or functionally equivalent basis,  
18 and under the same or functionally equivalent terms and  
19 conditions, as the regulated services provided by a delivery  
20 service provider to itself or its affiliates.

21 19. "Competitive electric services" means competitive  
22 power supply services sold at retail in this state commencing  
23 on or after May 1, 2002, in the assigned service areas of  
24 delivery service providers that are electric companies and  
25 commencing no later than October 1, 2002, in the assigned  
26 service areas of consumer-owned utilities. Electric metering  
27 services, electric meter information gathering services, and  
28 electric billing services sold at retail in the assigned  
29 service areas of electric companies by competitive electric  
30 service providers commencing on or after May 1, 2002, and  
31 other services of electric companies determined by the board  
32 after December 31, 2002, to be competitive pursuant to this  
33 chapter are competitive electric services. Electric metering  
34 services, electric meter information gathering services, and  
35 electric billing services sold at retail in the assigned

1 service area of a consumer-owned utility by a competitive  
2 electric service provider shall not be regulated by the board  
3 or local governing body except as provided in this chapter.  
4 Services provided pursuant to section 476B.8 are regulated  
5 electric services and not competitive electric services.

6 20. "Competitive electric service provider" means a person  
7 that provides or offers to provide competitive electric  
8 services in this state and includes an aggregator.

9 21. "Competitive power supply services" means demand,  
10 energy, and ancillary services sold at retail in this state,  
11 excluding scheduling, system control, load profiling and  
12 financial settlement when related to distribution, whether  
13 subject to the regulation of the board or a local governing  
14 body.

15 22. "Consumer-owned utility" means a municipal utility or  
16 electric cooperative.

17 23. "Control" means the possession, direct or indirect, of  
18 the power to direct or cause the direction of the management  
19 and policies of a person through ownership, by contract, or  
20 otherwise.

21 24. "Control area" means an electric delivery system or  
22 combination of electric delivery systems to which a common  
23 automatic control scheme is applied in order to do the  
24 following:

25 a. Match, at all times, the sum of the power output of the  
26 generators within the electric delivery systems and demand and  
27 energy purchased from entities outside the electric delivery  
28 systems with the load in the electric delivery systems.

29 b. Maintain, within the limits of good operating practice,  
30 scheduled interchange with other control areas.

31 c. Maintain the frequency of the electric delivery systems  
32 within reasonable limits in accordance with good operating  
33 practices.

34 d. Arrange for, provide, or verify that sufficient  
35 generating capacity or the right to sufficient generating

1 capacity is available to maintain operating reserves in  
2 accordance with good operating practice.

3 25. "Control area operator" means a person operating a  
4 control area.

5 26. "Delivery service" means the transportation of  
6 electricity from one point on a delivery service provider's  
7 system to another point on that system in this state.

8 Delivery service includes transmission service and  
9 distribution service.

10 27. "Delivery service provider" means a person that  
11 provides delivery service in this state but does not include a  
12 licensed competitive electric service provider that purchases  
13 delivery service from an electric company or consumer-owned  
14 utility and resells the delivery service at retail to an end-  
15 use consumer.

16 28. "Demand" means electric power measured in kilowatts or  
17 megawatts.

18 29. "Distribution service" means that portion of delivery  
19 service provided in this state that is not subject to the  
20 exclusive jurisdiction of the federal energy regulatory  
21 commission, or for consumer-owned utilities is not subject to  
22 section 211 of the federal Power Act. If a provider of  
23 distribution service is an electric company that is also a  
24 control area operator, the control area operations which are  
25 not subject to the exclusive jurisdiction of the federal  
26 energy regulatory commission, if any, shall be considered to  
27 be a part of distribution service and subject to the  
28 jurisdiction of the board.

29 30. "Electric company" means a delivery service provider,  
30 either on a bundled basis prior to May 1, 2002, or on an  
31 unbundled basis on or after May 1, 2002, but does not include  
32 a consumer-owned utility, municipal electric cooperative  
33 association, or governmental subdivision.

34 31. "Electric cooperative" means a person formed or  
35 organized as a cooperative under the laws of this state or

1 elsewhere, that engages in any of the following activities:  
2 generation of electricity, transmission of electricity,  
3 distribution of electricity, sale of electricity, control area  
4 operator services, or performance of ancillary services as  
5 designated by the federal energy regulatory commission. An  
6 electric cooperative includes a consumer-owned affiliate of an  
7 electric cooperative, an alliance, and an incorporated city  
8 utility provider.

9 32. "Electric power agency" means a political subdivision  
10 that acquires or finances electric facilities pursuant to  
11 chapter 28E or 28F.

12 33. "Eligible rates" means those rates specified in an  
13 application for a transitional funding order from which  
14 instrument funding charges may be deducted and collected.  
15 Eligible rates may include any of the following: bundled  
16 electric rates, unbundled distribution service rates, other  
17 unbundled rates, standard offer service rates, universal  
18 service rates, transitional service rates, basic energy  
19 service rates, transition charges, any other charges  
20 authorized under section 476B.15, or any other rates for  
21 tariffed services.

22 34. "End-use consumer" means a person that prior to having  
23 the option to choose competitive electric service, purchases  
24 for use in this state bundled electric service or that  
25 participates in an electric retail access pilot project  
26 approved by the board or local governing body. On and after  
27 the date a person has the option to choose competitive  
28 electric service, "end-use consumer" means a person that  
29 purchases, directly or through a competitive electric service  
30 provider, for use in this state, standard offer service,  
31 transitional service, universal service, basic energy service,  
32 or unbundled distribution service sold at retail.

33 35. "Energy" means electric power measured in kilowatt-  
34 hours (kWh).

35 36. "Good operating practices" means any of the practices,

1 methods, and acts engaged in or approved by a significant  
2 portion of the electric industry during a relevant time  
3 period, or any of the practices, methods, or acts which, in  
4 the exercise of reasonable judgment in light of the facts  
5 known at the time the decision was made, could reasonably have  
6 been expected to accomplish the desired result at reasonable  
7 cost consistent with good business practices, reliability,  
8 safety, and expedition. "Good operating practices" is not  
9 limited to the optimum practice, method, or act, to the  
10 exclusion of all others, but rather to acceptable practices,  
11 methods, or acts consistently adhered to and generally  
12 accepted in the region.

13 37. "Grantee" means a person, other than an incumbent  
14 provider or an assignee which acquires its interest from an  
15 incumbent provider, to whom or for whose benefit the board  
16 creates, establishes, and grants rights in, to, or under  
17 intangible transition property.

18 38. "Grid" means the interconnected system used for  
19 delivering electricity within this state.

20 39. "Holder" means a holder of transitional funding  
21 instruments, including a trustee, collateral agent, nominee,  
22 or other such person acting for the benefit of such a holder.

23 40. "Incorporated city utility provider" means a  
24 corporation, existing on the effective date of this chapter,  
25 with assets worth one million dollars or more, which has one  
26 or more platted villages located within the territorial limits  
27 of the tract of land which it owns, and which provides  
28 electricity to ten thousand or fewer end-use consumers.

29 41. "Incumbent provider" means a person, or the person's  
30 successor or assign, that provided bundled electric service  
31 within an assigned service area on the effective date of this  
32 chapter.

33 42. "Instrument funding charge" means a nonbypassable  
34 charge authorized in a transitional funding order to be  
35 applied and invoiced to each responsible consumer, a class of

1 responsible consumers of an incumbent provider, or other  
2 person or group of persons obligated to pay eligible rates  
3 from which the instrument funding charge has been deducted and  
4 stated separately pursuant to section 476B.17, subsection 4,  
5 paragraph "d".

6 43. "Intangible transition property" means the right,  
7 title, and interest of an incumbent provider, grantee, or  
8 assignee arising pursuant to a transitional funding order to  
9 impose and receive instrument funding charges, and all related  
10 revenues, collections, claims, payments, money, or proceeds of  
11 the transitional funding order, including all right, title,  
12 and interest of an incumbent provider, grantee, or assignee  
13 in, to, under, and pursuant to such transitional funding  
14 order, whether or not such intangible transition property is  
15 characterized on the books of the incumbent provider as a  
16 regulatory asset, a cost incurred by the incumbent provider,  
17 or otherwise. Intangible transition property arises and  
18 exists only to the extent that instrument funding charges are  
19 authorized in a transitional funding order that becomes  
20 effective in accordance with this chapter. Such intangible  
21 transition property shall continue to exist to the extent  
22 provided in the transitional funding order.

23 44. "Interval metering" means metering that records end-  
24 use consumer usage on the same time frame as pricing changes  
25 in the market, typically hourly or more frequently.

26 45. "Issuer" means a person, other than an incumbent  
27 provider, which has issued transitional funding instruments.

28 46. "Load" means the amount of demand or energy delivered  
29 to or required by an end-use consumer or consumers.

30 47. "Load profiling" means the process of estimating  
31 rather than directly measuring the demand and energy  
32 consumption of an end-use consumer during a period of time.

33 48. "Local governing body" means the board of directors of  
34 an electric cooperative as provided in section 499.36, the  
35 utility board of a municipal electric utility as defined in

1 section 388.1, or the council of a city, as defined in section  
2 362.2, whose municipal electric utility is not operated by a  
3 utility board.

4 49. "Municipal electric cooperative association" means an  
5 electric cooperative, the membership of which is composed  
6 entirely of municipal utilities.

7 50. "Municipal utility" means all or part of an electric  
8 light and power plant system which is owned by a city,  
9 including all land, easements, rights of way, fixtures,  
10 equipment, accessories, improvement, appurtenances, and other  
11 property necessary or useful for the operation of a municipal  
12 electric utility. Municipal utility includes a combined  
13 utility system, as defined in section 384.80, in which at  
14 least one of the components of the combined utility system is  
15 a municipal electric utility.

16 51. "Nonbypassable charge" means a charge assessed by a  
17 delivery service provider to each end-use consumer located  
18 within the delivery service provider's assigned service area  
19 or to a competitive electric service provider serving that  
20 end-use consumer, regardless of whether the consumer purchases  
21 delivery service from that delivery service provider.

22 52. "Nuclear decommissioning" means a series of activities  
23 undertaken at the time a nuclear power plant is permanently  
24 retired from service to ensure that the final entombment,  
25 decontamination, dismantlement, removal, and disposal of the  
26 structures, systems, and components of the power plant,  
27 including the plant site, and any radioactive components and  
28 materials associated with the plant, is accomplished in  
29 compliance with all applicable state and federal laws, and to  
30 ensure that such final disposition does not pose any material  
31 threat to the public health and safety.

32 53. "Nuclear decommissioning costs" means all reasonable  
33 costs and expenses that are expected to be incurred or are  
34 actually incurred in connection with nuclear decommissioning  
35 including all costs and expenses to prepare a unit of a plant

1 for decommissioning, such as the cost of moving spent fuel  
2 off-site, interim spent fuel storage costs, and interim costs  
3 incurred pursuant to a SAFSTOR decommissioning phase as  
4 approved and defined by the nuclear regulatory commission, and  
5 all costs and expenses after the actual decommissioning  
6 occurs, such as physical security and radiation monitoring  
7 expenses. "Nuclear decommissioning costs" also includes  
8 reasonable costs and expenses to return the plant site to a  
9 condition suitable for public use.

10 54. "Person" means person as defined in section 4.1.

11 55. "Responsible consumer" means all of the following:

12 a. Prior to May 1, 2002, a person who receives bundled  
13 electric service pursuant to a tariff or contract.

14 b. On or after May 1, 2002, a person responsible for  
15 payment for distribution services pursuant to a tariff or  
16 contract.

17 c. At any time, any other person responsible for payment  
18 of eligible rates pursuant to a tariff or contract as  
19 specified by an incumbent provider in its application for a  
20 transitional funding order.

21 56. "Scheduling" means the process by which a person  
22 notifies the control area operator of the amounts of demand  
23 and energy it intends to provide to the grid for a specified  
24 period of time, and the source and destination of that demand  
25 and energy.

26 57. "Tariff" means a document containing rates, charges,  
27 schedules, regulations, terms, or conditions of regulated  
28 electric service, filed or posted with the appropriate  
29 regulatory authority.

30 58. "Transition charges" means nonbypassable charges to  
31 end-use consumers, competitive electric service providers, or  
32 delivery service providers that are consumer-owned utilities,  
33 that are designed to compensate an incumbent provider or  
34 electric cooperative for all or a portion of the provider's or  
35 cooperative's transition costs.

- 1     59. "Transition costs" means both of the following:  
2     a. Costs and reduced revenues as calculated pursuant to  
3 section 476B.15 incurred by an incumbent provider as a result  
4 of changing from electric regulation under chapter 476 to a  
5 competitive electric industry pursuant to this chapter.  
6     b. Costs and reduced revenues as calculated by an electric  
7 cooperative pursuant to section 476B.15, subsection 5, as a  
8 result of changing from electric regulation under chapter 476  
9 to a competitive electric industry pursuant to this chapter.
- 10    60. "Transitional funding instruments" means any  
11 instruments, pass-through certificates, notes, debentures,  
12 certificates of participation, bonds, certificates of  
13 beneficial interest, or other evidences of indebtedness or  
14 instruments evidencing a beneficial interest which are issued  
15 by or on behalf of an incumbent provider or issuer pursuant to  
16 a transitional funding order; which are issued pursuant to an  
17 executed indenture, pooling agreement, security agreement, or  
18 other similar agreement of an incumbent provider or issuer  
19 creating a security interest, ownership interest, or other  
20 beneficial interest in intangible transition property; and the  
21 proceeds of which are to be used for the purposes set forth in  
22 section 476B.17, subsection 3, paragraph "c".
- 23    61. "Transitional funding order" means an order of the  
24 board issued under section 476B.17 creating and establishing  
25 intangible transition property and the rights of any person in  
26 such property, and approving the sale, pledge, assignment, or  
27 other transfer of intangible transition property, the issuance  
28 of transitional funding instruments, and the imposition and  
29 collection of instrument funding charges.
- 30    62. "Transmission service" means the portion of delivery  
31 service that is subject to the exclusive jurisdiction of the  
32 federal energy regulatory commission or, for consumer-owned  
33 utilities, the portion of delivery service subject to section  
34 211 of the federal Power Act.
- 35    63. "Unbundled rates" means separate charges for

1 components of regulated electric services such as distribution  
2 services.

3 64. "Unbundled services" means distribution service and  
4 other services specified in section 476B.4.

5 Sec. 4. NEW SECTION. 476B.4 UNBUNDLING OF RATES AND  
6 SERVICES.

7 1. ELECTRIC COMPANIES. On or before October 1, 1999, an  
8 incumbent provider that is an electric company shall file with  
9 the board unbundled rates as provided in this subsection. At  
10 a minimum, unbundled rates for an electric company shall  
11 reflect separate charges for distribution service; types of  
12 delivery service metering; supplying competitive electric  
13 service providers with meter information, if applicable;  
14 delivery service billings issued to competitive electric  
15 service providers; delivery service billings issued to end-use  
16 consumers; connecting to the delivery system those meters not  
17 owned by the delivery service provider; processing a change in  
18 an end-use consumer's competitive electric service provider;  
19 transition charges pursuant to section 476B.15, if applicable;  
20 and nuclear decommissioning cost recovery pursuant to section  
21 476B.16, if applicable. To the extent it elects to perform  
22 billing services for competitive electric service providers  
23 through its regulated delivery service function under section  
24 476B.12 or elects to perform meter reading or meter  
25 information gathering through its regulated delivery service  
26 function under section 476B.11, an electric company shall also  
27 propose unbundled rates for such services that shall apply to  
28 all competitive electric service providers in a  
29 nondiscriminatory manner. An electric company may propose  
30 other regulated, unbundled rates and charges associated with  
31 delivery service, as appropriate. Terms and conditions  
32 associated with all unbundled rates and charges shall be filed  
33 with the board at the time of filing unbundled rates. The  
34 board shall treat the filing as a submission under section  
35 476.6, except that subsection 5 of that section shall not

1 apply.

2 The initial unbundled rates for the services specified in  
3 this subsection shall be based upon cost of service, including  
4 current cost of capital. The electric company shall submit  
5 written evidence with its initial unbundled rate filing to  
6 support its proposed unbundled rates and charges, including  
7 direct and allocated costs associated with the levels of the  
8 unbundled rates and charges. The method used to determine  
9 class cost of service, to the maximum extent practicable,  
10 shall permit identification of cost differences attributable  
11 to variations in demand, energy, voltage delivery level,  
12 customer components of cost, and other factors.

13 The board shall approve rates, charges, terms, and  
14 conditions that are just, reasonable, and nondiscriminatory.  
15 The unbundled rates, charges, terms, and conditions approved  
16 by the board shall be posted on the board's website for  
17 informational purposes by no later than November 1, 2001, and  
18 shall become effective on May 1, 2002.

19 2. ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES. Each  
20 incumbent provider that is a consumer-owned utility, pursuant  
21 to its local governing process, shall unbundle and post on the  
22 board's website its rates and charges by January 1, 2002. At  
23 a minimum, unbundled rates for a consumer-owned utility shall  
24 reflect separate charges for distribution service; connecting  
25 to the delivery system meters not owned by the delivery  
26 service provider; supplying meter information to competitive  
27 electric service providers, if applicable; and processing a  
28 change in an end-use consumer's competitive electric service  
29 provider. A consumer-owned utility may unbundle and post  
30 other rates and charges, such as transition costs including  
31 nuclear decommissioning costs, as determined by its local  
32 governing body. The costs associated with meter reading or  
33 meter information gathering may be included in the  
34 distribution service rate as long as, for each metered  
35 location, the consumer-owned utility makes the information

1 available at a reasonable cost-based fee to the competitive  
2 electric service provider serving the metered location. Meter  
3 reading, meter information, and billing charges, if  
4 applicable, shall be posted. Terms and conditions associated  
5 with all unbundled rates shall be posted at the same time as  
6 the posting of unbundled rates. The unbundled rates, charges,  
7 terms, and conditions of service of each consumer-owned  
8 utility shall be established by its local governing body, be  
9 nondiscriminatory, comply with section 476B.9, subsection 6,  
10 and become effective when the first end-use consumer within  
11 the assigned service area of the consumer-owned utility has  
12 the option to choose competitive electric services.

13 3. CONTROL AREA OPERATORS.

14 a. A control area operator that is an electric company  
15 shall file control area service rates, charges, terms, and  
16 conditions applicable to distribution service with the board  
17 by October 1, 1999. The filing shall also include the  
18 processes proposed to be used by the control area operator for  
19 scheduling and system control related to distribution service,  
20 load profiling, and financial settlement, if applicable. The  
21 filing shall be subject to review and approval by the board  
22 pursuant to section 476B.9, subsection 7. Control area  
23 service rates, charges, terms, conditions, and processes  
24 approved by the board shall be posted on the board's website  
25 for informational purposes by no later than November 1, 2001,  
26 and shall become effective May 1, 2002.

27 b. A control area operator that is a consumer-owned  
28 utility shall post on the board's website control area service  
29 rates, charges, terms, and conditions applicable to  
30 distribution service and the processes for load profiling and  
31 financial settlement to be used by the control area operator.  
32 The rates, charges, terms, conditions, and processes shall be  
33 nondiscriminatory, comply with section 476B.9, subsection 6,  
34 be regulated by the consumer-owned utility's local governing  
35 body unless subject to the exclusive jurisdiction of the

1 federal energy regulatory commission or the exclusive  
2 jurisdiction of another federal agency or, for consumer-owned  
3 utilities, subject to section 211 of the federal Power Act, be  
4 posted on the board's website for informational purposes by no  
5 later than January 1, 2002, and become effective when the  
6 first Iowa end-use consumer in the control area has the option  
7 to choose competitive electric services.

8 4. INFORMATIONAL POSTING OF TRANSMISSION TARIFFS. On or  
9 before November 1, 2001, each delivery service provider that  
10 provides transmission service and each control area operator  
11 shall post on the board's website, for informational purposes  
12 only, all tariffs for transmission service and ancillary  
13 services applicable to competitive electric service provider  
14 and end-use consumer transactions that have been accepted by  
15 the federal energy regulatory commission or another federal  
16 agency with jurisdiction. The posting on the board's website  
17 shall be updated at the time the delivery service provider  
18 updates its comparable posting on the federal website.

19 Sec. 5. NEW SECTION. 476B.5 CONSUMER EDUCATION.

20 1. OBJECTIVE. Educated consumers and the availability of  
21 information sufficient to allow consumers to evaluate the  
22 prices, terms, and conditions of service offered are essential  
23 to the development of an efficient competitive marketplace.  
24 It is the intent of this section to establish a consumer  
25 education program that explains changes in the retail electric  
26 market and provides information necessary to help consumers  
27 make appropriate choices regarding their electric service, to  
28 understand their rights and responsibilities as consumers,  
29 including rights under the federal Telemarketing and Consumer  
30 Fraud and Abuse Prevention Act, and to understand the legal  
31 obligations of the competitive electric service providers and  
32 delivery service providers. A collaborative process shall be  
33 used to develop a consumer education program to assist  
34 consumers in understanding their rights and opportunities.  
35 The board shall determine the date for commencement of the

1 education program approved by the board.

2 2. COLLABORATIVE PROCESS. Within ninety days after the  
3 effective date of this chapter, the board shall convene an  
4 initial meeting of persons interested in participating in the  
5 development of a consumer education program. Additional  
6 meetings shall be scheduled by the board as necessary.  
7 Interested persons shall be provided an opportunity for input,  
8 consistent with the objective of commencing the consumer  
9 education program on a date determined by the board.

10 3. STANDARDS. A consumer education program shall be  
11 developed in a two-step process, including message development  
12 and message dissemination. Message development shall be  
13 designed to educate consumers about all of the following:

14 a. The existing electric industry structure and the  
15 difference between that structure and the purchase of  
16 competitive and regulated electric services in a competitive  
17 market.

18 b. Consumers' rights and responsibilities in a competitive  
19 electric market.

20 c. The rights and responsibilities of competitive electric  
21 service providers, aggregators, and delivery service  
22 providers.

23 d. The role of the board and the office of consumer  
24 advocate.

25 The messages shall focus upon the educational and  
26 informational needs of nonresidential consumers using fewer  
27 than one hundred thousand kilowatt-hours annually and  
28 residential consumers including rural consumers. The content  
29 and dissemination of the messages shall be as competitively  
30 neutral as practicable.

31 The board shall specify the methods of message  
32 dissemination for electric companies. The method of message  
33 dissemination for consumer-owned utilities shall be determined  
34 by each local governing body with due consideration of the  
35 recommendations of the board. However, the board shall

1 specify the minimum number of times that consumer-owned  
2 utilities must disseminate the messages. The board shall  
3 develop the messages and, for electric companies, the method  
4 of message dissemination, giving due consideration to the  
5 comments and suggestions received through the collaborative  
6 process.

7 4. MAXIMUM COST. The total cost of message development  
8 and dissemination shall not exceed six million dollars.

9 5. FUNDING. The costs of message development and  
10 dissemination shall be funded through nonbypassable charges on  
11 the bills issued for bundled electric service, with collection  
12 to be completed by May 1, 2002. The costs of message  
13 development shall be apportioned among the incumbent providers  
14 in proportion to the number of kilowatt-hours used within an  
15 incumbent provider's assigned service area in 1998 to the  
16 total number of kilowatt-hours used in 1998 in all assigned  
17 service areas. Ninety percent of the costs of message  
18 dissemination shall be allocated to incumbent providers that  
19 are electric companies and shall be apportioned among electric  
20 companies in proportion to the number of kilowatt-hours used  
21 within the electric company's assigned service area in 1998 to  
22 the total number of kilowatt-hours used in 1998 in the  
23 assigned service areas of all electric companies. The  
24 remaining ten percent of the costs of message dissemination,  
25 not to exceed six hundred thousand dollars, shall be allocated  
26 to consumer-owned incumbent providers and shall be apportioned  
27 among them in proportion to the number of kilowatt-hours used  
28 in 1998 within the assigned service area of each to the total  
29 number of kilowatt-hours used in 1998 in the assigned service  
30 areas of all consumer-owned incumbent providers.

31 The board shall determine the date for commencement of  
32 collection of the nonbypassable charge and shall specify for  
33 electric companies by December 31, 1999, the method of  
34 allocating the costs among rates, which method may differ from  
35 the method used for apportioning costs among incumbent

1 providers. Moneys collected from the nonbypassable charges  
2 shall be forwarded to the board quarterly. To the extent the  
3 amount collected through the nonbypassable charge exceeds by  
4 more than five percent the amount authorized to be collected,  
5 the electric company shall be required to refund such  
6 overcollections to the end-use consumers who paid those  
7 amounts in a manner to be approved by the board. A consumer-  
8 owned utility may collect its share of message development  
9 costs and the costs of its own message dissemination program  
10 through a nonbypassable delivery charge.

11 6. OTHER COMMUNICATIONS. Nothing in this section shall  
12 prohibit a person from communicating to an end-use consumer in  
13 an accurate and truthful manner regarding the competitive  
14 electric market and regulated electric services through a  
15 means other than the consumer education program developed  
16 under this section. In addition, the board may continue to  
17 provide information and education following the conclusion of  
18 the consumer education program, but shall not continue the  
19 nonbypassable charge established for that purpose.

20 Sec. 6. NEW SECTION. 476B.6 CONSUMER PROTECTIONS --  
21 RIGHTS AND RESPONSIBILITIES OF CONSUMERS.

22 1. LICENSE REQUIRED.

23 a. Except as provided in this section, a person shall not  
24 provide or offer to provide competitive electric services to  
25 an end-use consumer, or aggregate end-use consumers for the  
26 acquisition of competitive electric services without first  
27 obtaining a license from the board. This section does not  
28 prohibit a person from communicating to an end-use consumer in  
29 an accurate and truthful manner regarding the emerging  
30 competitive electric market in this state and the person's  
31 planned role in that market. In addition to the licensing  
32 requirements in this section, the board may adopt, by rule,  
33 additional licensing requirements consistent with this section  
34 that are required to protect the public from fraud and unfair,  
35 deceptive, or other abusive business sales practices, to

1 provide for reasonable disclosure of service terms and  
2 conditions and consumer rights and responsibilities, and to  
3 protect the integrity of the delivery system. However, the  
4 disclosure of fuel sources to an end-use consumer or the board  
5 shall only be required if necessary to support advertising  
6 claims. The board shall adopt rules providing additional  
7 protections that require competitive electric service  
8 providers to disclose to a residential end-use consumer  
9 information regarding service prices, terms, and conditions  
10 with a written statement which the residential end-use  
11 consumer may retain. The board shall adopt rules regarding  
12 the form, content, and distribution of the residential end-use  
13 consumer information, which shall include, but not be limited  
14 to, the following: prices, fees, charges, and penalties and  
15 other terms and conditions of service; whether a credit agency  
16 will be contacted; deposit requirements and interest paid on  
17 deposits; due dates of bills and consequences of late  
18 payments; deferred payment arrangements; limits, if any, on  
19 warranties and damages; any other fees, charges, or penalties;  
20 whether the competitive electric service provider or its  
21 primary power supplier, if known, operates under a collective  
22 bargaining agreement and whether it operates with employees  
23 hired as replacements during the course of a labor dispute;  
24 and the methods by which residential end-use consumers shall  
25 be notified of any changes to these items. The competitive  
26 electric service provider, in an informational booklet form,  
27 shall describe residential end-use consumer rights under this  
28 chapter and annually mail this booklet to its residential end-  
29 use consumers. The board may adopt, by rule, additional  
30 licensing requirements regarding adequate notice to end-use  
31 consumers prior to automatic contract renewal. The board  
32 shall also adopt rules regarding the circumstances under which  
33 residential end-use consumers would have the right to  
34 terminate competitive electric service contracts. The board  
35 may establish reasonable conditions or restrictions on a

1 license. Unless otherwise expressly provided by this chapter,  
2 the licensing rules adopted by the board shall not  
3 discriminate in favor of or against any prospective licensee.  
4 The initial licensing rules shall be proposed by the board no  
5 later than October 1, 1999.

6 b. The board may reject a request for a license if the  
7 request does not contain sufficient information for the board  
8 to evaluate the request, but must reject such a request within  
9 thirty days of the request's filing. The board shall fully  
10 describe in writing any deficiencies in a license request that  
11 is rejected.

12 c. The board shall rule upon a request for a license that  
13 is not found to be deficient within one hundred twenty days of  
14 the filing of the request with the board. However, the board  
15 may process a request for a license, but shall not make a  
16 license effective until one hundred eighty days after the  
17 adoption of the initial rules under paragraph "a".

18 d. The board shall maintain a current list of all licensed  
19 providers of competitive electric services. The board shall  
20 make such a list available to a person upon request and shall  
21 post the list on its website. This list shall be updated as  
22 soon as practicable following the issuance of a license to a  
23 competitive electric service provider or upon revocation of  
24 the license of a competitive electric service provider.

25 e. A license shall not be required for an incumbent  
26 provider that is a consumer-owned utility who chooses to  
27 provide competitive electric services only within its assigned  
28 service area, either through the incumbent provider or its  
29 affiliate.

30 f. The board may charge reasonable fees for licensing  
31 requests and for administering licenses.

32 2. LICENSE REQUIREMENTS FOR COMPETITIVE ELECTRIC SERVICE  
33 PROVIDERS OTHER THAN AGGREGATORS. In addition to other  
34 requirements that the board may adopt under subsection 1, a  
35 competitive electric service provider, except one acting only

1 as an aggregator, shall file with the board as a condition of  
2 obtaining a license under this section all of the following:

3 a. The legal name and all trade names under which the  
4 licensee will operate, a description of the business structure  
5 of the licensee, evidence of authorization to do business in  
6 the state if required, and, if applicable, the state of  
7 organization.

8 b. The names, business addresses, and business telephone  
9 numbers of the principal officers of the licensee, the name  
10 and business address of the agent for the licensee who can be  
11 contacted regarding its operations in this state, and a  
12 telephone number at which the agent can be contacted twenty-  
13 four hours a day.

14 c. Identification of any affiliates that are licensees  
15 under this section and a listing of the names and addresses of  
16 all affiliates of the competitive electric service provider  
17 engaged in the provision of competitive electric services in  
18 any other state.

19 d. Identification of any state in which the licensee or an  
20 affiliate has had a comparable license suspended, revoked, or  
21 denied, including identification of the title and number of  
22 any applicable proceedings and a copy of any final orders in  
23 such proceedings or the citation to the website where the text  
24 of the orders can be found.

25 e. A listing of all pending and completed legal actions  
26 and formal complaints pertaining to the provision of retail or  
27 wholesale electric service in the United States that have been  
28 filed against the licensee or its affiliates with a public  
29 utility regulatory body other than the board in the twelve  
30 months prior to the date of the request for a license,  
31 including identification of the title and number of any  
32 applicable proceedings and a copy of any final orders in such  
33 proceedings or the citation to the website where the text of  
34 the orders can be found.

35 f. Unless the licensee is an incumbent provider or a

1 consumer-owned utility with delivery service property in this  
2 state on the effective date of this chapter, or a municipal  
3 electric cooperative association established prior to the  
4 effective date of this chapter, a demonstration that the  
5 licensee has the operational and financial capability to  
6 obtain and deliver the services it proposes to offer.

7 g. A commitment to provide the board, upon the board's  
8 request, with evidence supporting the basis of any advertising  
9 claims made regarding fuel sources.

10 h. A commitment to disclose to each prospective end-use  
11 consumer prior to the initiation of service those terms and  
12 conditions of service and those rights and responsibilities of  
13 the end-use consumer associated with the offered service that  
14 are required to be disclosed by rules adopted by the board  
15 pursuant to subsection 1 and section 476B.8, subsection 3.

16 i. A bond or other demonstration of the financial  
17 capability to satisfy claims and expenses that can reasonably  
18 be anticipated to occur as part of operations under its  
19 license, including the failure to honor contractual  
20 commitments. The adequacy of the bond or demonstration shall  
21 be determined by the board and reviewed by the board from time  
22 to time. In determining the adequacy of the bond or  
23 demonstration, the board shall consider the extent of the  
24 services to be offered, the size of the licensee, and the size  
25 of the load to be served, with the objective of ensuring that  
26 the board's financial requirements do not unreasonably erect  
27 barriers to market entry. In no event shall the board require  
28 a bond or other demonstration of financial capability in  
29 excess of ten million dollars. A person not subject to  
30 paragraph "f" is deemed by the board to have fulfilled the  
31 requirements of this paragraph.

32 j. A commitment that, commencing with calendar year 2006,  
33 an annual calendar year average of at least two percent of the  
34 capacity, in megawatts, available for purchase by end-use  
35 consumers as a competitive power supply service will represent

1 the licensee's ownership of, or contracts for the purchase of,  
2 capacity from alternative energy facilities, provided that the  
3 board may waive this requirement to the extent that it  
4 determines that compliance with the requirement is not  
5 practicable or that the requirement constitutes a significant  
6 impediment to the development of competitive electric  
7 services, or to the extent that a consumer-owned utility can  
8 demonstrate that a statute or a contract in effect as of  
9 January 1, 1999, precludes compliance. For purposes of  
10 meeting this requirement, the capacity available for purchase  
11 from alternative energy facilities shall be calculated by  
12 multiplying an alternative energy facility's nameplate  
13 capacity in megawatts or kilowatts by the fraction of fuel  
14 input derived from geothermal, landfill gas, refuse-derived  
15 fuel, agricultural crops or residues, or wood. If the  
16 facility was not designed as an alternative energy facility,  
17 the facility's rated capacity for purposes of reliability in  
18 the applicable reliability region or council, or its  
19 successor, shall be used in lieu of the nameplate capacity in  
20 determining the megawatts available for purchase from  
21 alternative energy facilities. In the case of a solar, wind,  
22 or hydroelectric alternative energy facility, the megawatts  
23 available for purchase shall be deemed to be equal to the  
24 nameplate capacity or contract amount. If the board finds  
25 that any costs of a contract for alternative energy during an  
26 annual calendar year are being recovered through the charges  
27 provided in section 476B.15, subsection 3, the alternative  
28 energy in that contract shall not be used to satisfy the  
29 requirement of this paragraph for that year. A licensee may  
30 credit against the capacity requirement of this paragraph one  
31 hundred fifty percent of the nameplate capacity of any  
32 alternative energy facility located in this state that is no  
33 larger than five hundred kilowatts in nameplate capacity to  
34 the extent that the licensee agrees to allow net billing. For  
35 purposes of this paragraph, "net billing" means that an end-

1 use consumer's electric service and the generation from its  
2 alternative energy facility are both measured by a single  
3 meter, and the end-use consumer only pays for service net of  
4 its own generation.

5 k. A commitment not to terminate the provision of  
6 competitive electric service, or to request a delivery service  
7 provider to disconnect electric service, to an end-use  
8 consumer without providing at least twelve calendar days'  
9 prior notice to the end-use consumer, unless the contract  
10 between a nonresidential end-use consumer and the licensee  
11 provides otherwise.

12 l. A commitment to comply with the applicable rules of the  
13 board and this chapter, and to recognize an end-use consumer's  
14 rights including the right to voluntarily aggregate under  
15 subsection 4, paragraph "e".

16 m. A commitment to comply with all applicable federal,  
17 state, and regional rules and procedures, including those for  
18 the use, operation, and maintenance of the electric delivery  
19 system including control area operations. This shall include  
20 a commitment by the proposed licensee to accept, to the extent  
21 required by the applicable authority, the responsibility to  
22 report the loads of the end-use consumers served by the  
23 proposed licensee to the North American electric reliability  
24 council or its successor, or a person performing similar  
25 functions.

26 n. A commitment that competitive electric services, when  
27 offered to residential end-use consumers, will be provided for  
28 a minimum of thirty days.

29 o. A commitment to advise each end-use consumer of the  
30 right to rescind the selection of a competitive electric  
31 service offered by the licensee within three business days of  
32 selection, in accordance with rules adopted pursuant to  
33 subsection 4, paragraph "o".

34 p. A commitment not to transfer to another person the  
35 competitive electric service account of any end-use consumer

1 except with the consent of the end-use consumer or in  
2 accordance with any applicable statute. This chapter does not  
3 preclude a competitive electric service provider from  
4 transferring all or a portion of its end-use consumers and  
5 competitive electric service accounts pursuant to a sale or  
6 transfer of all or a substantial portion of a competitive  
7 electric service provider's competitive electric service  
8 business in this state, provided that the transfer satisfies  
9 all of the following conditions:

10 (1) The transferee will serve the affected end-use  
11 consumers through a licensed competitive electric service  
12 provider.

13 (2) The transferee will honor the transferor's contracts  
14 with affected end-use consumers.

15 (3) The transferor provides written notice of the transfer  
16 to each affected end-use consumer not less than thirty days  
17 prior to the transfer.

18 (4) An affected residential end-use consumer is given  
19 thirty days to change to a competing competitive electric  
20 service provider without penalty.

21 q. A commitment not to charge or attempt to collect any  
22 charges from end-use consumers for any competitive electric  
23 service or electric equipment not contracted for or otherwise  
24 agreed to by the end-use consumer.

25 r. A commitment that the licensee will have the facilities  
26 and the personnel to contact the delivery service provider in  
27 a timely fashion, as provided by rules adopted by the board,  
28 upon receipt of information from an end-use consumer of the  
29 existence of an emergency situation with respect to delivery  
30 service. The initial rules shall be proposed by October 1,  
31 1999.

32 s. A commitment that if the licensee ceases to comply with  
33 contractual commitments to end-use consumers, fails to  
34 schedule energy with the control area operator for two  
35 consecutive twenty-four-hour periods, fails to deliver energy

1 scheduled with or committed to a control area operator for two  
2 consecutive twenty-four-hour periods, ceases operation under  
3 its license, or otherwise substantially defaults on its  
4 obligations under its license, within eight hours of such  
5 occurrence, the licensee shall do both of the following:

6 (1) Provide the board with the names and addresses of all  
7 end-use consumers of the licensee.

8 (2) If any of the end-use consumers of the licensee are  
9 located in the assigned service area of a delivery service  
10 provider that is a consumer-owned utility, the licensee shall  
11 provide that delivery service provider with the names and  
12 addresses of such consumers.

13 t. A commitment to include on bills rendered to  
14 residential end-use consumers all of the following:

15 (1) The period of time for which the billing is  
16 applicable.

17 (2) The amount owed for current service, including an  
18 itemization of all charges.

19 (3) Any past due amount owed.

20 (4) The last date for timely payment.

21 (5) The amount of penalty for any late payment.

22 (6) The location for or method of remitting payment.

23 (7) A toll-free telephone number for the end-use consumer  
24 to contact for information and to make complaints regarding  
25 the licensee.

26 (8) A toll-free telephone number for the end-use consumer  
27 to contact the licensee in the event of an emergency.

28 (9) A toll-free telephone number for the end-use consumer  
29 to notify the delivery service provider of an emergency  
30 regarding delivery service.

31 (10) If the bill is to an end-use consumer in the assigned  
32 service area of a delivery service provider that is an  
33 electric company, information regarding regulated rates,  
34 charges, refunds, and services as provided in rules adopted by  
35 the board as being required by the public interest. The

1 initial rules shall be by October 1, 1999.

2 u. A commitment to notify the board during the pendency of  
3 the license request and after the issuance of the license of  
4 any substantial change in the representations and commitments  
5 required by this subsection within fourteen days of such  
6 change.

7 v. A commitment to annually submit to the board such  
8 information as the board reasonably determines by rule is  
9 necessary to monitor the development of competitive electric  
10 services in this state and the licensee's compliance with this  
11 chapter. Information submitted pursuant to this paragraph  
12 shall be kept confidential and shall not be available for  
13 public examination. The initial rules shall be by October 1,  
14 1999.

15 w. For a competitive electric service provider operating  
16 generating facilities in Iowa, or involved in meter  
17 installation, meter maintenance, or meter reading within Iowa,  
18 including a competitive electric service provider that is a  
19 consumer-owned utility but only to the extent that it provides  
20 competitive electric service outside its assigned service  
21 area, a commitment to conduct these activities in a prompt,  
22 safe, and reliable manner; to maintain within the state those  
23 administrative, technical, and operating personnel necessary  
24 for the provision of reasonably safe, reliable, and prompt  
25 generation and metering services and facilities; and to  
26 demonstrate that personnel involved in installing, operating,  
27 and maintaining generating facilities or electric meters and  
28 metering equipment have the requisite skills, knowledge,  
29 experience, and training to perform those work functions  
30 necessary to provide high-quality, safe, reliable, and prompt  
31 services. Such demonstration may include a showing that  
32 applicable personnel have completed an accredited or  
33 recognized apprenticeship training program for the particular  
34 skill, trade, or craft.

35 3. LICENSE REQUIREMENTS FOR AGGREGATORS. In addition to

1 other requirements that the board may adopt under subsection  
2 1, each competitive electric service provider that acts only  
3 as an aggregator shall file with the board the information  
4 specified in subsection 2, paragraphs "a", "b", "c", "d", "e",  
5 "g", "h", "k", "l", "n", "o", "p", "u", and "v". If the  
6 aggregator will be issuing bills to end-use consumers, then it  
7 shall also file the information required in subsection 2,  
8 paragraphs "q", "r", and "t".

9 4. RIGHTS OF CONSUMERS.

10 a. An end-use consumer shall have access to competitive  
11 electric services and regulated delivery services in  
12 accordance with this chapter. All such services shall be  
13 provided in a safe, reliable, and prompt manner.

14 b. The electric grid shall be extended to every end-use  
15 consumer in accordance with section 476B.9 and such applicable  
16 rules as are adopted by the board, or, for a consumer-owned  
17 utility, policies adopted by the local governing body.

18 c. An end-use consumer shall have nondiscriminatory access  
19 to use the electric grid in accordance with this chapter.

20 d. An end-use consumer shall not be refused competitive  
21 electric services, regulated delivery services, standard offer  
22 service, transitional service, basic energy service, or  
23 universal service on the basis of age, race, religion,  
24 national origin, gender, or disability within the meaning of  
25 the federal Americans with Disabilities Act.

26 e. An end-use consumer shall have the right to voluntarily  
27 aggregate with other end-use consumers for the purpose of  
28 seeking competitive electric services. Aggregation shall not  
29 be restricted by any rule or regulation except those  
30 determined necessary by the board to maintain the safety or  
31 reliability of the delivery system or to prevent fraud or  
32 unfair advantage. An end-use consumer shall not be forced to  
33 aggregate with any group of end-use consumers or other persons  
34 without the end-use consumer's express consent.

35 f. An end-use consumer that has the option to choose

1 competitive electric services under this chapter may negotiate  
2 a bilateral contract for these services.

3 g. An end-use consumer or an account of an end-use  
4 consumer shall not be transferred by a competitive electric  
5 service provider to another person except as provided in  
6 subsection 2, paragraph "p".

7 h. An end-use consumer located in the assigned service  
8 area of an incumbent provider that is an electric company  
9 shall have the right not to choose another competitive  
10 electric service provider and automatically receive service  
11 under section 476B.8, subsection 1 or 2, as applicable, from  
12 their incumbent provider without further action by the end-use  
13 consumer.

14 i. An end-use consumer located in the assigned service  
15 area of an incumbent provider that is a consumer-owned utility  
16 shall have the right not to choose another competitive  
17 electric service provider and automatically receive service  
18 from the consumer-owned utility under section 476B.8,  
19 subsection 4, without further action by the end-use consumer.

20 j. A residential end-use consumer who is located in the  
21 assigned service area of an electric company and who either  
22 has made a good faith effort to obtain a competitive electric  
23 service provider, but has not been able to do so, or qualifies  
24 for assistance under section 476B.13, subsection 1, shall have  
25 the option to receive electric services pursuant to section  
26 476B.8, subsection 3, and the rules adopted pursuant to that  
27 subsection. An end-use consumer who is located in the  
28 assigned service area of a consumer-owned utility and who is  
29 without a competitive electric service provider shall have the  
30 option to receive electric services pursuant to section  
31 476B.8, subsection 4.

32 k. Except as otherwise provided in this chapter, on or  
33 after May 1, 2002, information regarding the electric usage  
34 history or electric account credit history of an individual  
35 end-use consumer in the possession of an electric company,

1 consumer-owned utility, delivery service provider, control  
2 area operator, competitive electric service provider, or  
3 aggregator shall not be provided to any other electric  
4 company, consumer-owned utility, delivery service provider,  
5 control area operator, competitive electric service provider,  
6 or aggregator except pursuant to an order of the board or a  
7 court having jurisdiction, pursuant to a final determination  
8 of an appropriate governmental entity with authority to compel  
9 disclosure of such information, with the consent of the end-  
10 use consumer, or pursuant to a proposed sale or transfer of  
11 all or a substantial portion of the electric business in this  
12 state of the person disclosing the information.

13 1. An end-use consumer shall be entitled to request from  
14 its incumbent provider or competitive electric service  
15 provider the most recent twenty-four months of the consumer's  
16 historical usage information, if reasonably available, from  
17 its account. The requested information shall be provided to  
18 the end-use consumer without charge one time per calendar  
19 year. If requested more than once per calendar year, the end-  
20 use consumer may be charged the reasonable cost incurred by  
21 the incumbent provider or competitive electric service  
22 provider in providing the information.

23 m. The board may adopt rules regarding physical  
24 disconnection procedures. Only a delivery service provider  
25 with an assigned service area shall physically disconnect end-  
26 use consumers located within its assigned service area. Rules  
27 adopted, at a minimum, shall provide that disconnection is  
28 warranted by any of the following:

29 (1) Failure to pay charges for delivery service including  
30 nonbypassable charges.

31 (2) Failure of an end-use consumer that does not qualify  
32 for service under section 476B.8 to designate one or more  
33 competitive electric service providers to provide competitive  
34 power supply services, and, where applicable, electric  
35 metering, or electric billing services.

1 (3) Failure to pay for standard offer service,  
2 transitional service, basic energy service, or universal  
3 service.

4 The initial rules shall be proposed by June 1, 2001.

5 n. An end-use consumer shall have the right to install  
6 metering in accordance with section 476B.11.

7 o. An end-use consumer shall have three business days  
8 after the selection of a competitive electric service provider  
9 or a competitive electric service, but prior to the initiation  
10 of the service, within which to rescind the selection. The  
11 board shall propose rules by June 1, 2001, applicable to  
12 competitive electric service providers regarding the manner,  
13 method, and content of the notice to be provided to end-use  
14 consumers regarding this right.

15 p. Provisions addressing consumer fraud, including  
16 misrepresentations regarding service and terms of service,  
17 contained in section 714.16, subsection 2, paragraph "a", and  
18 all accompanying provisions of chapter 714 shall apply to  
19 competitive electric service providers.

20 q. A residential end-use consumer that is certified as a  
21 low-income consumer shall have the opportunity to receive  
22 assistance for bill payment and energy efficiency programs as  
23 provided in section 476B.13, subsection 1, and is eligible to  
24 request electric service under section 476B.8, subsection 3 or  
25 4, as applicable.

26 r. The board shall establish rules of uniform  
27 applicability to all competitive electric service providers  
28 that it determines to be required to protect the public  
29 interest regarding credit practices, consumer deposit  
30 practices, collection practices, service termination  
31 practices, billing practices, accuracy of information, public  
32 safety, electric service reliability, and quality of electric  
33 service. The initial rules shall be proposed by June 1, 2001.

34 Sec. 7. NEW SECTION. 476B.7 AVAILABILITY OF CHOICE.

35 1. Beginning on May 1, 2002, an end-use consumer located

1 in the assigned service area of a delivery service provider  
2 that is an electric company shall have the option to choose  
3 competitive electric services from competitive electric  
4 service providers and unbundled delivery services from the  
5 delivery service provider. An end-use consumer located in the  
6 assigned service area of a delivery service provider that is a  
7 consumer-owned utility shall have the option to choose  
8 competitive electric services from competitive electric  
9 service providers and unbundled delivery services from the  
10 delivery service provider on a date to be determined by the  
11 consumer-owned utility's local governing body, but in no event  
12 prior to May 1, 2002, or after October 1, 2002. The board  
13 shall adopt rules regarding the procedures to be used by  
14 delivery service providers, competitive electric service  
15 providers, and end-use consumers for those end-use consumers  
16 exercising their option to choose competitive electric  
17 services, including the amount of notice that must be provided  
18 to the delivery service provider prior to switching from  
19 bundled electric service to unbundled delivery service. The  
20 initial rules shall be proposed by October 1, 2000.

21 2. After January 1, 1999, the board shall not initiate or  
22 order an increase or a reduction in any of the bundled  
23 electric rates or standard offer service rates of an electric  
24 company except as provided in section 476B.8.

25 3. A consumer-owned utility pursuant to a decision by its  
26 local governing body may implement a retail access pilot  
27 project at any time prior to the time end-use consumers within  
28 the assigned service area have the option to choose  
29 competitive electric services. Such pilot projects shall be  
30 terminated at the time end-use consumers within the consumer-  
31 owned utility's assigned service area have the option to  
32 choose competitive electric services. An incumbent provider  
33 that is an electric company may propose a retail access pilot  
34 project to the board.

35 4. The board shall order the suspension of the dates for

1 commencement of the option to choose competitive electric  
2 services specified in subsection 1 if the board determines  
3 that essential deadlines cannot reasonably be met or there is  
4 a threat to service reliability or the public safety. The  
5 suspension may apply to all end-use consumers or some portion  
6 of such consumers. The suspension shall continue until the  
7 board determines the concern has been resolved or until the  
8 conclusion of the next regular session of the Iowa general  
9 assembly following the suspension, whichever occurs first.

10 5. If nationally recognized bond counsel determines that  
11 access to a municipal utility's delivery system by a  
12 competitive electric service provider, or provision of  
13 competitive electric services by the municipal utility, will  
14 result in the loss of exemption from federal income taxation  
15 for interest on debt incurred for electric facilities prior to  
16 the effective date of this chapter, the governing body of the  
17 municipal utility may defer the commencement of the option to  
18 choose competitive electric service in its assigned service  
19 area for a period of up to six months following the date on  
20 which the debt is eligible to be currently refunded. The  
21 reasonable costs of replacing tax-exempt bonds with taxable  
22 bonds may be collected as a nonbypassable charge. This  
23 subsection shall not be used to unreasonably impair the  
24 ability of consumers to choose competitive electric services.

25 6. The board may adopt rules for evaluating whether other  
26 regulated electric services of electric companies subject to  
27 the jurisdiction of the board should become competitive  
28 services, in addition to the competitive electric services  
29 specified in this chapter. For the purpose of this  
30 subsection, the board's authority shall not include  
31 distribution service except the control area services subject  
32 to its jurisdiction. The initial rules shall be proposed by  
33 June 1, 2001. Upon a board determination that a service  
34 provided by an electric company is subject to effective  
35 competition, the board shall deregulate the price of the

1 service. Service regulation, but not rate regulation, shall  
2 continue if the service is deemed essential and the public  
3 interest requires retention of service regulation.

4 Sec. 8. NEW SECTION. 476B.8 PRICE PROTECTIONS FOR  
5 CERTAIN CONSUMERS.

6 1. STANDARD OFFER SERVICE.

7 a. (1) A nonresidential end-use consumer that purchased  
8 fewer than twenty-five thousand kilowatt-hours of electric  
9 service in 2001 and in each calendar year after 2001 and a  
10 residential end-use consumer located within the assigned  
11 service area of an incumbent provider that is an electric  
12 company shall be provided electric service by the incumbent  
13 provider under this subsection commencing May 1, 2002. This  
14 service shall be provided by the incumbent provider's  
15 competitive electric service provider or its delivery service  
16 provider, at its option, and shall be a regulated service.  
17 This service shall continue until the earlier of any of the  
18 following:

19 (a) The end-use consumer selects an electric service  
20 offering other than the one provided in this subsection.

21 (b) The end-use consumer no longer qualifies to receive  
22 service under the terms and conditions of this paragraph "a"  
23 or the applicable standard offer service tariff or board  
24 rules.

25 (c) January 1, 2006.

26 (2) Termination of standard offer service on January 1,  
27 2006, is conditioned upon the board finding, after a contested  
28 case proceeding concluding not later than October 1, 2005,  
29 that as of January 1, 2006, all of the following conditions  
30 will exist:

31 (a) Transition cost recovery under section 476B.15,  
32 subsection 1, will have concluded.

33 (b) The delivery service provider substantially complies  
34 with all applicable board rules governing the administration  
35 of open access and comparable distribution service adopted

1 pursuant to section 476B.9, subsection 2.

2 (c) The delivery service provider has in place an  
3 enforceable dispute resolution process.

4 (d) Transaction costs assessed by the delivery service  
5 provider to end-use consumers exercising their option to  
6 choose competitive electric services are reasonable.

7 (e) Competitive electric services purchased by end-use  
8 consumers eligible for standard offer service are subject to  
9 effective competition in the relevant markets.

10 (3) In determining whether a service is or becomes subject  
11 to effective competition in the relevant markets, the board,  
12 in addition to other factors, shall consider whether a  
13 comparable service is available from a competitive electric  
14 service provider other than the incumbent provider and whether  
15 market forces are sufficient to assure competitively priced  
16 services without regulation. If the board finds that any of  
17 the conditions under subparagraph (2) have not been met,  
18 standard offer service shall continue until a showing is made  
19 by the incumbent provider and the board determines all  
20 conditions are met. An end-use consumer has no right to  
21 return to standard offer service after any of the conditions  
22 identified under subparagraph (1) occur, except that an end-  
23 use consumer having selected an electric service offering  
24 other than standard offer service may return to standard offer  
25 service if all of the following apply:

26 (a) No more than ninety days have passed since the  
27 consumer left standard offer service.

28 (b) The consumer has not previously left and returned to  
29 standard offer service.

30 (c) The consumer is otherwise still qualified to receive  
31 standard offer service.

32 The ninety-day period in subparagraph subdivision (a) shall  
33 not extend the termination date of standard offer service.

34 b. At the time an incumbent provider that is an electric  
35 company files its initial unbundled rates with the board

1 pursuant to section 476B.4, it shall also file its initial  
2 standard offer service tariffs under this subsection, which  
3 shall be subject to review and approval by the board. The  
4 initial standard offer service tariffs shall reflect the  
5 electric rates, charges, terms, and conditions of the tariffs  
6 applicable to nonresidential end-use consumers using fewer  
7 than twenty-five thousand kilowatt-hours per year and the  
8 tariffs applicable to residential end-use consumers, as those  
9 tariffs existed in the rate zones of the incumbent provider's  
10 assigned service area on the effective date of this chapter,  
11 adjusted to avoid duplicate recovery of costs to be recovered  
12 under section 476B.15, subsection 3, costs to be recovered  
13 under section 476B.16, and the portion of uncollectible costs  
14 projected to be offset by the programs established under  
15 section 476B.13, subsection 1. However, the board may approve  
16 modifications to the terms and conditions of such tariffs  
17 existing on the effective date of this chapter to the extent  
18 just, reasonable, and nondiscriminatory. An electric company,  
19 to the extent it has not already done so, shall eliminate  
20 automatic adjustment mechanisms in effect pursuant to section  
21 476.6, subsection 11, that are applicable to standard offer  
22 service rates. Elimination shall be accomplished by adjusting  
23 the initial standard offer service rates to include a  
24 representative amount of the costs which would have been  
25 recovered through the mechanisms. If an electric company's  
26 nuclear generating unit is unavailable for reasons beyond the  
27 electric company's reasonable control, the electric company  
28 may file with the board an adjustment reflecting changes in  
29 exogenous factors beyond the control of the electric company.  
30 The board shall allow the adjustment to become effective  
31 immediately. The board shall review the adjustment within  
32 thirty days after the date the adjustment is effective, and  
33 order refunds of the revenues resulting from the adjustment if  
34 the board determines after its review that the nuclear  
35 generating unit's unavailability was reasonably within the

1 control of the electric company. The effective date of the  
2 automatic adjustment mechanism elimination for standard offer  
3 service rates shall be May 1, 2002. An electric company may  
4 retain automatic adjustment mechanisms to the extent the  
5 mechanisms apply to transitional service under subsection 2.

6 c. After January 1, 1999, the board shall not initiate or  
7 order an increase or a reduction in any of the bundled  
8 electric rates of an electric company or in the standard offer  
9 service rates established pursuant to this section except as  
10 provided in this subsection. However, an incumbent provider  
11 that is an electric company may reduce its bundled electric  
12 rates or standard offer service rates at any time, so long as  
13 such reduction is effected in a nondiscriminatory manner, the  
14 reduction is filed with the board thirty days prior to the  
15 proposed effective date of the reduction, and the reduced  
16 rates are posted on the board's website. The board may hold a  
17 hearing on the reduction prior to the proposed effective date  
18 and may suspend the effective date for up to an additional  
19 sixty days. The board shall approve the reduction unless it  
20 determines that it is unreasonably discriminatory or would  
21 constitute predatory pricing as defined by applicable  
22 antitrust law. A board finding of predatory pricing under  
23 this paragraph shall be given no weight in any subsequent  
24 legal action, except with respect to judicial review of the  
25 board's ruling brought pursuant to section 476B.22.

26 d. Commencing January 1, 2003, an incumbent provider that  
27 is an electric company may increase its standard offer service  
28 rates to reflect increases in its unbundled distribution  
29 service rates approved by the board under section 476B.9,  
30 subsection 5. An incumbent provider that is an electric  
31 company may also increase its standard offer service rates  
32 after January 1, 2003, to reflect increases in applicable  
33 transmission service rates approved by a federal or state  
34 agency with rate jurisdiction. Standard offer service rates  
35 incorporating an increase permitted by this paragraph shall be

1 filed with the board thirty days prior to becoming effective.  
2 The increased standard offer service rates shall become  
3 effective at the conclusion of the thirty-day period unless  
4 the board determines that the incumbent provider has increased  
5 standard offer service rates by an amount greater than the  
6 increase in unbundled distribution service rates or  
7 transmission service rates, in which case the board may  
8 suspend the effective date for up to an additional sixty days.  
9 If the board suspends a filing made pursuant to this  
10 paragraph, the board shall provide the incumbent provider with  
11 an opportunity for hearing.

12 e. On or before January 1, 2003, an incumbent provider  
13 that is an electric company may file with the board a  
14 mechanism to increase or decrease standard offer service rates  
15 by adjusting the generation components of the rates to or  
16 toward the market price of generation that an affected end-use  
17 consumer should reasonably be expected to pay after the  
18 termination of standard offer service. The mechanism shall be  
19 approved by the board if it finds, after hearing, that it is  
20 in the public interest and is as revenue neutral to the  
21 incumbent provider as practicable. In determining the public  
22 interest of the mechanism, the board, in addition to other  
23 factors, shall consider whether the approval of the mechanism  
24 would contribute to the development of effective competition  
25 in the relevant markets. A mechanism approved under this  
26 paragraph shall not become effective before January 1, 2004.  
27 The board shall determine the market price that the affected  
28 end-use consumer would reasonably be expected to pay in the  
29 relevant competitive market. An incumbent provider's filing  
30 under this paragraph is subject to section 476B.9, subsection  
31 5.

32 f. If the board does not allow the termination of standard  
33 offer service in a relevant market on or before January 1,  
34 2006, pursuant to paragraph "a", the incumbent provider shall  
35 be required to acquire competitive power supply services in

1 the market for this service. The price of standard offer  
2 service shall be adjusted to reflect the cost of acquiring  
3 that supply. The board shall adopt rules to assure  
4 competitive pricing under this paragraph.

5 g. At any time, an incumbent provider that is an electric  
6 company may file with the board a request to recalculate the  
7 generation component of its bundled electric rates or standard  
8 offer service rates to reflect changes in revenues, expenses,  
9 and investments due to exogenous factors beyond the control of  
10 the electric company. Such filing is subject to section  
11 476B.9, subsection 5.

12 h. At a time and in a manner determined by the board to be  
13 reasonable and in the public interest, an electric company  
14 shall notify those end-use consumers receiving standard offer  
15 service of the termination of such service and the  
16 alternatives reasonably available to such consumers.

17 i. Rates, charges, terms, and conditions in effect under  
18 this subsection shall be posted on the board's website.

19 j. An end-use consumer receiving standard offer service  
20 under this subsection shall also be billed for applicable  
21 charges under section 476B.13, subsection 1, section 476B.15,  
22 subsection 3, and section 476B.16.

23 2. TRANSITIONAL SERVICE.

24 a. Commencing on May 1, 2002, a nonresidential end-use  
25 consumer of an incumbent provider that is an electric company  
26 who purchased twenty-five thousand kilowatt-hours of electric  
27 service or more from the electric company in 2001 and who has  
28 not chosen competitive electric services from another  
29 competitive electric service provider shall receive  
30 transitional service from the incumbent provider for a period  
31 not to exceed one year and under tariff provisions approved by  
32 the board. On or before January 1, 2001, an incumbent  
33 provider shall file its initial rates, charges, terms, and  
34 conditions applicable to this transitional service and shall  
35 specify the duration for which the service will be available.

1 The board shall approve transitional service rates, charges,  
2 terms, and conditions to the extent it determines them to be  
3 just and reasonable. The filing shall be subject to section  
4 476B.9, subsection 5. The rates, charges, terms, conditions,  
5 and duration of transitional service approved by the board  
6 shall be posted on the board's website for informational  
7 purposes by no later than November 1, 2001, and shall become  
8 effective May 1, 2002.

9 b. Nothing in this subsection shall preclude a qualifying  
10 end-use consumer from exercising its option to choose  
11 competitive electric services from a licensed competitive  
12 electric service provider at any time, consistent with this  
13 chapter and applicable board rules.

14 c. An end-use consumer receiving transitional service  
15 under this subsection shall also be billed for applicable  
16 charges under section 476B.13, subsection 1, section 476B.15,  
17 subsection 3, and section 476B.16.

18 3. UNIVERSAL SERVICE.

19 a. The board shall adopt rules establishing the conditions  
20 with which a residential end-use consumer located in the  
21 assigned service area of a delivery service provider that is  
22 an electric company must comply to qualify to receive service  
23 under this subsection. The rules, at a minimum, shall address  
24 the rights and remedies to avoid disconnection including, but  
25 not limited to, use of prepaid meters, payment plans, deposit  
26 requirements, load limiters, and other provisions deemed  
27 appropriate by the board. The rules shall include a  
28 requirement that electric service to a residential end-use  
29 consumer who is the head of the household as defined by law  
30 and who is eligible for assistance under the programs  
31 established by section 476B.13, subsection 1, shall not be  
32 discontinued from November 1 through April 1 except as  
33 otherwise provided by the board. The initial rules shall be  
34 proposed by March 1, 2001.

35 b. Residential end-use consumers who qualify to receive

1 service under the rules adopted pursuant to paragraph "a" and  
2 who can demonstrate they have made an effort, as defined by  
3 the board rules, to secure electric service from a competitive  
4 electric service provider, but have been denied service, or  
5 who have been determined to qualify for assistance under  
6 section 476B.13, subsection 1, shall have the option to be  
7 provided electric service under this subsection by their  
8 delivery service provider.

9 c. At the time an electric company files its initial  
10 unbundled rates with the board pursuant to section 476B.4, the  
11 electric company shall also file its initial universal service  
12 tariffs under this subsection, which shall be subject to  
13 review and approval by the board. Through December 31, 2005,  
14 the rates for universal service shall generally be the same as  
15 the residential rates that would be available to the consumer  
16 from its incumbent provider under subsection 1, including the  
17 adjustments as specified in that subsection. However, an  
18 electric company may propose to offer only one universal  
19 service rate in each rate zone and may propose automatic  
20 adjustment mechanisms applicable only to rates under this  
21 subsection. The board shall approve universal service rates  
22 and tariffs to the extent it determines those rates and  
23 tariffs to be just and reasonable. The initial universal  
24 service rates approved by the board shall be posted on the  
25 board's website by no later than November 1, 2001, and shall  
26 become effective May 1, 2002. Beginning January 1, 2006, the  
27 rates for this service shall be based upon the market prices  
28 applicable to the type of service received by the consumer,  
29 adjusted for any state or federal subsidy of the rate paid to  
30 the delivery service provider. The board may adopt rules, to  
31 be effective January 1, 2006, that require the delivery  
32 service provider to acquire competitive power supply services  
33 for this service.

34 d. Section 476B.9, subsection 5, applies to changes in the  
35 initial universal service tariffs proposed by an electric

1 company after the board's approval of the initial tariffs.

2 e. Rates, charges, terms, and conditions in effect under  
3 this subsection shall be posted on the board's website within  
4 twenty-four hours after becoming effective.

5 f. An end-use consumer receiving universal service under  
6 this subsection shall also be billed for applicable charges  
7 under section 476B.13, subsection 1, section 476B.15,  
8 subsection 3, and section 476B.16.

9 4. CONSUMER-OWNED UTILITIES.

10 a. BASIC ENERGY SERVICE. Delivery service providers with  
11 an assigned service area that are consumer-owned utilities  
12 shall offer basic energy services to all end-use consumers  
13 within their assigned service areas that have not specified a  
14 competitive electric service provider or are otherwise without  
15 a competitive electric service provider. Rates, charges,  
16 terms, and conditions of basic energy services shall be  
17 established by the local governing body and shall comply with  
18 section 476B.9, subsection 6.

19 b. UNIVERSAL SERVICE. Delivery service providers with an  
20 assigned service area that are consumer-owned utilities shall  
21 offer universal service as a type of basic energy service to  
22 eligible residential consumers determined in accordance with  
23 the board's rules adopted pursuant to subsection 3, paragraphs  
24 "a" and "b". This service will only be offered to eligible  
25 consumers for the same period of time this service is offered  
26 by electric company delivery service providers. Rates  
27 associated with this service are subject to section 476B.9,  
28 subsection 6.

29 Sec. 9. NEW SECTION. 476B.9 RESPONSIBILITIES AND RIGHTS  
30 OF DELIVERY SERVICE PROVIDERS.

31 1. RESPONSIBILITIES FOR SAFE, RELIABLE, AND PROMPT  
32 SERVICE.

33 a. A delivery service provider shall furnish safe,  
34 reliable, and prompt delivery services and facilities. A  
35 delivery service provider with an assigned service area shall

1 maintain within the state those administrative, technical, and  
2 operating personnel necessary for the provision of safe,  
3 reliable, and prompt delivery services and facilities. Such  
4 personnel shall be strategically located by the delivery  
5 service provider to ensure that end-use consumers receive  
6 safe, reliable, and prompt service. A delivery service  
7 provider shall also maintain within the state an office for  
8 Iowa operations that shall maintain those books, accounts,  
9 papers, and records deemed necessary by the board to be  
10 maintained within the state, unless otherwise authorized by  
11 the board. Nothing in this paragraph requires a consumer-  
12 owned utility to relocate any delivery service personnel or to  
13 change the current location of its books, accounts, papers, or  
14 records.

15 b. The board shall have general oversight responsibility  
16 for delivery service safety requirements and inspection and  
17 maintenance activities for all delivery service providers.  
18 The board shall adopt rules for delivery service providers  
19 that it determines are required for reasonably safe, reliable,  
20 and prompt delivery service, including rules relating to  
21 credit practices, collection practices, disconnection  
22 practices, billing practices, public safety, service  
23 reliability, quality of service, power quality, preventive  
24 maintenance standards, line clearance standards, outage  
25 frequency, outage duration, service restoration, and other  
26 necessary provisions. The board shall also adopt rules  
27 regarding distribution service extensions, staffing levels as  
28 related to outage duration, and the timeliness of service  
29 installation for delivery service providers that are electric  
30 companies. In adopting the rules required by this paragraph,  
31 the board shall give due consideration to weather, terrain,  
32 public safety, staffing levels, cost, and end-use consumer  
33 satisfaction. The initial rules shall be proposed by March 1,  
34 2001.

35 c. The board shall adopt rules requiring that delivery

1 service providers demonstrate that personnel who will be  
2 installing, operating, and maintaining the delivery system  
3 have the requisite skills, knowledge, experience, and training  
4 to perform those work functions necessary to provide high  
5 quality, safe, and reliable services. Such demonstration may  
6 include a showing that applicable personnel have completed an  
7 accredited or recognized apprenticeship training program for  
8 the particular skill, trade, or craft. The initial rules  
9 shall be proposed by June 1, 2001.

10 2. OPEN ACCESS AND COMPARABLE DELIVERY SERVICE.

11 a. Commencing May 1, 2002, for each delivery service  
12 provider that is an electric company, and commencing on the  
13 date that an end-use consumer has the option to choose  
14 competitive electric services in the assigned service area of  
15 each delivery service provider that is a consumer-owned  
16 utility, unbundled distribution services, and other electric  
17 services unbundled pursuant to section 476B.4, shall be made  
18 available to end-use consumers and, if in the assigned service  
19 area of an electric company, to licensed competitive electric  
20 service providers, as provided in this chapter and the rules  
21 adopted by the board to implement this section. Unbundled  
22 delivery services shall be offered on a nondiscriminatory and  
23 comparable service basis.

24 b. The board may adopt uniform rules for administering  
25 open access and comparable delivery service including, but not  
26 limited to, procedures for access to consumer information for  
27 operational purposes, data transfers, and switching of  
28 competitive electric service providers by end-use consumers.  
29 However, the board shall not impose rates upon a consumer-  
30 owned utility. The rules shall give due consideration to the  
31 technology available, the administrative and financial burden  
32 on delivery service providers and competitive electric service  
33 providers, the objective of reasonable distribution service  
34 rates, and the objective of nondiscriminatory and comparable  
35 service. The initial rules shall be proposed by October 1,

1 2000.

2 c. Delivery service providers shall adopt and implement  
3 procedures for restoring delivery service after outages on a  
4 nondiscriminatory basis without regard to the competitive  
5 electric service provider serving the end-use consumer.

6 d. If, after notice and opportunity for hearing, the board  
7 determines that any delivery service provider or control area  
8 operator is imposing unreasonable or artificial barriers to  
9 access to any competitive electric service on the delivery  
10 system, the board shall require the delivery service provider  
11 or control area operator to take corrective measures, not  
12 inconsistent with federal law, to the extent necessary and  
13 feasible to eliminate the barriers to access. However, the  
14 board shall not impose rates upon a consumer-owned utility.  
15 The measures ordered by the board may include a requirement  
16 that the delivery service provider participate in a regional  
17 entity approved by the federal energy regulatory commission,  
18 or its successor, that has authority over the portion of the  
19 delivery system subject to federal regulation independently  
20 from the wholesale electric sales function of the delivery  
21 service provider. For the purposes of this paragraph,  
22 artificial barriers shall not include legislative or  
23 regulatory actions.

24 3. ELIMINATION OF OBLIGATION TO PROVIDE CERTAIN ELECTRIC  
25 SERVICES.

26 a. Except as provided in subsection 7 and sections 476B.8,  
27 476B.11, and 476B.12, an incumbent provider and a delivery  
28 service provider shall not have any obligation to provide  
29 competitive electric services to an end-use consumer that has  
30 the option to choose competitive electric services.

31 b. A delivery service provider or a control area operator  
32 shall not be liable for any damages to an end-use consumer if  
33 a competitive electric service provider chosen by the consumer  
34 fails to fulfill the terms of its contract with the end-use  
35 consumer. This paragraph shall not be construed to limit the

1 liability of a delivery service provider or a control area  
2 operator for damages caused by its own actions or failure to  
3 act.

4 4. ASSIGNED SERVICE AREAS.

5 a. EXCLUSIVE ASSIGNED SERVICE AREAS ESTABLISHED. The  
6 state has established a system of exclusive assigned service  
7 areas for electric service pursuant to section 476.25 and in  
8 effect on January 1, 1999. The service areas shall continue  
9 to be assigned to the persons to whom such areas were assigned  
10 on January 1, 1999, or their successors, who shall provide  
11 bundled electric service to end-use consumers on an exclusive  
12 basis until the dates when choice is available as specified in  
13 section 476B.7. On or after the dates when choice is  
14 available, a person assigned a service area immediately prior  
15 to the dates when choice is available shall be the delivery  
16 service provider for the assigned service area unless such  
17 person designates to the board a different person. A delivery  
18 service provider shall provide delivery services to end-use  
19 consumers within its assigned area on an exclusive basis  
20 pursuant to this chapter.

21 b. CLARIFICATION OR MODIFICATION OF BOUNDARIES.

22 (1) Consistent with this subsection, the board, on its own  
23 motion or at the request of a delivery service provider or  
24 municipal corporation, after notice and opportunity for  
25 hearing, may clarify or modify the boundaries of an assigned  
26 service area if it finds that the clarification or  
27 modification will promote the public interest, preserve  
28 existing assigned service areas and the delivery service  
29 providers' right to serve existing end-use consumers, prevent  
30 unnecessary duplication of facilities, provide adequate  
31 delivery service to all assigned service areas and end-use  
32 consumers affected, and promote the efficient and economical  
33 use and development of the electric delivery system.

34 (2) An agreement between delivery service providers to  
35 designate assigned service areas and end-use consumers or to

1 clarify or modify assigned service areas to be served by the  
2 delivery service providers or for the exchange of end-use  
3 consumers between delivery service providers shall be  
4 submitted to the board for review. The agreement, when  
5 approved by the board, is valid and enforceable and shall be  
6 incorporated into the appropriate assigned service areas  
7 established pursuant to this subsection. The board shall  
8 approve an agreement if the board finds the agreement  
9 satisfies the criteria set forth in subparagraph (1).

10 (3) If a delivery service provider declines to enter into  
11 an agreement to designate an assigned service area or end-use  
12 consumers, or to clarify or modify an assigned service area,  
13 an aggrieved person may petition the board to order such a  
14 designation, clarification, or modification on the grounds  
15 that the proposed designation, clarification, or modification  
16 will promote the public interest, preserve existing service  
17 areas and the delivery service providers' right to serve  
18 existing end-use consumers, prevent unnecessary duplication of  
19 facilities, provide adequate delivery service to all assigned  
20 service areas and end-use consumers affected, and promote the  
21 efficient and economical use and development of the electric  
22 delivery system. If the board finds that the petition meets  
23 the foregoing standards, the board shall order the  
24 designation, clarification, or modification on such terms and  
25 conditions as it finds just and reasonable.

26 c. LIMIT ON BYPASS. Except with the written approval of  
27 the affected delivery service provider and the board, a person  
28 shall not provide or offer to provide delivery service to an  
29 end-use consumer in an assigned service area assigned to  
30 another delivery service provider, or construct delivery  
31 service facilities in an assigned service area assigned to  
32 another delivery service provider to serve an end-use consumer  
33 in such assigned service area. This paragraph does not  
34 preclude an end-use consumer from constructing, or having  
35 constructed, on real estate which the end-use consumer owns or

1 leases, distribution service facilities for the exclusive  
2 purpose of meeting the end-use consumer's own electric service  
3 requirements, as long as such facilities are constructed  
4 entirely within the boundaries of such real estate and, as a  
5 consequence of constructing such facilities, will not allow  
6 that end-use consumer to avoid nonbypassable charges or reduce  
7 the value of facilities dedicated to that end-use consumer for  
8 which the delivery service provider would not be compensated.  
9 With respect to matters subject to the board's jurisdiction, a  
10 person may file a complaint with the board regarding a  
11 violation of this paragraph. Upon finding a violation, the  
12 board shall order appropriate corrective action including  
13 discontinuance of the unlawful service, removal of the  
14 unlawful facility, compensation for lost margin, or other  
15 disposition commensurate with the injury suffered. A petition  
16 for franchise filed by a municipal utility pursuant to section  
17 478.2 for facilities used to connect the utility to the  
18 transmission grid shall not be limited by this paragraph.

19 d. CERTIFICATES OF AUTHORITY. A municipal corporation,  
20 after being authorized by a vote of the people, or any  
21 delivery service provider may file a petition with the board  
22 requesting a certificate of authority to furnish delivery  
23 service to the existing point of delivery of any end-use  
24 consumer already receiving delivery service. If, after thirty  
25 days have elapsed following notice by the board to the person  
26 currently serving the end-use consumer, objection to the  
27 petition is not filed and investigation is not deemed  
28 necessary, the board shall issue a certificate. If an  
29 objection is filed, and the board, after notice and  
30 opportunity for hearing, determines that delivery service to  
31 the end-use consumer by the petitioner should be granted, the  
32 board shall grant a certificate in whole or in part, upon such  
33 terms, conditions, and restrictions as may be justified. In  
34 determining whether a proposal should be granted, the board  
35 shall consider the factors set forth in paragraph "b",

1 subparagraph (1). Whether or not an objection is filed, a  
2 certificate issued shall require that the petitioner pay to  
3 the person presently serving the end-use consumer the  
4 reasonable price for the facilities serving the end-use  
5 consumer as determined by the board. A price determination by  
6 the board shall include due consideration of all of the  
7 following:

8 (1) The value of the facilities being acquired.

9 (2) Any penalties, buyout costs, or other costs associated  
10 with any commitments to generating and transmission capacity  
11 on behalf of the departing consumers or to support the  
12 delivery service facilities being acquired.

13 (3) Projected loss of revenue and its impact on remaining  
14 end-use consumers of the affected provider.

15 (4) The cost of any facilities necessary to reintegrate  
16 the system of the delivery service provider after detaching  
17 the portion sold.

18 e. OBLIGATION TO EXTEND DELIVERY SERVICE FACILITIES. A  
19 delivery service provider that has been assigned an exclusive  
20 delivery service area pursuant to this subsection shall extend  
21 delivery service facilities to all end-use consumers within  
22 its assigned service area as provided in this chapter. The  
23 board shall adopt rules for electric companies setting forth  
24 the terms and conditions of delivery service facility  
25 extensions for electric companies and shall issue proposed  
26 rules by no later than October 1, 2001.

27 f. DELIVERY SERVICE AREA MAPS. Whenever requested by the  
28 board, delivery service providers shall file with the board,  
29 jointly or severally, detailed maps of their assigned service  
30 areas drawn to a scale specified by the board showing all of  
31 the following:

32 (1) The locations of franchised transmission lines,  
33 distribution lines, and related facilities.

34 (2) All state and federal highways and other public roads  
35 within the delivery service area.

1 (3) All section lines and numbers, and township and range  
2 numbers within the delivery service area.

3 (4) The corporate boundaries of all cities within the  
4 delivery service area.

5 (5) All lakes and rivers within the delivery service area.

6 (6) All railroads within the delivery service area.

7 (7) The number, classifications, training levels, and  
8 locations of personnel involved in installing, operating, and  
9 maintaining delivery services and facilities.

10 (8) Any additional information requested by the board.

11 If deemed by the board to be necessary, the board shall  
12 prepare or cause to have prepared a composite map of this  
13 state showing the delivery service areas. The form and detail  
14 of all maps shall be determined by the board.

15 g. EXCEPTION. Notwithstanding contrary provisions of this  
16 section, a delivery service provider may extend delivery  
17 service facilities and provide delivery service outside its  
18 assigned service area to its own utility property and  
19 facilities.

20 h. RIGHTS OF CITIES. If not inconsistent with this  
21 chapter, the rights of cities under chapters 362 through 390  
22 are preserved.

23 However, prior to the institution of condemnation  
24 proceedings under chapter 6B, a city shall obtain a  
25 certificate of authority from the board as provided in  
26 paragraph "d" and the board's determination of price shall be  
27 conclusive evidence of damages in these condemnation  
28 proceedings.

29 i. EFFECT OF INCORPORATION, ANNEXATION, OR CONSOLIDATION.  
30 The inclusion by incorporation, annexation, or consolidation  
31 of any facilities or service area of a person with an  
32 exclusive assigned service area within the boundaries of any  
33 city shall not by such inclusion impair or affect in any  
34 respect the rights of the delivery service provider to  
35 continue to provide delivery services and to extend service to

1 prospective end-use consumers in accordance with this chapter.

2 5. DELIVERY SERVICE RATE REGULATION FOR ELECTRIC  
3 COMPANIES. A delivery service provider that is also an  
4 electric company shall file, post, and maintain applicable  
5 unbundled rates in accordance with this subsection and section  
6 476B.4. The board shall regulate the rates, charges,  
7 schedules, and regulations for distribution services and other  
8 services unbundled pursuant to section 476B.4, subsection 1,  
9 and provided by delivery service providers that are electric  
10 companies. The burden of establishing the reasonableness of  
11 rates, charges, schedules, and regulations is upon the  
12 delivery service provider.

13 a. FILING WITH BOARD. Except as provided in paragraphs  
14 "g" and "i", a delivery service provider that is an electric  
15 company shall not make effective a new or changed distribution  
16 service rate, charge, schedule, or regulation or other  
17 unbundled rate, charge, schedule, or regulation subject to the  
18 jurisdiction of the board until the rate, charge, schedule, or  
19 regulation has been approved by the board. Notwithstanding  
20 anything in this chapter to the contrary, if an application  
21 for a new or changed rate or charge is filed with the board  
22 and posted on its website, and if affected competitive  
23 electric service providers and end-use consumers have the  
24 option to select or not select such rate or charge, the rate  
25 or charge shall become effective within ten business days  
26 after filing. The board, within ten business days after the  
27 filing, may docket the filing and suspend the rate or charge,  
28 either upon the filing of a written objection or on its own  
29 motion, but the board shall not suspend the rate or charge for  
30 more than ninety days from the date the tariff was filed.

31 b. LIMITATIONS ON FILING. A delivery service provider  
32 that is an electric company shall not make a subsequent filing  
33 of an application for a new or changed rate, charge, schedule,  
34 or regulation which relates to the same rate, charge,  
35 schedule, or regulation for which a filing is pending within

1 twelve months following the date the prior application was  
2 filed or until the board has issued a final order on the prior  
3 application, whichever date is earlier, unless the delivery  
4 service provider applies to the board for authority to make a  
5 subsequent filing at an earlier date and such application is  
6 approved by the board.

7 c. WRITTEN NOTICE OF INCREASE. A delivery service  
8 provider that is an electric company shall give written notice  
9 of a proposed increase of a distribution service rate or  
10 charge or other unbundled rate or charge subject to the  
11 jurisdiction of the board to all affected competitive electric  
12 service providers and end-use consumers receiving service  
13 under board-approved tariffs or with whom the delivery service  
14 provider has distribution service contracts, whether or not  
15 written, prior to the time the application for the increase is  
16 filed with the board. The notice shall state that the  
17 competitive electric service provider or end-use consumer has  
18 a right to file a written objection to the rate increase and  
19 may request the board to hold a public hearing to determine if  
20 the increase should be allowed. The board shall adopt rules  
21 prescribing the timing, manner, and method of serving the  
22 written notice. The board may adopt rules regarding  
23 notification of other end-use consumers that may be affected  
24 by a proposed increase. The initial rules shall be proposed  
25 by March 1, 2001.

26 d. FACTS AND ARGUMENTS SUBMITTED. At the time an  
27 application for any new or changed rate, charge, schedule, or  
28 regulation is filed with the board, the delivery service  
29 provider shall submit factual evidence and written argument  
30 offered in support of the filing. If the application proposes  
31 an increase in distribution service rates, the delivery  
32 service provider shall also file testimonial evidence in  
33 support of the filing.

34 e. HEARING SET. After the filing of an application by a  
35 delivery service provider for a new or changed rate, charge,

1 schedule, or regulation subject to the jurisdiction of the  
2 board, the board, prior to the expiration of thirty days after  
3 the filing date, shall docket the case as a formal proceeding  
4 and set the case for hearing unless the new or changed rate,  
5 charge, schedule, or regulation is approved by the board. If  
6 an application presents no material issue of fact subject to  
7 dispute, and the board determines that the application  
8 violates a relevant statute, or is not in substantial  
9 compliance with a board rule, the application may be rejected  
10 by the board without prejudice and without a hearing, provided  
11 that the board issues a written order setting forth all of its  
12 reasons for rejecting the application. The board shall give  
13 notice of formal proceedings as it deems appropriate. Except  
14 as provided in paragraphs "g" and "i", the docketing of a case  
15 as a formal proceeding suspends the effective date of the new  
16 or changed rate, charge, schedule, or regulation until the  
17 rate, charge, schedule, or regulation is approved by the  
18 board.

19 f. UTILITY HEARING EXPENSES REPORTED. If a case has been  
20 docketed as a formal proceeding, the delivery service provider  
21 shall file with the board a report outlining the expected  
22 expenses for litigating the case through the period allowed by  
23 the board in rendering a final decision. Within ten days  
24 after the conclusion of the delivery service provider's  
25 presentation of comments, testimony, or briefs, the delivery  
26 service provider shall submit to the board a listing of the  
27 delivery service provider's actual litigation expenses in the  
28 proceeding, excluding costs to be billed by the board and the  
29 consumer advocate. As part of the findings of the board, the  
30 board shall allow recovery of all reasonable costs of the  
31 litigation, including all costs billed by the board and the  
32 consumer advocate, over a reasonable period of time.

33 g. DISTRIBUTION SERVICE RATES AND CHARGES. Distribution  
34 service rates and charges and other unbundled rates and  
35 charges shall be based upon a cost of service method,

1 performance-based incentives, or such other method of  
2 ratemaking as the board deems just and reasonable. If cost of  
3 service is used for establishing a component of unbundled  
4 rates, the method used to determine class cost of service, to  
5 the maximum extent practicable, should permit identification  
6 of cost differences attributable to variations in demand,  
7 energy, voltage delivery level, customer components of costs,  
8 and other factors. This chapter does not prohibit a delivery  
9 service provider from making provision for the automatic  
10 adjustment of a distribution service rate or charge or other  
11 rate or charge subject to the jurisdiction of the board,  
12 provided that a tariff setting forth the mechanism for  
13 automatic adjustment of a rate or charge is first filed with  
14 and approved by the board. Notice of such filing to end-use  
15 consumers and competitive electric service providers receiving  
16 service under board-approved tariffs or with whom the delivery  
17 service provider has distribution service contracts, whether  
18 or not written, shall be required, but adjustments pursuant to  
19 an approved mechanism shall not require further notice. The  
20 board may adopt rules regarding notification of other end-use  
21 consumers that may be affected by the automatic adjustment  
22 mechanism.

23 The board, in determining the value of materials or  
24 services to be included in valuations or costs of operations  
25 for ratemaking purposes, may disallow any unreasonable profit  
26 made in the sale of materials to or services supplied for any  
27 delivery service provider by a firm or corporation owned or  
28 controlled directly or indirectly by such delivery service  
29 provider or any affiliate, subsidiary, parent company,  
30 associate, or any corporation whose controlling stockholders  
31 are also controlling stockholders of such delivery service  
32 provider. The burden of proof is on the delivery service  
33 provider to prove that no unreasonable profit is made.

34 h. FINDING BY BOARD. If, after hearing and decision on  
35 all issues presented for determination in the rate proceeding,

1 the board finds the proposed rate, charge, schedule, or  
2 regulation to be unlawful or not just and reasonable, the  
3 board shall, by order, authorize and direct the delivery  
4 service provider to file a new or changed rate, charge,  
5 schedule, or regulation which, when approved by the board and  
6 placed in effect, will satisfy the requirements of this  
7 chapter. A rate, charge, schedule, or regulation so approved  
8 is lawful and effective upon its approval.

9 i. TEMPORARY AUTHORITY. Upon the request of a delivery  
10 service provider, the board, when required by this paragraph,  
11 shall grant temporary authority to place in effect any or all  
12 of a suspended rate, charge, schedule, or regulation. A  
13 delivery service provider shall file with the board a bond or  
14 other undertaking approved by the board conditioned upon the  
15 refund in a manner to be prescribed by the board of any  
16 amounts collected in excess of the amounts which would have  
17 been collected under a rate, charge, schedule, or regulation  
18 finally approved by the board. In determining that portion of  
19 the new or changed rate, charge, schedule, or regulation to be  
20 placed into effect prior to a final decision, the board shall  
21 apply previously established regulatory principles and, at a  
22 minimum, shall permit rates and charges which will allow the  
23 delivery service provider the opportunity to earn a return on  
24 common stock equity equal to that which the board held  
25 reasonable and just in the most recent rate case involving  
26 electric or distribution service. However, if the most recent  
27 final decision of the board in an applicable rate case was  
28 rendered more than twelve months prior to the date of filing  
29 of the request for temporary rates, the board, in addition,  
30 shall consider financial market data that is filed or that is  
31 otherwise available to the board and shall adjust the rate of  
32 return on common stock equity that was approved in that  
33 decision upward or downward as necessary to reflect current  
34 conditions. The board shall render a decision on a request  
35 for temporary authority within ninety days after the date of

1 filing of the request. The decision shall be effective  
2 immediately. If the board has not rendered a final decision  
3 with respect to a suspended rate, charge, schedule, or  
4 regulation upon the expiration of ten months after the filing  
5 date, plus the length of any delay that necessarily results  
6 either from the failure of the delivery service provider to  
7 exercise due diligence in connection with the proceedings or  
8 from intervening judicial proceedings, the portion of the  
9 rate, charge, schedule, or regulation that was approved by the  
10 board on a temporary basis shall be deemed finally approved by  
11 the board and the delivery service provider may place that  
12 portion of the rate, charge, schedule, or regulation into  
13 effect on a permanent basis, and also may place into effect  
14 subject to refund and until the final decision of the board  
15 any portion of the suspended rate, charge, schedule, or  
16 regulation not previously approved on a temporary basis by  
17 filing with the board a bond or other undertaking approved by  
18 the board.

19 The board shall determine the rate of interest to be paid  
20 by a delivery service provider to persons receiving refunds.

21 j. INVESTIGATIONS. If a written request is filed with the  
22 board by any person or body politic, or filed by the board  
23 upon its own motion, requesting the board to determine the  
24 reasonableness of a distribution service rate, charge,  
25 schedule, or regulation or other unbundled rate, charge,  
26 schedule, or regulation subject to the jurisdiction of the  
27 board, or anything done or omitted to be done in contravention  
28 of this chapter by a delivery service provider that is an  
29 electric company, the written complaint shall be forwarded by  
30 the board to the delivery service provider, which shall be  
31 called upon to satisfy the complaint or to answer it in  
32 writing within a reasonable time to be specified by the board.  
33 Copies of the written complaint forwarded by the board to the  
34 delivery service provider and copies of all correspondence  
35 from the delivery service provider in response to the

1 complaint shall be provided by the board in an expeditious  
2 manner to the consumer advocate. If the board determines the  
3 delivery service provider's response is inadequate and there  
4 appears to be any reasonable ground for investigating the  
5 complaint, the board shall promptly initiate a formal  
6 proceeding. If the consumer advocate determines the delivery  
7 service provider's response to the complaint is inadequate,  
8 the consumer advocate may file a petition with the board which  
9 shall promptly initiate a formal proceeding if the board  
10 determines that there is any reasonable ground for  
11 investigating the complaint. The complainant or the delivery  
12 service provider also may petition the board to initiate a  
13 formal proceeding, which petition shall be granted if the  
14 board determines that there is any reasonable ground for  
15 investigating the complaint. A formal proceeding may be  
16 initiated at any time by the board on its own motion. If a  
17 formal proceeding is initiated, the board shall set the case  
18 for hearing and give notice as it deems appropriate. If the  
19 board, after a hearing held after reasonable notice, finds a  
20 delivery service provider's rate, charge, schedule, or  
21 regulation subject to the jurisdiction of the board is unjust,  
22 unreasonable, discriminatory, or otherwise in violation of any  
23 law, the board shall determine a just, reasonable, and  
24 nondiscriminatory rate, charge, schedule, or regulation to be  
25 observed and enforced.

26 k. RATE COMPLAINTS BY CONSUMER ADVOCATE. If the consumer  
27 advocate files a complaint with the board alleging that a  
28 delivery service provider's regulated rates are excessive, the  
29 disputed amount shall be specified in the petition. The board  
30 shall promptly initiate a formal proceeding if it determines  
31 that there is any reasonable ground for investigating the  
32 complaint. If the board determines to initiate a formal  
33 proceeding, the delivery service provider, within the time  
34 prescribed by the board, shall file a bond or undertaking  
35 approved by the board conditioned upon the refund in a manner

1 prescribed by the board of amounts collected after the date of  
2 filing of the petition in excess of a rate or charge finally  
3 determined by the board to be lawful. If after hearing the  
4 board finds that the delivery service provider's regulated  
5 rates are unlawful or not just and reasonable, the board shall  
6 order a refund, with interest, of amounts collected after the  
7 date of filing of the petition that are determined to be in  
8 excess of the amounts which would have been collected under  
9 the rates finally approved. However, the board shall not  
10 order a refund that is greater than the amount specified in  
11 the petition, plus interest, and if the board fails to render  
12 a decision within ten months following the date of filing of  
13 the petition, the board shall not order a refund of any excess  
14 amounts that are collected after the expiration of that ten-  
15 month period and prior to the date the decision is rendered.

16 1. PROSPECTIVE EFFECT. A determination by the board of a  
17 distribution service rate or charge or another unbundled rate,  
18 charge, schedule, or regulation pursuant to paragraph "i" or  
19 "j" that is based upon a variance from previously established  
20 regulatory principles shall apply prospectively from the date  
21 of the decision.

22 m. RULES GOVERNING HEARINGS. The board shall adopt rules  
23 to provide for the completion of proceedings under this  
24 subsection within ten months after the date of the filing of  
25 the application or complaint. The rules shall include  
26 reasonable time limitations for the submission or completion  
27 of comments, testimony, exhibits, briefs, and hearings, which  
28 the board may extend upon the request of a party to the  
29 proceeding for good cause shown. Additional time granted to a  
30 party shall not extend the amount of time for which a delivery  
31 service provider is required to file a bond or other  
32 undertaking. If additional time is granted, the board may  
33 extend the ten-month period during which a delivery service  
34 provider is prohibited from placing its entire rate increase  
35 request into effect, but an extension shall not exceed the

1 aggregate amount of all additional time granted under this  
2 paragraph. The initial rules shall be proposed by March 1,  
3 2001.

4 n. CONSIDERATION OF CURRENT INFORMATION. The board shall  
5 adopt rules that require the board in rate proceedings under  
6 this subsection to consider the use of the most current test  
7 period possible in determining reasonable and just rates,  
8 subject only to the availability of existing and verifiable  
9 data with respect to costs and revenues, and in addition to  
10 consider verifiable data that exist as of the filing date of  
11 the application or complaint with respect to known and  
12 measurable changes in costs not associated with a different  
13 level of revenue, and known and measurable revenues not  
14 associated with a different level of costs, that are to occur  
15 at any time within twelve months after the date of the filing.  
16 This paragraph shall not limit the authority of the board to  
17 consider other evidence in proceedings under this subsection.  
18 The initial rules shall be proposed by March 1, 2001.

19 o. TARIFFS POSTED. A rate, charge, schedule, term,  
20 condition, or regulation applicable to distribution service or  
21 other unbundled service that has been approved by the board or  
22 is otherwise in effect pursuant to this subsection shall be  
23 posted on the board's website within twenty-four hours after  
24 being placed into effect,

25 p. ACCOUNTS RENDERED TO THE BOARD.

26 (1) A delivery service provider that is an electric  
27 company shall keep and render to the board, in the manner and  
28 form prescribed by rules of the board, uniform accounts of all  
29 business transacted.

30 (2) A delivery service provider that is an electric  
31 company and that is engaged directly or indirectly in any  
32 other business than that of the provision of delivery services  
33 to the public, if required by rules adopted by the board,  
34 shall keep and render separately to the board in like manner  
35 and form the accounts of all such other business, in which

1 case this subsection shall apply to the books, accounts,  
2 papers, and records of such other business and all profits and  
3 losses may be taken into consideration by the board if deemed  
4 relevant to the general fiscal condition of the delivery  
5 service provider.

6 (3) A delivery service provider that is an electric  
7 company is required to keep and render its books, accounts,  
8 papers, and records accurately and faithfully in the manner  
9 and form prescribed by rules of the board, and to comply with  
10 all directions of the board relating to such books, accounts,  
11 papers, and records.

12 (4) The board shall consult with other state and federal  
13 regulatory bodies for the purpose of eliminating accounting  
14 discrepancies with regard to the keeping of accounts before  
15 prescribing any system of account to be kept by a delivery  
16 service provider. The initial rules shall be proposed by  
17 March 1, 2001.

18 q. JURISDICTION OVER DELIVERY SERVICE PROVIDERS. The  
19 jurisdiction and powers of the board shall extend as provided  
20 in this chapter to a delivery service business of an electric  
21 company operating within this state to the full extent  
22 permitted by the Constitution and laws of the United States.

23 r. AUDIT OF DELIVERY SERVICE OPERATIONS. The board shall  
24 adopt rules to administer a program for the continuous review  
25 of operations of a delivery service provider that is an  
26 electric company with respect to all matters that affect rates  
27 or charges for delivery service. The initial rules shall be  
28 proposed by March 1, 2001.

29 s. LOBBYING COSTS. A delivery service provider that is an  
30 electric company is prohibited from including either directly  
31 or indirectly the costs of lobbying in the charges or rates  
32 subject to the jurisdiction of the board.

33 t. LEGAL COSTS. Legal costs and attorney fees incurred by  
34 a delivery service provider that is an electric company in a  
35 judicial review proceeding in state or federal court involving

1 the validity of any action of the board shall not be included  
2 either directly or indirectly in the charges or rates subject  
3 to the jurisdiction of the board except to the extent that  
4 recovery of legal costs and attorney fees is allowed by the  
5 board. The board shall allow recovery of the reasonable legal  
6 costs and attorney fees incurred in judicial review. The  
7 board may consider the degree of success of the legal  
8 arguments of the delivery service provider in determining the  
9 reasonable legal costs and attorney fees to be allowed.

10 u. ADVERTISING. Except as provided in this paragraph, a  
11 delivery service provider that is an electric company shall  
12 not include either directly or indirectly in the charges or  
13 rates subject to the jurisdiction of the board the costs of  
14 advertising other than advertising regarding public safety or  
15 advertising that is required by the board or by any other  
16 state or federal regulation. However, this restriction does  
17 not apply to advertising which is deemed by the board to be in  
18 the public interest and which is approved by the board.

19 An advertisement which is published, broadcast, or  
20 otherwise displayed or disseminated to the public by a  
21 delivery service provider that is an electric company, the  
22 costs of which will be included in the rates or charges  
23 subject to the jurisdiction of the board and which is not  
24 public safety advertising or advertising required by the board  
25 or by other state or federal regulation, shall include a  
26 statement in the advertisement that the costs of the  
27 advertisement are being charged to the users of delivery  
28 service. This paragraph does not apply to a delivery service  
29 provider's product or service that is or becomes subject to  
30 competition as determined by the board.

31 v. ANNUAL REPORTS OF DELIVERY SERVICE PROVIDERS. The  
32 board shall adopt rules prescribing the form and content of an  
33 annual report to be filed with the board by a delivery service  
34 provider, other than a consumer-owned utility. The board  
35 shall review annual reports submitted pursuant to the rules.

1 The board may commence rate-review proceedings under this  
2 chapter for an electric company if an annual report indicates  
3 that its earnings are excessive. The initial rules shall be  
4 proposed by March 1, 2001.

5 6. DELIVERY SERVICE RATE REGULATION FOR CONSUMER-OWNED  
6 UTILITIES.

7 a. LOCAL REGULATION. The rates for delivery service and  
8 other unbundled services provided by a consumer-owned utility  
9 and all other matters not specifically reserved to the board  
10 by statute shall be regulated by the consumer-owned utility's  
11 local governing body. An election made pursuant to section  
12 476.1A by the board of directors or the membership of an  
13 electric cooperative corporation or association to have the  
14 cooperative's rates regulated by the board is rescinded  
15 effective June 1, 1999.

16 b. POSTING. Rates, terms, and conditions of applicable  
17 distribution services and other unbundled services provided by  
18 a consumer-owned utility shall be posted on the board's  
19 website. Any change in rates, terms, or conditions shall be  
20 posted no less than twenty-four hours prior to becoming  
21 effective.

22 c. NOTICE OF CHANGES. A consumer-owned utility shall give  
23 written notice of any proposed increase in delivery service  
24 rates or charges or other unbundled rates or charges to all  
25 applicable and directly affected end-use consumers and  
26 competitive electric service providers at least thirty days  
27 prior to the effective date of the increase.

28 d. DISCRIMINATION PROHIBITED. A consumer-owned utility  
29 shall not make or grant to any person any unreasonable  
30 preference or advantage as to delivery service rates,  
31 services, terms, or conditions or subject any person to  
32 unreasonable prejudice or disadvantage. This paragraph shall  
33 not be construed to prohibit a municipal utility from  
34 providing preferential rates, terms, or conditions of services  
35 to any department or function of municipal government pursuant

1 to section 384.91.

2 e. DISPUTES. The district court has original jurisdiction  
3 concerning disputes with respect to the distribution service  
4 rates and charges and other unbundled service rates of a  
5 consumer-owned utility and all other matters concerning a  
6 consumer-owned utility not specifically reserved to the board  
7 by this chapter or another statute.

8 f. ANNUAL REPORTS OF CONSUMER-OWNED DELIVERY SERVICE  
9 PROVIDERS. The board shall adopt rules prescribing the form  
10 and content of an annual report to be filed with the board by  
11 a consumer-owned delivery service provider. The initial rules  
12 shall be proposed by March 1, 2001.

13 7. CONTROL AREA OPERATIONS.

14 a. REGULATORY JURISDICTION. A rate, charge, term, and  
15 condition of distribution services provided within the state  
16 by a control area operator that is an electric company is  
17 subject to subsection 5 and to regulation by the board except  
18 to the extent such rate, charge, term, or condition is subject  
19 to the exclusive jurisdiction of the federal energy regulatory  
20 commission or another federal agency. Distribution services  
21 may include load profiling, financial settlement, distribution  
22 system scheduling, and ancillary services to the extent not  
23 subject to exclusive federal jurisdiction. The board shall  
24 approve rates, charges, terms, conditions, and processes for  
25 load profiling and financial settlement that are just,  
26 reasonable, and nondiscriminatory. The board shall adopt  
27 rules governing the filing and posting of control area  
28 operator's services, rates, charges, terms, conditions, and  
29 processes subject to its jurisdiction and changes in such  
30 services, rates, charges, terms, conditions, and processes.  
31 The initial rules shall be proposed by October 1, 1999.

32 b. NOTICE TO BOARD OF DEFAULT. If a control area operator  
33 becomes aware that a competitive electric service provider has  
34 substantially failed to schedule energy for two consecutive  
35 twenty-four-hour periods, failed to deliver energy scheduled

1 with or committed to the control area operator for two  
2 consecutive twenty-four-hour periods, or has otherwise  
3 substantially defaulted upon its obligations to or agreements  
4 with the control area operator, the control area operator  
5 shall notify the board and the affected delivery service  
6 provider of such occurrence as soon as practicable. A control  
7 area operator shall use reasonable commercial efforts to  
8 provide power supply services on an emergency basis to end-use  
9 consumers if a competitive electric service provider defaults.  
10 However, notwithstanding subsection 3, paragraph "b", a  
11 control area operator shall not be liable to an end-use  
12 consumer for failure to provide emergency power supply  
13 services.

14 The board shall adopt rules addressing the failure of a  
15 competitive electric service provider to comply with the  
16 terms, conditions, and obligations of control area services.  
17 The rules shall provide for finding a replacement competitive  
18 electric service provider or competitive electric service  
19 providers to serve the end-use consumers of the defaulting  
20 competitive electric service provider as soon as feasible in  
21 order to eliminate the burden on the control area operator to  
22 provide power supply services for such consumers. The rules  
23 shall include a provision for the board or an entity  
24 designated by the board to notify affected end-use consumers  
25 if a need exists for the end-use consumers to select a new  
26 competitive electric service provider. The rules shall also  
27 include a provision that permits a control area operator to  
28 recover all reasonable costs incurred by the control area  
29 operator in remedying the competitive electric service  
30 provider's failure and providing service to the end-use  
31 consumers of the competitive electric service provider to the  
32 extent the competitive electric service provider fails to pay  
33 such costs. The initial rules shall be proposed by October 1,  
34 2000.

35 8. STANDARDS OF CONDUCT.

1 a. DELIVERY SERVICE PROVIDERS. No later than November 1,  
2 2001, each delivery service provider shall post on the board's  
3 website standards of conduct, to be effective May 1, 2002,  
4 that require the delivery service provider to do all of the  
5 following:

6 (1) Apply all tariff provisions in a nondiscriminatory and  
7 comparable service manner to similarly situated persons.

8 (2) Process requests for delivery service in a  
9 nondiscriminatory manner.

10 (3) Make available any distribution service discounts,  
11 rebates, or waiver of fees on a nondiscriminatory basis to all  
12 similarly situated persons.

13 (4) Comply with section 476B.6, subsection 4, paragraph  
14 "k".

15 (5) Deny to any competitive electric service provider  
16 preferential access to information related to the distribution  
17 of electricity which is not otherwise made publicly available,  
18 except information regarding the competitive electric service  
19 provider's own end-use consumers.

20 (6) Not represent that any advantages accrue to end-use  
21 consumers or others in the use of the delivery service  
22 provider's services as a result of that end-use consumer or  
23 others dealing with any particular competitive electric  
24 service provider.

25 (7) Establish a complaint procedure applicable to the  
26 standards of conduct, and process and resolve complaints in  
27 accordance with such procedure.

28 (8) Develop written agreements with generating plant  
29 operators as needed to maintain distribution system  
30 reliability.

31 (9) Abide by the applicable federal energy regulatory  
32 commission standards of conduct when providing delivery  
33 service subject to the jurisdiction of the federal energy  
34 regulatory commission.

35 (10) Take reasonable steps to keep its delivery system in

1 operation in emergency circumstances affecting system  
2 reliability.

3 (11) Prohibit discrimination in the extension or repair of  
4 the delivery system facilities.

5 (12) If the delivery service provider is an electric  
6 company, maintain separate books, records, and accounts for  
7 distribution service operations. If the delivery service  
8 provider is a consumer-owned utility, maintain records in such  
9 a manner as to enable delivery service data to reasonably be  
10 separated from data that do not pertain to delivery services.

11 (13) With respect to distribution service and control area  
12 operator employees engaged in receiving requests from a  
13 competitive electric service provider for reservation or  
14 scheduling of energy over the distribution system, prohibit  
15 the sharing of such employees with a competitive electric  
16 service provider and physically separate such employees from a  
17 competitive electric service provider.

18 A consumer-owned utility shall not be required to comply  
19 with subparagraph (13), but shall be required to comply with  
20 paragraph "b", subparagraph (7), with respect to employees  
21 engaged in receiving requests from a competitive electric  
22 service provider for reservation or scheduling of energy over  
23 the delivery system.

24 The board shall review any posting of an electric company  
25 and, if it concludes there are reasonable grounds to do so,  
26 may hold a hearing to determine if the standards comply with  
27 this subsection.

28 b. CONTROL AREA OPERATORS. No later than November 1,  
29 2001, each control area operator that engages in retail  
30 electric sales within a control area, either directly or  
31 through its own corporate structure or an affiliate, shall  
32 post on the board's website standards of conduct, to be  
33 effective May 1, 2002, that require the control area operator  
34 to do all of the following:

35 (1) Disclose tariff information to users of the control

1 area and apply all tariff provisions on a nondiscriminatory  
2 basis to similarly situated persons.

3 (2) If the control area operator is an electric company,  
4 maintain separate books of accounts and financial records from  
5 any competitive electric service provider. If the control  
6 area operator is a consumer-owned utility, maintain records in  
7 such a manner as to enable control area service data to  
8 reasonably be separated from other data.

9 (3) Prohibit the tying of the provision of any control  
10 area services to the selection of any particular competitive  
11 electric service provider or the selection of a product or  
12 service from any particular competitive electric service  
13 provider.

14 (4) Deny a competitive electric service provider  
15 preferential access to information related to control area  
16 operations which is not otherwise made publicly available,  
17 except with respect to information regarding the competitive  
18 electric service provider's own end-use consumers.

19 (5) Solicit, from time to time, competitive bids for  
20 ancillary services, to the extent not inconsistent with any  
21 applicable federal requirements.

22 (6) Administer energy balancing and financial settlement  
23 performed by the control area in a nondiscriminatory manner.

24 (7) Develop and administer a method for maintaining the  
25 integrity of proprietary and confidential information.

26 (8) Develop and post on the board's website a system for  
27 reporting declared emergencies. However, a control area  
28 operator shall not declare an emergency situation for the  
29 purpose of unreasonably discriminating against any other  
30 person.

31 The board shall review the posting of standards of conduct  
32 of an electric company and, if it concludes there are  
33 reasonable grounds to do so, may hold a hearing to determine  
34 if the standards comply with the provisions of this  
35 subsection.

1 c. INFORMATIONAL FILING AND ADDITIONAL STANDARDS FOR  
2 ELECTRIC COMPANIES. A delivery service provider or control  
3 area operator that is an electric company shall submit to the  
4 board such information as the board may require in order to  
5 evaluate the actual effectiveness of the standards of conduct  
6 in fulfilling the purposes of this chapter. The board, upon  
7 its own motion or upon receipt of a complaint from any person  
8 alleging a violation of the standards of conduct, may  
9 investigate a delivery service provider's or control area  
10 operator's compliance with the standards of conduct. In  
11 addition, the board may add new standards of conduct by rule,  
12 if it determines the existing standards are not sufficient to  
13 ensure open access and comparable and nondiscriminatory  
14 service.

15 9. ADHERENCE TO SCHEDULES. A delivery service provider  
16 shall not directly or indirectly charge a greater compensation  
17 for its services than that prescribed in its tariffs, and a  
18 delivery service provider shall not make or grant any  
19 unreasonable preferences or advantages as to rates, charges,  
20 or services to any person, or subject any person to any  
21 unreasonable prejudice or disadvantage.

22 10. AFFILIATES OF DELIVERY SERVICE PROVIDERS.

23 a. Except as provided in this section or as otherwise  
24 approved by the board, a delivery service provider that is an  
25 electric company shall not directly or indirectly include in  
26 regulated rates or charges any costs or expenses of an  
27 affiliate engaged in any business other than delivery service  
28 unless the affiliate provides goods or services to the  
29 delivery service provider in accordance with rules adopted  
30 pursuant to this subsection. Any costs included in regulated  
31 rates or charges shall be reasonably necessary and appropriate  
32 for the delivery service business.

33 b. A delivery service provider that is an electric company  
34 shall only provide regulated services in a manner that  
35 minimizes the possibility of cross-subsidization of

1 unregulated services and unfair competitive advantage and  
2 shall provide services as described in subsection 11 only in a  
3 manner that minimizes the possibility of cross-subsidization  
4 or unfair competitive advantage.

5 c. A delivery service provider that is an electric company  
6 shall keep and render to the board upon request delivery  
7 service records and records pertaining to services as  
8 described in subsection 11 separate from affiliates or  
9 operations that do not provide delivery service.

10 d. For a delivery service provider that is an electric  
11 company, the board, for delivery service ratemaking purposes,  
12 may inquire as to and prescribe the allocation of  
13 capitalization, earnings, debts, shared corporate services,  
14 and expenses related to ownership, operation, or management of  
15 affiliates.

16 e. Not later than October 1, 2000, the board shall propose  
17 rules identifying those services that may be shared between a  
18 delivery service provider or control area operator that is an  
19 electric company and an affiliated competitive electric  
20 service provider. Such rules shall not prevent a delivery  
21 service provider or control area operator from using the  
22 following shared corporate services, even when shared with an  
23 affiliated competitive electric service provider: corporate  
24 oversight; governance; administrative services, including  
25 travel administration, security, printing, graphics, custodial  
26 services, secretarial support, mail services and records  
27 management; financial management services, including  
28 accounting, treasury, internal audit, tax and financial  
29 reporting and planning; data processing; shareholder services;  
30 strategic corporate planning; human resources; employee  
31 benefits; regulatory services; legal services; lobbying; and  
32 nonmarket research and development activities. Such rules  
33 shall not prevent a delivery service provider or control area  
34 operator from using such shared corporate services even when  
35 shared with an affiliated competitive electric service

1 provider. This paragraph shall not be construed to limit the  
2 authority of the board to determine the amount of shared  
3 corporate service costs, if any, to be included in regulated  
4 rates for distribution service and other unbundled services  
5 under section 476B.4 and this section.

6 f. A contract or arrangement providing for the furnishing  
7 or receiving of goods and services between a delivery service  
8 provider that is an electric company and an affiliate shall be  
9 filed with the board in a time frame established by rule of  
10 the board. The initial rules shall be proposed by March 1,  
11 2001.

12 g. A contract or arrangement for the purchase, sale,  
13 lease, or exchange of any property, right, or thing between a  
14 delivery service provider that is an electric company and any  
15 affiliate shall be filed with the board in a time frame  
16 established by rule by the board. The initial rules shall be  
17 proposed by March 1, 2001.

18 h. A contract or arrangement providing for a loan of money  
19 or an extension or renewal of a loan of money or any similar  
20 transaction between a delivery service provider that is an  
21 electric company and an affiliate, whether as guarantor,  
22 endorser, surety, or otherwise, shall be filed with the board  
23 in a time frame established by rule of the board. The initial  
24 rules shall be proposed by March 1, 2001.

25 i. A contract or agreement filed pursuant to paragraph  
26 "f", "g", or "h" and determined by the board to be a  
27 confidential record pursuant to section 22.7 shall be  
28 available for review by an interested party under rules  
29 protecting the confidentiality of the contract or agreement as  
30 adopted by the board. The initial rules shall be proposed by  
31 March 1, 2001. The contract or agreement shall be returned to  
32 the delivery service provider filing the confidential record  
33 within sixty days after the contract or agreement is filed.

34 j. The board shall adopt rules excluding from the filing  
35 requirements of paragraphs "f", "g", and "h", the filing of a

1 contract or agreement for a transaction with an affiliate  
2 where the amount of consideration involved does not exceed a  
3 threshold level of annual distribution and transmission  
4 revenues of the delivery service provider. The initial rules  
5 to be adopted pursuant to this paragraph shall be proposed by  
6 March 1, 2001.

7 k. In a proceeding involving the rates, charges, or  
8 practices of a delivery service provider that is an electric  
9 company, the board may exclude from rates or charges any  
10 unreasonable payment or compensation to an affiliate made  
11 pursuant to a contract or arrangement whether or not filed  
12 under this subsection. For ratemaking purposes, the board may  
13 exclude the payment of compensation to an affiliate or adjust  
14 the revenue received from an affiliate associated with any  
15 contract or arrangement required to be filed with the board if  
16 the contract or arrangement is not so filed.

17 l. The board has the same jurisdiction over modification  
18 of or amendment to a contract or arrangement filed under this  
19 subsection as it has over the original contracts or  
20 arrangements. A modification of or amendment to a contract or  
21 arrangement shall also be filed in a time frame as determined  
22 by the board.

23 m. The board shall consult with other state and federal  
24 regulatory agencies for the purpose of eliminating duplicate  
25 or conflicting filing requirements and may adopt rules which  
26 provide that comparable information required to be filed with  
27 other state or federal regulatory agencies may be accepted by  
28 the board in lieu of information required by this subsection.

29 n. The board may adopt rules or issue orders which exempt  
30 a class of contracts or arrangements from this subsection, or  
31 waive the requirements of this subsection if the board finds  
32 that the exemption or waiver is in the public interest.

33 o. The board may periodically retain a nationally or  
34 regionally recognized independent auditing firm to conduct an  
35 audit of the transactions between a delivery service provider

1 that is an electric company and its affiliates to investigate  
2 compliance with this subsection. An affiliate transaction  
3 audit shall not be conducted more frequently than twelve  
4 months after the conclusion of the most recently completed  
5 audit, unless ordered by the board for good cause after notice  
6 and opportunity for hearing. The cost of the audit shall be  
7 paid by the delivery service provider to the independent  
8 auditing firm and shall be included in its regulated rates and  
9 charges, unless otherwise ordered by the board for good cause  
10 after providing the delivery service provider the opportunity  
11 for a hearing.

12 p. A delivery service provider that is a consumer-owned  
13 utility shall keep and render to the board upon request  
14 delivery service records in a manner as to enable delivery  
15 service data to reasonably be separated from affiliates' data.  
16 This subsection shall not be construed to authorize the board  
17 to impose rates on a consumer-owned utility. Information  
18 rendered to the board pursuant to this paragraph and  
19 determined by the board to be a confidential record pursuant  
20 to section 22.7 shall be returned to the delivery service  
21 provider rendering the confidential record within sixty days  
22 after rendering the confidential record or at the end of the  
23 investigation or proceeding. Except as provided in this  
24 subsection, a consumer-owned delivery service provider shall  
25 not directly or indirectly include in delivery service rates  
26 or charges any costs or expenses of an affiliate engaged in  
27 any business other than delivery service unless the affiliate  
28 provides goods and services to the delivery service provider.  
29 Any costs included in rates or charges shall be reasonably  
30 necessary and appropriate for the delivery service business,  
31 and shall be market priced and directly related to such goods  
32 or services in a manner that avoids cross-subsidization or  
33 unfair competitive advantage.

34 11. CROSS-SUBSIDIZATION PROHIBITED. A delivery service  
35 provider that is an electric company shall not directly or

1 indirectly include in distribution service rates or charges  
2 any costs or expenses attributable to the sale, lease, or  
3 other conveyance of commercial and residential electric  
4 appliances, interior lighting systems or fixtures, or electric  
5 heating, ventilating, or air conditioning systems and  
6 component parts, or the servicing, repair, or maintenance of  
7 such equipment. Except for contracts existing as of July 1,  
8 1996, a delivery service provider that is an electric company,  
9 or its affiliate, shall not use the delivery service  
10 provider's vehicles, service tools and instruments, or  
11 employees, the costs, salaries, or benefits of which are  
12 recoverable in regulated rates for distribution service, to do  
13 either of the following:

14 a. Install, service, or repair residential or commercial  
15 electric heating, ventilating, or air conditioning systems, or  
16 interior lighting systems and fixtures.

17 b. Sell at retail electric heating, ventilating, air  
18 conditioning, or interior lighting equipment.

19 For purposes of this subsection, "commercial" means a place  
20 of business primarily used for the storage or sale, at  
21 wholesale or retail, of goods, wares, services, or  
22 merchandise, as well as a nonprofit institution and a business  
23 office. This subsection shall not be construed to prohibit a  
24 delivery service provider from using its vehicles, service  
25 tools and instruments, and employees to market its systems,  
26 services, and equipment or to eliminate an emergency or threat  
27 to public safety.

28 12. REORGANIZATION OF DELIVERY SERVICE PROVIDERS THAT ARE  
29 ELECTRIC COMPANIES.

30 a. For purposes of this subsection, "reorganization" means  
31 any of the following:

32 (1) The acquisition, sale, lease, or any other  
33 disposition, directly or indirectly, including by merger or  
34 consolidation, of the whole or any substantial part of the  
35 regulated delivery service assets of an electric company.

1 (2) Until the cessation of standard offer service under  
2 section 476B.8, subsection 1, the sale by an electric company  
3 to any person, or the transfer by an electric company to any  
4 of its unregulated affiliates, of any interest in a generation  
5 unit located in this state, the costs of which have been  
6 included in the standard offer service rates.

7 (3) The purchase or other acquisition or sale or other  
8 disposition of the controlling capital stock of any delivery  
9 service provider that is an electric company, either directly  
10 or indirectly.

11 b. A reorganization shall not take place unless the board  
12 approves. Prior to reorganization, an applicant shall file  
13 with the board a proposal for reorganization with supporting  
14 testimony and evidence addressing the items specified in  
15 paragraph "d".

16 c. A proposal for reorganization shall be approved or  
17 disapproved within ninety days after its filing. However, the  
18 board may extend the time for its decision by no more than an  
19 additional ninety-day period for good cause. The board shall  
20 provide for notice and opportunity for hearing on the  
21 proposal. The notice of hearing shall be provided no later  
22 than fifty days after the proposal for reorganization has been  
23 filed.

24 d. In its review of a proposal for reorganization, the  
25 board shall consider all of the following:

26 (1) Whether the board will have reasonable access to  
27 books, records, documents, and other information relating to  
28 the delivery service provider or any affiliates with which the  
29 delivery service provider has contracts.

30 (2) Whether the delivery service provider's ability to  
31 attract capital on reasonable terms, including the maintenance  
32 of a reasonable capital structure, is impaired.

33 (3) Whether the ability of the delivery service provider  
34 to provide safe, reasonable, and adequate delivery service is  
35 impaired.

1 (4) Whether users of the delivery service are  
2 detrimentally affected.

3 (5) Whether the public interest is detrimentally affected,  
4 including, but not limited to, whether the proposed  
5 reorganization is likely to have a significant adverse effect  
6 on competition in this state.

7 (6) Whether the delivery service provider has shown that  
8 it will maintain within the state those administrative,  
9 technical, and operating personnel necessary for the provision  
10 of reasonably safe, reliable, and prompt delivery services and  
11 facilities, and that such personnel shall be strategically  
12 located by the delivery service provider to ensure that end-  
13 use consumers receive safe, reliable, and prompt service.

14 e. The board may adopt rules or issue orders which exempt  
15 a class of reorganization from this subsection if the board  
16 finds, with respect to the class of reorganization, that  
17 review is not necessary in the public interest. The board may  
18 waive any or all of the requirements of this subsection, if  
19 the board finds that board review is not necessary in the  
20 public interest.

21 f. In approving any proposed reorganization pursuant to  
22 this subsection, the board may impose such terms, conditions,  
23 or requirements as in its judgment are necessary to protect  
24 the financial and operational integrity of the delivery  
25 service provider.

26 13. JOINT ADVERTISING PROHIBITED.

27 a. No later than May 1, 2002, a delivery service provider  
28 that is an electric company shall use a name that is distinct  
29 from any affiliated competitive electric service provider. An  
30 affiliated competitive electric service provider may use any  
31 name and logo of its choosing, including that of the incumbent  
32 provider or parent company. The board shall determine whether  
33 the name of the delivery service provider is distinct from any  
34 affiliated competitive electric service provider. Except as  
35 provided in rules adopted by the board, the delivery service

1 provider shall not identify its affiliation with a competitive  
2 electric service provider or the parent of a competitive  
3 electric service provider either through a tag line or other  
4 means, except that a common logo may be used.

5 b. A delivery service provider or a control area operator  
6 of an electric company shall neither jointly advertise nor  
7 jointly market its services or products with an affiliated  
8 competitive electric service provider. However, this  
9 subsection does not preclude a delivery service provider from  
10 having joint meetings and contacts with end-use consumers and  
11 competitive electric service providers, including affiliated  
12 competitive electric service providers, for legitimate  
13 business purposes. The board shall adopt rules regarding such  
14 meetings and purposes. The initial rules shall be proposed by  
15 October 1, 2000.

16 Sec. 10. NEW SECTION. 476B.10 RESPONSIBILITIES AND  
17 RIGHTS OF COMPETITIVE ELECTRIC SERVICE PROVIDERS.

18 1. GENERAL. The responsibilities and rights of a licensed  
19 competitive electric service provider include those specified  
20 in this section and elsewhere in this chapter.

21 2. RESPONSIBILITIES AND RIGHTS.

22 a. A competitive electric service provider may do any of  
23 the following:

24 (1) To the extent permitted by its license, offer and  
25 enter into contracts to provide competitive electric services  
26 to end-use consumers.

27 (2) Purchase delivery services from a delivery service  
28 provider that is an electric company to sell to end-use  
29 consumers, subject to this chapter and any applicable delivery  
30 service tariffs and board rules.

31 (3) Purchase delivery services from a delivery service  
32 provider that is a consumer-owned utility at the discretion of  
33 the consumer-owned utility and subject to the terms and  
34 conditions of the consumer-owned utility.

35 (4) Consistent with the rules adopted pursuant to section

1 476B.6, subsection 4, require a money deposit from an end-use  
2 consumer as a condition of service, with any deposit so  
3 required becoming part of the contract between the end-use  
4 consumer and the competitive electric service provider.

5 (5) Bill for services in accordance with section 476B.12.

6 (6) With the agreement of an end-use consumer, install,  
7 own, maintain, and read a meter in accordance with section  
8 476B.11.

9 b. A competitive electric service provider shall do all of  
10 the following:

11 (1) Comply with all applicable environmental, safety, and  
12 service standards.

13 (2) Be able to demonstrate the truth of any claim that it  
14 makes to end-use consumers regarding types of fuel used to  
15 produce energy.

16 (3) Pay a delivery service provider for services provided  
17 and charges assessed to a competitive electric service  
18 provider or to an end-use consumer for whom the competitive  
19 electric service provider has agreed to assume payment  
20 responsibility, without regard to whether the competitive  
21 electric service provider receives payment from the end-use  
22 consumer.

23 (4) Pay a delivery service provider for services provided  
24 to an end-use consumer and charges assessed to an end-use  
25 consumer for which the delivery service provider has  
26 authorized the competitive electric service provider to bill  
27 and collect, without regard to whether the competitive  
28 electric service provider receives payment from the end-use  
29 consumer.

30 (5) If requested, provide to each delivery service  
31 provider, schedules and schedule changes submitted for  
32 deliveries to the delivery service provider at the same time  
33 that they are submitted to the control area operator.

34 (6) If operating generating facilities in Iowa or offering  
35 metering installation, meter maintenance, or meter reading

1 services within Iowa, perform these activities in a prompt,  
2 safe, and reliable manner; maintain within the state those  
3 administrative, technical, and operating personnel necessary  
4 for the provision of reasonably safe, reliable, and prompt  
5 generation and metering services and facilities; and  
6 demonstrate that personnel involved in installing, operating,  
7 and maintaining generating facilities or electric meters and  
8 metering equipment have the requisite skills, knowledge,  
9 experience, and training to perform those work functions  
10 necessary to provide high-quality, safe, reliable, and prompt  
11 services. Such demonstration may include a showing that  
12 applicable personnel have completed an accredited or  
13 recognized apprenticeship training program for the particular  
14 skill, trade, or craft. This subparagraph shall only apply to  
15 a competitive electric service provider that is a consumer-  
16 owner utility to the extent that it provides competitive  
17 electric service outside its assigned service area.

18 c. A competitive electric service provider shall not be  
19 required to provide individual end-use consumer information,  
20 including metering information, to other competitive electric  
21 service providers.

22 d. This chapter is not intended to affect the activities  
23 of a licensed competitive electric service provider in the  
24 provision of goods and services other than the sale of  
25 competitive electric services at retail in this state.

26 e. The board shall not regulate the rates or charges of  
27 competitive electric services of or a competitive electric  
28 service provider with the exception of the rates or charges  
29 for standard offer service under section 476B.8, subsection 1.

30 Sec. 11. NEW SECTION. 476B.11 METERING AND METER  
31 INFORMATION.

32 1. An existing meter owned by an incumbent provider shall  
33 remain the property of the delivery service provider.

34 2. A delivery service provider shall install, own, and  
35 maintain metering as deemed necessary by the delivery service

1 provider. However, this chapter shall not be construed to  
2 require a delivery service provider to provide, install, own,  
3 or maintain meters that are not necessary for the purpose of  
4 providing delivery service.

5 3. A delivery service provider or a control area operator  
6 shall not require interval metering as a condition for  
7 residential end-use consumers and nonresidential end-use  
8 consumers using fewer than twenty-five thousand kilowatt-hours  
9 annually to exercise the option to choose competitive  
10 services.

11 4. A meter owned by the delivery service provider shall be  
12 installed by that delivery service provider regardless of the  
13 location of the meter.

14 5. An end-use consumer may install metering not owned by  
15 the delivery service provider on the consumer's side of the  
16 main disconnect, subject to the reasonable connection  
17 requirements of the delivery service provider and the rules of  
18 the board. The end-use consumer is subject to the board's  
19 rules regarding standards, installation, maintenance, and  
20 testing of meters used for billing if the end-use consumer  
21 chooses to own the meter. The delivery service provider may  
22 disconnect electric service at such meter subject to board  
23 rules.

24 6. An end-use consumer or such consumer's competitive  
25 electric service provider may request that metering and  
26 associated hardware be installed on the electric facilities of  
27 the delivery service provider or on the delivery service  
28 provider's side of the main disconnect, to enable the consumer  
29 to take advantage of competitive service offerings. The meter  
30 and associated hardware shall comply with applicable board  
31 rules, and the costs of the meter shall be borne by the end-  
32 use consumer or the competitive electric service provider.  
33 The installation of the meter and associated hardware shall be  
34 performed by the delivery service provider in accordance with  
35 its requirements and the rules of the board. The delivery

1 service provider may charge a reasonable, cost-based fee for  
2 the installation. The delivery service provider shall have  
3 reasonable discretion in prescribing the location and  
4 necessary connection equipment for the installation of meters  
5 and associated hardware under this subsection.

6 7. If the meter will be owned by the end-use consumer or  
7 the competitive electric service provider and will be  
8 installed on the end-use consumer's side of the main  
9 disconnect, the delivery service provider may offer to, but is  
10 not required to, install the meter.

11 8. The board shall adopt rules relating to installation of  
12 meters, uniform metering standards and practices, inspection  
13 and testing programs, accuracy requirements, data transmission  
14 protocols, load profiling, and maintenance of meter reading  
15 records. The board shall not preclude the use of accurate  
16 prepaid meters by a competitive electric service provider. In  
17 addition, the board shall require a competitive electric  
18 service provider and an end-use consumer owning a meter to  
19 provide meter access to the delivery service provider for  
20 disconnections, and may require a presence for meter testing.  
21 The initial rules shall be proposed by October 1, 2000.

22 9. A person is entitled to read meters that the person  
23 owns. A delivery service provider is entitled to reasonable  
24 access to any meters connected to the delivery service  
25 provider's system without regard to ownership. A competitive  
26 electric service provider is responsible for obtaining the  
27 meter information necessary to bill such provider's end-use  
28 consumers. With the consent of the end-use consumer, a  
29 competitive electric service provider serving the end-use  
30 consumer is entitled to reasonable access to read any meters  
31 owned by the delivery service provider on the end-use  
32 consumer's premises for this purpose.

33 10. A delivery service provider is not required to read  
34 meters but, to the extent such provider does so, the delivery  
35 service provider shall make the meter information needed for

1 billing available to a competitive electric service provider  
2 serving the metered premises. A delivery service provider may  
3 assess the competitive electric service provider a reasonable  
4 charge for making such information available to the  
5 competitive electric service provider.

6 11. To avoid unnecessary reading of an end-use consumer's  
7 meter, a competitive electric service provider responsible for  
8 meter information gathering shall make end-use consumer usage  
9 information needed for billing and financial settlement  
10 available to the delivery service provider at a charge if the  
11 competitive electric service provider so chooses. It shall  
12 also make necessary information available to the control area  
13 operator serving the metered premises.

14 Sec. 12. NEW SECTION. 476B.12 BILLING.

15 1. Subject to subsections 3 and 4, a delivery service  
16 provider and a control area operator may bill an end-use  
17 consumer and a competitive electric service provider for the  
18 services each provides. A delivery service provider or a  
19 control area operator shall not be required to bill for  
20 services provided by a competitive electric service provider  
21 except as provided in subsection 3, but either may do so at  
22 its option for a cost-based charge.

23 2. A competitive electric service provider may bill an  
24 end-use consumer for services it provides, subject to section  
25 476B.6, subsection 2, and other applicable provisions of this  
26 chapter and board rules.

27 3. An end-use consumer receiving delivery service from an  
28 electric company is entitled to request a single consolidated  
29 bill for competitive electric services, delivery services, and  
30 control area services. Unless otherwise agreed by the  
31 affected service providers, such consolidated billing is the  
32 responsibility of the competitive electric service provider  
33 selling competitive billing services.

34 4. An end-use consumer receiving delivery service from a  
35 consumer-owned utility shall receive a bill from the consumer-

1 owned utility for services rendered and a bill from the  
2 competitive electric service provider for competitive electric  
3 services, unless otherwise agreed to by the affected service  
4 providers. Any consolidated billing for an end-use consumer  
5 receiving delivery service from a consumer-owned utility shall  
6 be the responsibility of the consumer-owned utility, unless  
7 otherwise agreed to by the consumer-owned utility and affected  
8 competitive electric service providers. If a delivery service  
9 provider that is a consumer-owned utility provides all billing  
10 services for its associated licensed competitive electric  
11 service provider function within its assigned service area,  
12 such consumer-owned utility shall provide comparable service  
13 within its assigned service area for all other competitive  
14 electric service providers.

15 5. Not later than March 1, 2000, the board shall propose  
16 rules related to billing services consistent with this  
17 chapter. Except as provided in this chapter, the board shall  
18 not restrict a delivery service provider or a control area  
19 operator from contracting with a competitive electric service  
20 provider to provide or receive billing services.

21 Sec. 13. NEW SECTION. 476B.13 SYSTEM BENEFIT PROGRAMS.

22 1. LOW-INCOME AFFORDABILITY AND ENERGY EFFICIENCY  
23 PROGRAMS.

24 a. PURPOSE. For purposes of this subsection, "division"  
25 means the division of community action agencies within the  
26 department of human rights or its successor. A low-income  
27 affordability program and a low-income energy efficiency  
28 program are created to be administered by the division. The  
29 purpose of the low-income affordability program is to  
30 encourage the competitive market to serve the electric needs  
31 of low-income, end-use consumers. The purpose of the low-  
32 income energy efficiency program is to reduce the consumption  
33 of electricity by low-income, end-use consumers through energy  
34 efficiency improvements.

35 b. APPORTIONMENT. Low-income affordability and low-income

1 energy efficiency assistance shall be distributed statewide.  
2 However, an electric company or consumer-owned utility shall  
3 not receive in the first two years of the program an  
4 apportionment of funding that is less than eighty percent of  
5 the total amount of funding paid by end-use consumers in such  
6 company's or utility's assigned service area under this  
7 subsection, as determined by the division. Commencing in the  
8 third year of the program and biannually after that year, if  
9 the apportionment of funding to low-income, end-use consumers  
10 in an assigned service area would be less than eighty percent  
11 of the funds collected pursuant to paragraph "f" in that  
12 assigned service area, the division shall return or direct the  
13 return of the difference between the amount apportioned and  
14 eighty percent of the amount collected to the appropriate  
15 delivery service provider. The delivery service provider  
16 shall return to end-use consumers in its assigned service area  
17 the above amount in a manner that reflects the proportion of  
18 collections. The board shall approve the mechanism for return  
19 for electric companies. Consumer-owned utilities shall  
20 determine the return mechanism.

21 c. ELIGIBILITY. Eligibility for the low-income  
22 affordability and low-income energy efficiency programs shall  
23 be determined as follows:

24 (1) A residential end-use consumer with a household income  
25 at or below one hundred fifty percent of the federal poverty  
26 level, as determined annually by the United States department  
27 of health and human services, is eligible to receive low-  
28 income affordability assistance.

29 (2) A residential end-use consumer with a household income  
30 at or below one hundred fifty percent of the federal poverty  
31 level, as determined annually by the United States department  
32 of health and human services, is eligible to receive low-  
33 income energy efficiency program assistance, regardless of  
34 their eligibility to receive low-income affordability  
35 assistance.

1 d. LOW-INCOME AFFORDABILITY PROGRAM. The community action  
2 agencies shall qualify a consumer for participation in the  
3 low-income affordability program and shall notify a person  
4 billing the end-use consumer of the consumer's monthly fixed  
5 credit and the duration for which the monthly fixed credit is  
6 authorized. The monthly fixed credit is the amount necessary  
7 to reduce the consumer's total electric bill to an affordable  
8 percentage of income in accordance with rules adopted by the  
9 division. The affordable percentage of income shall be tiered  
10 to reflect the ratio of the consumer's household income to the  
11 federal poverty level, with greater assistance provided to  
12 those at lower poverty levels, as determined by rules of the  
13 division.

14 Program benefits shall be distributed as a monthly fixed  
15 credit applied toward a consumer's delivery service bill for  
16 provision of electricity. A person billing an end-use  
17 consumer shall subtract the amount of the credit from the  
18 amount of the consumer's bill each month, or an equivalent  
19 amount if a different billing cycle is utilized. If the  
20 monthly fixed credit exceeds the portion of the bill related  
21 to delivery service, the excess shall be applied toward the  
22 cost of the consumer's competitive power supply services. A  
23 person billing the end-use consumer shall bill the appropriate  
24 community action agency for the sum of the total amount of  
25 fixed credits provided to the consumer and the division shall  
26 timely reimburse the person for all credited amounts. Only  
27 those credits that are authorized in accordance with this  
28 subsection shall be reimbursed.

29 e. LOW-INCOME ENERGY EFFICIENCY PROGRAM. Energy  
30 efficiency assistance shall be prioritized based on the end-  
31 use consumers with the largest kilowatt-hours of annual use.  
32 Moneys allocated to the low-income energy efficiency program  
33 may be used for space heating as allowed pursuant to the  
34 federal weatherization assistance program or nonspace heating  
35 as determined by the division as necessary and appropriate to

1 provide maximum comprehensive cost-effective energy efficiency  
2 treatment to low-income households.

3 f. FUNDING. For the first three years the low-income  
4 affordability program and the low-income energy efficiency  
5 program are in effect, funds for the programs shall be  
6 provided by all end-use consumers through a nonbypassable  
7 surcharge on distribution service to be collected by the  
8 person billing the end-use consumer for such distribution  
9 service. The monthly charge shall commence with bills issued  
10 on February 1, 2002, and shall be as follows:

11 (1) Seventy cents for all residential electric accounts.

12 (2) Seventy cents for nonresidential electric accounts  
13 with an annual usage of less than twenty-five thousand  
14 kilowatt-hours in the prior calendar year.

15 (3) Two dollars and fifty cents for nonresidential  
16 electric accounts with an annual usage of twenty-five thousand  
17 kilowatt-hours to one hundred thousand kilowatt-hours in the  
18 prior calendar year.

19 (4) Ten dollars for nonresidential electric accounts with  
20 annual usage of more than one hundred thousand kilowatt-hours  
21 to four hundred thousand kilowatt-hours in the prior calendar  
22 year.

23 (5) Forty dollars for nonresidential electric accounts  
24 with annual usage of more than four hundred thousand kilowatt-  
25 hours to one million five hundred thousand kilowatt-hours in  
26 the prior calendar year.

27 (6) One hundred fifty dollars for nonresidential electric  
28 accounts with annual usage of more than one million five  
29 hundred thousand kilowatt-hours to six million kilowatt-hours  
30 in the prior calendar year.

31 (7) Six hundred dollars for nonresidential electric  
32 accounts with annual usage of more than six million kilowatt-  
33 hours in the prior calendar year.

34 For the purpose of determining the monthly charge, the term  
35 "accounts" may be interpreted by the board in appropriate

1 circumstances to mean end-use consumers. During the second  
2 and third twelve-month periods that the program is in effect,  
3 the monthly charges shall be adjusted as necessary to yield no  
4 less than twenty-three million dollars annually. For  
5 nonresidential consumers with no prior calendar-year usage the  
6 delivery service provider may use a reasonable estimate of the  
7 consumer's usage.

8 All moneys collected pursuant to this subsection shall be  
9 remitted to the treasurer of state. The treasurer shall make  
10 disbursements from this fund as appropriate. The unencumbered  
11 or unobligated moneys remaining at the end of any fiscal year  
12 from the appropriations made in this subsection shall not  
13 revert but shall be available for expenditure during  
14 subsequent fiscal years until expended for the purposes for  
15 which originally appropriated. Interest or earnings on  
16 investments or time deposits of the moneys remitted under this  
17 section shall be retained for the purposes designated in this  
18 section.

19 After the third year of the program, the board shall  
20 annually establish levels of charges on electric accounts  
21 based on the total program budget developed by the division.  
22 When determining the per account charge, the board shall not  
23 substantially deviate from the cost allocation among consumer  
24 groups reflected in the initial funding charges. Any increase  
25 in monthly charges as provided in this paragraph shall not go  
26 into effect without prior approval by joint resolution as  
27 adopted by the general assembly.

28 g. PROGRAM ALLOCATIONS, ADMINISTRATION, AND BUDGETS.

29 (1) Amounts allocated to the low-income affordability  
30 program shall be based on participation rates from prior years  
31 and the level of credits necessary to maintain affordable  
32 energy burdens. Low-income energy efficiency program  
33 allocations shall be based on the level of funding necessary  
34 to deliver adequate energy efficiency to participating  
35 households, as determined by the weatherization assistance

1 program. The level of funding allocated for the low-income  
2 energy efficiency program shall not exceed twenty percent of  
3 total low-income affordability program funding. The level of  
4 funding allocated for administration shall not exceed ten  
5 percent of the amounts allocated for the sum of the low-income  
6 affordability program and the low-income energy efficiency  
7 program.

8 (2) The division shall administer the program.

9 Administration of the program shall include contracting with  
10 community action agencies, enrolling low-income, end-use  
11 consumers in the program, providing outreach and consumer  
12 education, notifying consumers and answering consumer  
13 inquiries, and keeping records relating to the numbers of  
14 program participants and program expenditures.

15 (3) The division shall develop a budget for the low-income  
16 affordability program and the low-income energy efficiency  
17 program on an annual basis.

18 h. IMPLEMENTATION PLAN. Within ninety days after the  
19 effective date of this chapter, the division shall convene an  
20 initial meeting of persons interested in participating in the  
21 development of an implementation plan. Additional meetings  
22 shall be scheduled by the division as necessary. The plan, at  
23 a minimum, shall include the requirements identified in this  
24 subsection.

25 i. DELIVERY SERVICE PROVIDER REPORT. A delivery service  
26 provider shall report to the board annually the number of end-  
27 use consumer accounts in its assigned service area eligible  
28 for each program under paragraph "c".

29 j. BOARD RULES. The board shall propose rules by October  
30 1, 2000, applicable to a delivery service provider and  
31 competitive electric service provider concerning the  
32 collection of funds pursuant to paragraph "f".

33 k. EVALUATION AND PLAN. Every other year, the division,  
34 in consultation with the board, shall evaluate the performance  
35 and effectiveness of the low-income affordability program

1 through use of an independent third party and develop a low-  
2 income needs and resources plan for the state which shall  
3 include a statewide assessment of the need for low-income  
4 affordability assistance and low-income energy efficiency  
5 assistance; an identification of the public and private  
6 resources available to meet the identified needs; and  
7 recommendations on how to coordinate the available resources  
8 to most effectively address the identified needs, taking into  
9 account the difference between short-term and long-term  
10 effectiveness.

11 Upon completion, the evaluation and the plan shall be  
12 submitted to the general assembly.

13 2. CONTRIBUTION FUND.

14 a. A delivery service provider and a licensed competitive  
15 electric service provider may establish a fund whose purposes  
16 shall include receiving contributions to assist consumers with  
17 weatherization measures to improve energy efficiency related  
18 to winter heating and summer cooling and to supplement other  
19 energy assistance sources for the payment of electric bills.

20 b. The delivery service provider or competitive electric  
21 service provider establishing the fund may be reimbursed by  
22 the fund for the reasonable administrative costs of the  
23 billings, disbursements, notices to potential contributors,  
24 and financial recordkeeping. However, such reimbursement  
25 shall not exceed five percent of the total contributions  
26 collected.

27 3. ENVIRONMENTAL ASSESSMENT.

28 a. On and after May 1, 2002, the board shall direct all  
29 delivery service providers with an assigned service area to  
30 collect from each end-use consumer in the assigned service  
31 area, directly or through the competitive electric service  
32 provider billing the end-use consumer, the following  
33 nonbypassable monthly charge, with the proceeds to be remitted  
34 to the treasurer of state as follows:

35 (1) Six cents for all residential electric accounts.

1 (2) Six cents for a nonresidential electric account with  
2 an annual usage of less than twenty-five thousand kilowatt-  
3 hours in the prior calendar year.

4 (3) Twenty cents for a nonresidential electric account  
5 with an annual usage of twenty-five thousand kilowatt-hours to  
6 one hundred thousand kilowatt-hours in the prior calendar  
7 year.

8 (4) Eighty cents for a nonresidential electric account  
9 with annual usage of more than one hundred thousand kilowatt-  
10 hours to four hundred thousand kilowatt-hours in the prior  
11 calendar year.

12 (5) Three dollars and twenty cents for a nonresidential  
13 electric account with annual usage of more than four hundred  
14 thousand kilowatt-hours to one million five hundred thousand  
15 kilowatt-hours in the prior calendar year.

16 (6) Twelve dollars for a nonresidential electric account  
17 with annual usage of more than one million five hundred  
18 thousand kilowatt-hours to six million kilowatt-hours in the  
19 prior calendar year.

20 (7) Forty-eight dollars for a nonresidential electric  
21 account with annual usage of more than six million kilowatt-  
22 hours in the prior calendar year.

23 For the purpose of determining the monthly charge, the term  
24 "accounts" may be interpreted by the board in appropriate  
25 circumstances to mean end-use consumers. The board shall, by  
26 rule, provide a schedule for remittances. The initial rules  
27 shall be proposed by March 1, 2001. The board shall allow  
28 inclusion of the remittance amounts in unbundled distribution  
29 service rates. Eighty-five percent of the remittances  
30 collected pursuant to this subsection is appropriated to the  
31 Iowa energy center created in section 266.39C. Fifteen  
32 percent of the remittances collected pursuant to this  
33 subsection is appropriated to the center for global and  
34 regional environmental research established by the state board  
35 of regents.

1 Notwithstanding section 8.33, any unexpended moneys  
2 remitted to the treasurer of state under this subsection shall  
3 not revert and shall be retained by the centers for the  
4 purposes designated. Notwithstanding section 12C.7,  
5 subsection 2, interest or earnings on investments or time  
6 deposits of the moneys remitted under this subsection shall be  
7 retained and used for the purposes designated.

8 The Iowa energy center and the center for global and  
9 regional environmental research shall each provide a written  
10 annual report to the board which describes each center's  
11 activities and the results that each center has accomplished.  
12 Each report shall include an explanation of initiatives and  
13 projects of importance to the state.

14 4. ENERGY EFFICIENCY PROGRAMS. This chapter shall not be  
15 interpreted to preclude a delivery service provider from  
16 offering energy efficiency programs and tree planting  
17 programs. Such tree planting programs need not be cost  
18 effective.

19 Sec. 14. NEW SECTION. 476B.14 COMPLAINTS.

20 1. A competitive electric service provider, a delivery  
21 service provider, and a control area operator shall develop  
22 and post on the board's website the procedures for filing and  
23 resolving complaints regarding their services and operations.

24 2. The board is authorized to hear all complaints subject  
25 to its jurisdiction by and against an end-use consumer, a  
26 competitive electric service provider, a delivery service  
27 provider, and a control area operator. This subsection does  
28 not confer exclusive jurisdiction in collection matters upon  
29 the board.

30 3. The district court has original jurisdiction concerning  
31 disputes with respect to all rates and charges of a consumer-  
32 owned utility and all other matters concerning a consumer-  
33 owned utility not specifically reserved to the board by this  
34 chapter or another statute. A complaint shall be filed in the  
35 district court for the county in which the complainant resides

1 or, if the complainant is a nonresident, in the district court  
2 for Polk county.

3 4. The board shall render a decision upon a complaint as  
4 soon as practicable. A person aggrieved by the board's  
5 decision may seek judicial review pursuant to chapter 17A.

6 5. A delivery service provider or a competitive electric  
7 service provider shall not take any detrimental action against  
8 an employee of such provider for the filing of a good faith  
9 complaint with the board.

10 Sec. 15. NEW SECTION. 476B.15 TRANSITION CHARGES.

11 1. COSTS OF GENERATION AND CONTRACTS FOR POWER AND ENERGY.

12 An electric company is entitled, but not required, to  
13 implement transition charges under this subsection. If an  
14 electric company elects to implement transition charges, such  
15 charges shall be nonbypassable charges collected from each  
16 end-use consumer within the incumbent provider's assigned  
17 service area. However, transition charges shall not increase  
18 the rates for electric service provided under section 476B.8.  
19 Transition charges under this subsection shall be billed by an  
20 electric company to end-use consumers, directly or through a  
21 competitive electric service provider, commencing with service  
22 rendered on May 1, 2002, and concluding with service rendered  
23 on and including December 31, 2005.

24 Transition charges shall be calculated for each bundled  
25 retail rate group or code existing on the date the electric  
26 company files its unbundled rates pursuant to section 476B.4.  
27 Transition charges shall be calculated each year in which the  
28 electric company is entitled to implement such charges.  
29 Transition charges in cents per kilowatt-hour shall be  
30 calculated by rate group or code by first subtracting the  
31 market price from the cost of generation, and then multiplying  
32 that result times a mitigation factor, the percentage of which  
33 varies by calendar year as follows:

- 34 a. Eighty percent applicable to 2002.  
35 b. Seventy percent applicable to 2003.

1 c. Sixty percent applicable to 2004.

2 d. Fifty percent applicable to 2005.

3 Under no circumstance shall a charge under this subsection  
4 be less than zero.

5 For purposes of this subsection, the cost of generation  
6 shall be stated in cents per kilowatt-hour included in a  
7 bundled rate group or code on the effective date of this  
8 chapter. The cost of generation shall include the return on  
9 plant investment allowed in the most recent rate proceeding,  
10 but shall exclude that portion of regulatory assets to be  
11 recovered under subsection 3 that are attributable to  
12 generation costs, and the amount of nuclear decommissioning  
13 expenses included in the rate group or code.

14 For purposes of this subsection, the market price shall be  
15 stated in cents per kilowatt-hour an electric company should  
16 reasonably be expected to receive for demand and energy from a  
17 rate group or code when sold in a competitive power market.  
18 At a minimum, separate values shall be determined by the board  
19 for firm and interruptible sales. The market price shall be  
20 determined by the board by no later than January 1, 2002, and  
21 shall be updated annually. In determining the market price,  
22 the board shall consider relevant wholesale and retail  
23 contracts for demand and energy sales and purchases,  
24 recognizing such factors as the time differentiation of price  
25 levels in the contracts and whether the prices in the  
26 contracts are for firm or interruptible service. The board  
27 shall also consider other relevant information from power  
28 exchanges, trading hubs, and similar sources.

29 An electric company that elects to implement transition  
30 charges under this subsection shall file tariffs with the  
31 board that identify the cost of generation to be included in  
32 the calculation of transition charges to be paid by end-use  
33 consumers in each bundled rate group or code at the time it  
34 files its initial unbundled rates under section 476B.4. Rate  
35 groups or codes, for purposes of calculating transition

1 charges, shall be defined in tariffs included in the electric  
2 company's filing under section 476B.4, subsection 1. The  
3 board shall issue its decision regarding the transition charge  
4 tariffs at the same time it issues its order regarding the  
5 initial unbundled rates filed under section 476B.4. Charges  
6 approved by the board shall be posted on its website starting  
7 no later than November 1, 2001.

8 2. DIVESTITURE OPTION. The board may permit, but shall  
9 not require, an incumbent provider that is an electric company  
10 to divest itself of its generation assets and contracts for  
11 power and energy.

12 No later than January 1, 2000, an incumbent provider,  
13 including, for the purposes of this subsection, any affiliated  
14 incumbent provider, may submit an election to divest to the  
15 board. The election shall be accompanied by the submittal of  
16 a divestiture plan to the board, which shall review the plan.  
17 By July 1, 2000, the board shall issue an order approving or  
18 modifying the plan. The incumbent provider may revoke its  
19 election within ninety days of the board's order approving or  
20 modifying the plan. If the incumbent provider does not revoke  
21 its election, the incumbent provider shall divest its  
22 generation assets and contracts for power and energy in  
23 accordance with the board's order. Such divestiture must be  
24 completed by December 31, 2001, unless such time is extended  
25 for good cause as determined by the board.

26 If an incumbent provider makes an election to divest, the  
27 incumbent provider shall divest of all generation assets and  
28 contracts for power and energy that are included in the  
29 incumbent provider's most recent board-determined Iowa revenue  
30 requirement except to the extent such divestiture is found by  
31 a court of proper jurisdiction to be impermissible. All  
32 generation assets and contracts for power and energy not  
33 included in the incumbent provider's most recent board-  
34 determined Iowa revenue requirement shall be subject to a  
35 determination by the board as to whether divestiture is in the

1 public interest, except to the extent such divestiture is  
2 found by a court of proper jurisdiction to be impermissible.

3 The board shall not allow any supply contracts, for which  
4 bids are sought as part of the divestiture plan to satisfy an  
5 incumbent provider's standard offer service obligation  
6 pursuant to section 476B.8, to extend beyond December 31,  
7 2005.

8 The board may allow the divestiture plan to include  
9 transfer of the decommissioning responsibility for any nuclear  
10 generation asset to the purchaser if such transfer of  
11 responsibility is deemed by the board to be in the public  
12 interest.

13 For each incumbent provider electing divestiture under this  
14 subsection, the board shall determine the sum of the following  
15 amounts:

16 a. The net of an incumbent provider's generation-related  
17 regulatory assets and liabilities.

18 b. The difference between net plant investment associated  
19 with an incumbent provider's generation assets and the market  
20 value of the generation assets.

21 c. The difference between future contract payments and the  
22 market value of an incumbent provider's purchased power  
23 contracts.

24 When determining the market value of generation assets and  
25 existing purchase power contracts, the board shall rely solely  
26 on the market information resulting from the sale of the  
27 generation assets and the rights to energy and demand under  
28 contracts held by the incumbent provider including the supply  
29 contracts to meet the incumbent provider's standard offer  
30 service obligation.

31 To the extent that the divestiture realizes an amount less  
32 than the sum of the amounts determined in paragraphs "a", "b",  
33 and "c," beginning no later than May 1, 2002, the board shall  
34 provide an incumbent provider a reasonable opportunity to  
35 recover all costs not recovered through the sale of generation

1 assets and the contracts for energy and demand through  
2 nonbypassable charges. This cost recovery opportunity must be  
3 equal to the incumbent provider's opportunity to recover costs  
4 before the effective date of this chapter.

5 To the extent that the divestiture realizes an amount  
6 greater than the sum of the amounts determined in paragraphs  
7 "a", "b", and "c", such difference shall be applied to reduce  
8 end-use consumers' responsibility for nuclear decommissioning  
9 costs held by the incumbent provider after divestiture. To  
10 the extent that the divestiture realizes an amount greater  
11 than the sum of the amounts determined in paragraphs "a", "b",  
12 and "c", and no responsibility for nuclear decommissioning  
13 costs remains with the incumbent provider, the incumbent  
14 provider shall be entitled to retain the remaining amounts.

15 Nothing in this chapter shall be construed to give an  
16 incumbent provider a greater or lesser opportunity to recover  
17 all costs than existed prior to the effective date of this  
18 chapter.

19 This subsection, including the treatment of proceeds from  
20 divestiture, shall not be construed to apply to any other  
21 provision of this chapter or to any regulatory or legal  
22 proceeding not pertaining to this specific subsection.

23 All costs that are afforded recovery as a result of  
24 generation asset divestiture pursuant to this subsection shall  
25 qualify for securitization as set forth in section 476B.17.  
26 All savings from this securitization shall flow back to end-  
27 use consumers through a reduction in the nonbypassable charge  
28 required under this subsection.

29 3. REGULATORY ASSETS AND LIABILITIES.

30 a. Regulatory assets and regulatory liabilities exist  
31 because regulators have allowed recovery of certain costs in  
32 different time periods than normally recognized under  
33 generally accepted accounting principles, with assurances to  
34 an incumbent provider that is an electric company of ultimate  
35 recovery. An incumbent provider that is an electric company

1 shall be permitted, but not required, to recover all of its  
2 net regulatory assets attributable to electric operations in  
3 this state. For purposes of this subsection, net regulatory  
4 assets equals regulatory assets less regulatory liabilities.  
5 For the purpose of this paragraph, regulatory assets shall  
6 include but not be limited to the costs of programs offered  
7 under section 476.6, subsections 17 and 19, and the costs of  
8 contracts or arrangements entered into under section 476.43.

9 b. Recovery of net regulatory assets shall be accomplished  
10 through charges on all delivery services within the electric  
11 company's assigned service area, including electricity  
12 delivered under rates or charges charged pursuant to section  
13 476B.8. The rates or charges may vary by type of delivery  
14 service to the extent such variation is just, reasonable, and  
15 based upon relevant cost factors. The board may require that  
16 such charges be nonbypassable. Collection of the net  
17 regulatory asset charges shall commence on May 1, 2002.

18 c. An electric company electing to recover net regulatory  
19 assets shall annually file with the board its estimates of the  
20 unamortized amount of regulatory assets and liabilities. The  
21 initial estimates shall be filed with the initial unbundled  
22 rate filing pursuant to section 476B.4, followed by annual  
23 filings until the amortization of these net assets is  
24 completed. Such filing shall include a proposed amortization  
25 period or periods over which the net assets are to be  
26 recovered, estimated sales in kilowatt-hours in its assigned  
27 service area during the first year of the proposed  
28 amortization period, and any proposed variation in charges by  
29 type of delivery service. The electric company shall also  
30 file supporting documentation for its proposals. If it does  
31 not approve the electric company's filing, the board after  
32 notice and opportunity for hearing shall determine the  
33 regulatory assets and regulatory liabilities of the electric  
34 company eligible for recovery; the appropriate periods over  
35 which net regulatory assets shall be recovered, which shall

1 not exceed fifteen years; and the charges applicable to each  
2 type of delivery service. In determining net regulatory  
3 assets, the board shall not combine or net assets or  
4 liabilities that would be recorded on the electric company's  
5 books absent regulation or that would cause violation of the  
6 normalization provisions of the Internal Revenue Code. The  
7 board shall issue its decision regarding the regulatory asset  
8 filing at the time it issues its order regarding the initial  
9 unbundled rates filed under section 476B.4. Charges approved  
10 by the board shall be posted on its website starting on  
11 November 1, 2001.

12 4. START-UP COSTS OF DELIVERY SERVICE PROVIDERS. The  
13 board shall permit a delivery service provider that is an  
14 electric company to recover one hundred percent of its  
15 reasonable start-up costs caused by the transition to  
16 competition, including the reasonable costs associated with  
17 implementing the requirements of this chapter and the board  
18 orders issued and rules adopted pursuant to this chapter.  
19 Start-up costs to be considered by the board shall include,  
20 but are not limited to, costs associated with new computer  
21 information systems, changes in computer information systems,  
22 new and existing metering, and costs incurred pursuant to  
23 section 476B.24. The board may require that recoverable  
24 start-up costs be amortized over a period not to exceed ten  
25 years. Start-up cost charges under this subsection shall not  
26 be applicable to the rates for electric service provided under  
27 section 476B.8.

28 An electric company electing to recover start-up costs  
29 shall file estimates of the start-up costs and a tariff for  
30 recovery of the costs with the board at the time it files its  
31 initial unbundled rates pursuant to section 476B.4. The board  
32 shall issue its decision regarding the start-up cost filing at  
33 the time it issues its order regarding the initial unbundled  
34 rate filing. Charges approved by the board shall be posted on  
35 its website starting on November 1, 2001. Collection of

1 start-up cost charges shall commence on May 1, 2002. Electric  
2 companies shall file annually with the board a reconciliation  
3 of start-up costs actually collected versus estimated start-up  
4 costs. The first reconciliation filing shall be made no later  
5 than March 31, 2003, reflecting costs and revenues for the  
6 period ending December 31, 2002. The board shall allow the  
7 electric company to adjust its cost recovery factors to  
8 reflect any differences, with the intent of allowing one  
9 hundred percent recovery of reasonable costs incurred. The  
10 board shall have ninety days to issue its decision on the  
11 reconciliation factors.

12 5. CONSUMER-OWNED UTILITY TRANSITION COSTS.

13 a. ELECTRIC COOPERATIVES. The local governing body of an  
14 electric cooperative shall determine the nature and amount of  
15 transition costs which shall be paid by its respective  
16 members. The local governing body shall have the sole  
17 authority to determine the manner, rates, charges, terms, and  
18 conditions of recovery. A member electric cooperative is  
19 authorized, but not required, to collect the transition costs  
20 through nonbypassable charges on all end-use consumers in its  
21 assigned service area. The calculation of transition costs by  
22 an electric cooperative shall consider the market value of  
23 capacity and energy. The transition cost recovery shall be  
24 reconciled periodically.

25 b. MUNICIPAL UTILITIES. The local governing body of a  
26 municipal utility shall determine the nature and amount of  
27 transition costs which shall be paid through nonbypassable  
28 charges by the end-use consumers in its assigned service area.  
29 The local governing body shall have the sole authority to  
30 determine the manner, rates, charges, terms, and conditions of  
31 recovery. Each municipal utility is authorized, but not  
32 required, to collect the transition costs on all end-use  
33 consumers in its assigned service area. The calculation of  
34 transition costs by a municipal utility shall consider the  
35 market value of capacity and energy. The transition cost

1 recovery shall be reconciled periodically.

2 Sec. 16. NEW SECTION. 476B.16 NUCLEAR DECOMMISSIONING.

3 1. RECOVERY OF NUCLEAR DECOMMISSIONING CHARGES. An  
4 incumbent provider or electric cooperative, and its successors  
5 or assigns, owning an interest in or having responsibility as  
6 a matter of contract, statute, or energy purchase agreement  
7 for the nuclear decommissioning costs of the Duane Arnold  
8 energy center, Quad Cities nuclear power station, Cooper  
9 nuclear station, or La Crosse boiling water reactor shall be  
10 allowed to recover nuclear decommissioning costs. An electric  
11 company shall be allowed to recover nuclear decommissioning  
12 costs allocated to Iowa through nonbypassable charges,  
13 including charges on service provided pursuant to section  
14 476B.8. The tariffs of an electric company for the nuclear  
15 decommissioning charges shall conform to subsection 2. An  
16 electric company shall file its nuclear decommissioning  
17 tariffs with the board as part of the filing of initial  
18 unbundled rates under section 476B.4. The local governing  
19 body of each consumer-owned utility shall determine the amount  
20 of and method and timing for recovery of nuclear  
21 decommissioning costs and shall post that information as  
22 provided in section 476B.4. All nuclear decommissioning  
23 tariffs of electric companies under this section and the  
24 initial charges under such tariffs shall become effective May  
25 1, 2002.

26 2. DESIGN OF NUCLEAR DECOMMISSIONING TARIFF FOR ELECTRIC  
27 COMPANIES. The nuclear decommissioning tariffs of an  
28 incumbent provider that is an electric company shall provide  
29 for the nonbypassable charges to be collected from each end-  
30 use consumer within the incumbent provider's assigned service  
31 area and in each assigned service area in Iowa of any  
32 affiliated incumbent provider. The decommissioning charges  
33 shall be a surcharge upon unbundled distribution service rates  
34 and rates charged pursuant to section 476B.8. Decommissioning  
35 charges shall be billed to each end-use consumer, directly or

1 through a competitive electric service provider, commencing  
2 with bills issued on and after May 1, 2002. The allocation of  
3 decommissioning charges among end-use consumers shall be  
4 subject to approval by the board. The decommissioning charges  
5 in such tariffs shall be set at a level that will ensure the  
6 incumbent provider recovery of its nuclear decommissioning  
7 costs, with the objective of achieving full recovery as of the  
8 date on which decommissioning is commenced for a unit or  
9 units. The decommissioning charges shall be adjusted  
10 periodically to reflect increases or decreases in the  
11 estimated costs of decommissioning the nuclear unit or units,  
12 irrespective of any increases or decreases in other costs or  
13 revenues of the incumbent provider or delivery service  
14 provider. The decommissioning charges shall cease when the  
15 nuclear plant is fully decommissioned or the incumbent  
16 provider no longer has a responsibility for nuclear  
17 decommissioning costs. All revenues collected under the  
18 tariff shall be contributed to appropriate decommissioning  
19 trust funds to be used to decommission the nuclear unit or  
20 units or to reduce the amounts to be charged under such  
21 tariffs in the future. All material changes to the trust fund  
22 agreements, including a change in the trustee, shall be filed  
23 with the board for approval. Decommissioning charges in such  
24 tariffs shall be considered the equivalent of "cost of  
25 service" amounts for purposes of determining contributions  
26 deductible by the incumbent provider pursuant to section 468A  
27 of the Internal Revenue Code.

28 3. ADJUSTMENT OF CHARGES FOR ELECTRIC COMPANIES. Nuclear  
29 decommissioning tariffs filed with the board under this  
30 section by an electric company shall provide that no increase  
31 in charges under the decommissioning tariffs may take effect  
32 until approved by the board. Notice to end-use consumers and  
33 competitive electric service providers served under delivery  
34 service tariffs or with whom the delivery service provider has  
35 delivery service contracts, whether or not written, shall not

1 be required. The board may suspend the filing and hold  
2 hearings as provided in section 476B.9, subsection 5.

3 Sec. 17. NEW SECTION. 476B.17 SECURITIZATION.

4 1. FINDINGS. The general assembly finds and declares all  
5 of the following:

6 a. Securitization is a common financing technique which  
7 has been used by other states as an effective tool to mitigate  
8 transition costs.

9 b. It is in the state's interest to allow securitization  
10 because it will help incumbent providers manage their costs  
11 without increasing rates paid by end-use consumers.

12 c. Securitization will not create obligations of the state  
13 or any of its political subdivisions.

14 2. DEFINITION. For purposes of this section, "incumbent  
15 provider" includes a delivery service provider who was an  
16 incumbent provider prior to May 1, 2002.

17 3. ISSUANCE OF TRANSITIONAL FUNDING ORDERS.

18 a. Upon application of an incumbent provider, the board is  
19 authorized to issue transitional funding orders to create,  
20 establish, and grant rights in, to, and under intangible  
21 transition property in and to any grantee, incumbent provider,  
22 issuer, or assignee in accordance with the terms of such  
23 application.

24 b. After the effective date of this chapter, an incumbent  
25 provider may file any number of applications for transitional  
26 funding orders. An application for a transitional funding  
27 order shall contain the incumbent provider's detailed proposal  
28 for all of the following:

29 (1) The assignment, sale, pledge, or other transfer of, or  
30 the establishment, creation, and granting of rights in, to, or  
31 under intangible transition property.

32 (2) The issuance of transitional funding instruments.

33 (3) The amount of transitional funding instruments to be  
34 issued which amount shall not exceed four hundred million  
35 dollars in the aggregate for any incumbent provider.

1 (4) The method for calculating the amount of instrument  
2 funding charges to be collected.

3 (5) The method for allocating such instrument funding  
4 charges among classes of responsible consumers.

5 (6) The time to maturity for the transitional funding  
6 instruments.

7 (7) The incumbent provider's planned use of the proceeds  
8 from the issuance.

9 c. After notice, the board shall hold a hearing to  
10 determine whether the application and requested transitional  
11 funding order are in compliance with this section. The board  
12 shall complete its review of the application and issue its  
13 final transitional funding order no later than ninety days  
14 after the filing of such application. The order shall create  
15 and establish the proposed intangible transition property and  
16 approve the proposed sale, pledge, assignment, or other  
17 transfer of, or the establishment, creation, and granting of  
18 rights in, to, or under intangible transition property; the  
19 proposed issuance of transitional funding instruments; and the  
20 proposed imposition and collection of the corresponding  
21 instrument funding charges. Such transitional funding order  
22 shall be issued if the board finds that each of the following  
23 conditions are met:

24 (1) The application provides that the incumbent provider  
25 will apply all savings not to exceed two million dollars  
26 annually, from the issuance of the transitional funding  
27 instruments during the term of the transitional funding  
28 instruments to reduce the funding surcharges for the low-  
29 income programs established under section 476B.13, subsection  
30 1. If savings exceed two million dollars annually, the  
31 incumbent provider shall use the amounts in excess of two  
32 million dollars to compensate the incumbent provider for  
33 transition costs associated with generation assets and  
34 contracts for power and energy not recovered under section  
35 476B.15, subsection 1, and if a savings remain during the

1 period ending December 31, 2005, to use the remaining savings  
2 to first reduce charges under section 476B.15, subsection 4,  
3 and second to reduce charges under section 476B.15, subsection  
4 3. Any remaining savings may be retained by the incumbent  
5 provider and used for any lawful purpose. If the incumbent  
6 provider issues transitional funding instruments prior to May  
7 1, 2002, any savings associated with the period prior to May  
8 1, 2002, shall be amortized in equal annual amounts in  
9 accordance with the above purposes over the period from May 1,  
10 2002, through the remaining term of the transitional funding  
11 instruments. Incumbent providers choosing to divest their  
12 generation assets under section 476B.15, subsection 2, shall  
13 first use the savings from securitization to compensate  
14 themselves for any losses which may result from divestiture,  
15 with any remaining savings to be allocated to the purposes,  
16 and in the order provided, as set forth in this subparagraph.

17 (2) The expected maturity date for the transitional  
18 funding instruments, and the final date on which the incumbent  
19 provider, grantee, or assignee is entitled to charge and  
20 collect instrument funding charges, shall each be set to occur  
21 no later than December 31, 2011, subject to subsection 4,  
22 paragraph "m".

23 (3) The instrument funding charges authorized in such  
24 order will be deducted and stated separately from eligible  
25 rates, all as provided in subsection 4, paragraph "d", and in  
26 a manner conforming to the allocation of the instrument  
27 funding charges implemented pursuant to subparagraph (4).

28 (4) The proposed method for allocating such instrument  
29 funding charges among all classes of responsible consumers is  
30 just and reasonable.

31 (5) The issuance of the transitional funding instruments  
32 will not cause eligible rates to increase over the rates which  
33 would otherwise be chargeable from time to time in the absence  
34 of such issuance.

35 (6) Use of transitional funding proceeds shall not result

1 in the common equity component of the incumbent provider's  
2 capital structure, exclusive of the portion of its capital  
3 structure that consists of obligations representing  
4 transitional funding instruments, as measured by the most  
5 recently available thirteen-month average when adjusted for  
6 the use of proceeds, being reduced below the lesser of forty-  
7 two and one-half percent or the common equity percentage as of  
8 December 31, 1998. The incumbent provider shall not use the  
9 proceeds from transitional funding instruments to repay or  
10 retire obligations incurred by any affiliate of the incumbent  
11 provider without the consent of the board. However, consent  
12 is not required to repay or retire debt or equity securities  
13 of the incumbent provider which are held by the parent company  
14 of the incumbent provider. A disbursement out of retained  
15 earnings from the incumbent provider to its parent will not be  
16 treated as repayment or retirement of an obligation of an  
17 affiliate for purposes of this section.

18 (7) The incumbent provider will use the net proceeds of  
19 the sale and issuance of the transitional funding instruments  
20 to repay or refinance debt and equity, or to replenish cash  
21 used for such purposes.

22 d. A transitional funding order issued by the board shall  
23 become effective in accordance with its terms only after the  
24 incumbent provider files with the board its written consent to  
25 all terms and conditions of such order. After the issuance of  
26 a transitional funding order, the incumbent provider, grantee,  
27 or assignee shall retain sole discretion regarding whether to  
28 cause transitional funding instruments to be issued, including  
29 the right to defer or postpone such issuance or to change the  
30 terms of such instruments as allowed by such order.

31 4. TERMS AND PROVISIONS OF TRANSITIONAL FUNDING ORDERS.

32 a. CREATION OF INTANGIBLE TRANSITION PROPERTY. A  
33 transitional funding order shall create intangible transition  
34 property in favor of an incumbent provider or grantee  
35 representing the right to impose and collect instrument

1 funding charges necessary to pay principal and interest on the  
2 transitional funding instruments authorized in the order  
3 together with premium, servicing fees and other fees, costs,  
4 and charges related to such funding instruments, and to fund  
5 or maintain any required reserves, after giving effect to  
6 delays in bill collections and uncollectibles. The party in  
7 whose favor such rights are granted and any assignee of such  
8 rights shall be granted the power to levy general tariffs on  
9 responsible consumers of an incumbent provider or any other  
10 person required to pay an instrument funding charge in order  
11 to collect the instrument funding charges authorized in such  
12 order and in order to facilitate the issuance of transitional  
13 funding instruments authorized in such order. The board may  
14 create, establish, and grant such rights under this paragraph  
15 in and to such party with or without receiving consideration  
16 from such party.

17 b. BASIC TERMS. The transitional funding order shall  
18 authorize the establishment, creation, and granting of rights  
19 in and to intangible transition property; any requested sale,  
20 pledge, assignment, or other transfer of such rights; the  
21 issuance of a specific dollar amount of transitional funding  
22 instruments by or on behalf of an incumbent provider,  
23 assignee, issuer, or grantee, as the case may be in an amount  
24 not exceeding the limits set forth in subsection 3, paragraph  
25 "b"; and the imposition and collection of instrument funding  
26 charges projected to be sufficient to pay when due the  
27 principal of and interest on the corresponding transitional  
28 funding instruments, in each case, together with premium,  
29 servicing fees and other fees, costs, and charges related to  
30 such funding instruments, and to fund or maintain any required  
31 reserves. The transitional funding order shall require that  
32 the proceeds from the issuance of transitional funding  
33 instruments be used for the purposes set forth in subsection  
34 3, paragraph "c". Except where this section specifically  
35 requires otherwise, the collection of instrument funding

1 charges and the allocation of any such collections as among  
2 holders, assignees, issuers, grantees, and any other parties  
3 entitled to receive portions of such collections, may be  
4 accomplished according to the applicable transitional funding  
5 order, or, if the order is silent on any such matters,  
6 according to the documents relating to the pertinent  
7 transitional funding instruments.

8 c. FLEXIBILITY -- CREDIT AND COLLECTION POLICIES. The  
9 board, in a transitional funding order, shall afford  
10 flexibility in establishing the terms and conditions of the  
11 transitional funding instruments including repayment  
12 schedules, collateral, required debt service and other  
13 reserves, interest rates and other financing costs, and the  
14 ability of the incumbent provider, at its option, to effect a  
15 series of issuances of transitional funding instruments and  
16 correlated assignments, sales, pledges, or other transfers of  
17 intangible transition property. At the request of an  
18 incumbent provider, the board in its transitional funding  
19 order may establish such terms with respect to credit and  
20 collection policies to be followed by persons collecting  
21 instrument funding charges as the incumbent provider may  
22 reasonably demonstrate are likely to be required for at least  
23 two nationally recognized statistical rating agencies to rate  
24 the transitional funding instruments in the highest rating  
25 category assigned by such agencies to securities of comparable  
26 maturities.

27 d. TARIFFS. Concurrently with the issuance of  
28 transitional funding instruments, an incumbent provider,  
29 grantee, issuer, or an assignee shall begin to impose and  
30 collect the specified instrument funding charges from  
31 responsible consumers, classes of responsible consumers, and  
32 any other persons or groups of persons as set forth in the  
33 relevant transitional funding order and shall file tariffs in  
34 accordance with this paragraph. As a precondition to the  
35 imposition of any instrument funding charges, an incumbent

1 provider shall file tariffs directing that the amount of such  
2 instrument funding charges be deducted, stated, and collected  
3 separately from the amounts otherwise billed by such incumbent  
4 provider for eligible rates as set forth in the transitional  
5 funding order. Upon the effectiveness of such tariffs, the  
6 amounts of instrument funding charges thereby deducted and to  
7 be deducted become intangible transition property as specified  
8 in the transitional funding order and the rights to such  
9 intangible transition property shall constitute a current  
10 property right. The board shall not review such tariffs  
11 except to confirm that the instrument funding charges  
12 authorized in the transitional funding order have been  
13 deducted and stated separately from eligible rates in effect  
14 at such time, and the filing of any such tariff shall not be  
15 suspended for any other reason. Deductions referred to in  
16 this paragraph shall not be construed as a change in or  
17 otherwise require a recalculation of the authorized amounts of  
18 eligible rates. Instrument funding charges shall be  
19 recoverable with respect to services for which the deductions  
20 provided in this paragraph have become effective and such  
21 deductions shall not be effective with respect to any services  
22 or power in respect of which instrument funding charges have  
23 not been so authorized and imposed.

24 e. PERIODIC ADJUSTMENTS. The board shall provide in any  
25 transitional funding order for a procedure for periodic  
26 adjustments to the instrument funding charges to ensure  
27 adequate revenues from such instrument funding charges for  
28 repaying principal of the transitional funding instruments in  
29 accordance with their expected amortization schedule, for  
30 paying interest and related fees and expenses, and for funding  
31 and maintaining required reserves on a timely basis. If so  
32 requested by an incumbent provider in an application for a  
33 transitional funding order, the transitional funding order may  
34 specify a dollar or percentage amount of variation from the  
35 projected revenues within which no such adjustment will be

1 required, set forth a maximum adjustment amount for the  
2 instrument funding charges, or both. If an adjustment  
3 described in this paragraph is required, such adjustment shall  
4 be implemented by the incumbent provider, grantee, assignee,  
5 or issuer, as applicable, with prior written notice to the  
6 board. Any such adjustment shall be calculated to include  
7 amounts necessary for recovery of any additional costs  
8 incurred by the incumbent provider, grantee, assignee, or  
9 issuer as a result of the relevant delay in collections of  
10 instrument funding charges. If any such adjustment would  
11 cause the amount of any instrument funding charge to exceed  
12 the eligible rates from which such instrument funding charge  
13 is to be deducted, the relevant incumbent provider may ratably  
14 allocate the deficiency to other responsible consumers as part  
15 of the adjustment mechanism set forth in this paragraph and in  
16 the relevant transitional funding order. If, as a result of  
17 any adjustment, the amount of any instrument funding charge,  
18 as adjusted, will exceed an amount greater than the amount of  
19 the instrument funding charge initially authorized by the  
20 board in its transitional funding order, the relevant  
21 incumbent provider shall be obligated to file amendatory  
22 tariffs in compliance with paragraph "f".

23 f. AMENDATORY TARIFFS. If an adjustment under paragraph  
24 "e" results in the amount of any instrument funding charge as  
25 so adjusted exceeding the amount of the instrument funding  
26 charge initially authorized by the board in its transitional  
27 funding order, the relevant incumbent provider shall file  
28 amendatory tariffs reducing the amounts otherwise billed by  
29 such incumbent provider for eligible rates by the amount of  
30 such excess. Such amendatory tariff shall be subject to the  
31 provisions of paragraph "d", except that the failure of such  
32 amendatory tariff to become effective for any reason shall not  
33 delay or impair the effectiveness of the adjustments required  
34 under paragraph "e" and the obligation of responsible  
35 consumers and other persons or groups of persons to pay

1 instrument funding charges as so adjusted shall not be subject  
2 to any defense, counterclaim, or right of setoff arising as a  
3 result of failure by the incumbent provider to comply with  
4 this paragraph. This paragraph does not restrict any  
5 responsible end-use consumer or other person from bringing any  
6 suit in any court or from exercising any other legal or  
7 equitable remedy against an incumbent provider for any failure  
8 by such incumbent provider to comply with this paragraph.

9 g. NONRECOURSE STATUS -- NO DEFENSE, COUNTERCLAIM, OR  
10 SETOFF. Except as otherwise specifically set forth in the  
11 transitional funding order, the transitional funding  
12 instruments issued pursuant to such order shall be nonrecourse  
13 to the credit or to any assets of the incumbent provider other  
14 than any assets comprising intangible transition property.  
15 The obligation of responsible consumers and other persons to  
16 pay instrument funding charges shall be contingent upon the  
17 receipt by such responsible consumers and other persons of  
18 delivery service or other services related to the provision of  
19 electric power for which eligible rates may be assessed, but  
20 the transitional funding order shall specifically provide that  
21 such instrument funding charges will not be subject to any  
22 defense, counterclaim, or right of set-off arising as a result  
23 of failure by the incumbent provider, upon whose application  
24 the intangible transition property was created, to perform or  
25 provide past, present, or future services.

26 h. TRANSFER AND SERVICING. On such conditions as the  
27 board may approve in the relevant transitional funding order,  
28 the interest of any party in intangible transition property  
29 may be assigned, sold or otherwise transferred, in whole or in  
30 part, and may, in whole or in part, be pledged or assigned as  
31 security to or for the benefit of a holder or holders. To the  
32 extent that any such interest or portion of such interest is  
33 assigned, sold, pledged, or otherwise transferred or is  
34 established, created, and granted to a party other than the  
35 incumbent provider, the board, in the relevant transitional

1 funding order, shall authorize the incumbent provider or any  
2 affiliate of the incumbent provider to contract with any owner  
3 or pledgee of such intangible transition property and any  
4 holders of the relevant transitional funding instruments to  
5 collect the applicable instrument funding charges for the  
6 benefit and account of such persons, and such incumbent  
7 provider or affiliate shall, except as otherwise specified in  
8 the transitional funding order, account for and remit the  
9 applicable instrument funding charges, without the obligation  
10 to remit any investment earnings on such charges, to or for  
11 the account of the relevant persons. The obligation of such  
12 incumbent provider or affiliate to collect and remit the  
13 applicable instrument funding charges shall continue  
14 irrespective of whether such incumbent provider is providing  
15 the services to which such instrument funding charges relate.  
16 If the documents creating the transitional funding instruments  
17 so provide, such obligations, in the event of a default by the  
18 incumbent provider or affiliate in performing such  
19 obligations, shall be undertaken and performed by any other  
20 entity selected by the grantee, assignee or any holder, group  
21 of holders or trustee or agent on behalf of such holder or  
22 holders, as the case may be. However, a failure by the  
23 designated party to perform such obligations shall not affect  
24 the existence of the intangible transition property or the  
25 instrument funding charges or the validity or enforceability  
26 of the instrument funding charges in accordance with their  
27 terms.

28 i. REPORTING. An incumbent provider shall file a  
29 statement of the final terms of the issuance of any series of  
30 transitional funding instruments with the board within ninety  
31 days of the receipt of proceeds from such issuance. In  
32 addition, the board may require an incumbent provider to file  
33 periodic reports on its use of the proceeds at intervals of  
34 not less than one year.

35 j. REFINANCING. Any adjustment to instrument funding

1 charges that is necessary due to subsequent refinancing of  
2 transitional funding instruments shall be authorized by the  
3 board in a supplemental order. Unless specifically requested  
4 by the incumbent provider in the application for such  
5 supplemental order, no refinancing of previously issued  
6 transitional funding instruments shall be deemed a new  
7 issuance to be counted towards the dollar limitations set  
8 forth in subsection 3, paragraph "b".

9 k. NO REDUCTION, POSTPONEMENT, IMPAIRMENT, OR TERMINATION.  
10 A transitional funding order, the intangible transition  
11 property created and established by such order, or the  
12 instrument funding charges authorized to be imposed and  
13 collected under such order, shall not be subject to reduction,  
14 postponement, impairment, or termination by any subsequent  
15 action of the board. However, a party to the board's  
16 proceeding relating to the transitional funding order may seek  
17 judicial review of such transitional funding order in  
18 accordance with the provisions of other applicable law.

19 l. ONGOING VALIDITY. A transitional funding order shall  
20 remain valid notwithstanding the invalidation of any portion  
21 of this chapter. A transitional funding instrument,  
22 instrument funding charge, intangible transition property,  
23 lien, or other right established pursuant to a transitional  
24 funding order is valid and binding in accordance with terms of  
25 such order, notwithstanding that such order or any portion of  
26 this chapter is later vacated, modified, or otherwise held to  
27 be wholly or partly invalid.

28 m. CONTINUATION OF INTANGIBLE TRANSITION PROPERTY. The  
29 intangible transition property created under a transitional  
30 funding order and the authority of the grantee, assignee,  
31 issuer, incumbent provider, or other person authorized under  
32 such order to impose and collect instrument funding charges  
33 and to exercise its rights under a transitional funding order,  
34 including the right to make periodic adjustments pursuant to  
35 paragraph "e", shall continue beyond the final date set forth

1 in the applicable transitional funding order until such time  
2 as all transitional funding instruments authorized in such  
3 order have been paid in full. Upon the later of the final  
4 date set forth in the applicable transitional funding order  
5 for the imposition and collection of instrument funding  
6 charges or the repayment in full of any transitional funding  
7 instruments, as applicable, authorized in such order, the  
8 authority to impose and collect the related instrument funding  
9 charges shall cease and any instrument funding charges  
10 collected in excess of the amount required for the repayment  
11 of the transitional funding instruments shall be paid to the  
12 owner of such intangible transition property, and the relevant  
13 incumbent provider shall be entitled to file tariffs revoking  
14 any deductions from eligible rates which were granted in  
15 connection with such instrument funding charges pursuant to  
16 paragraph "d" or "f". The board shall not review such tariffs  
17 except to determine that the rates and charges resulting from  
18 such revocation do not exceed the applicable eligible rates  
19 which would otherwise have been in effect at the time of such  
20 revocation had no instrument funding charges ever been  
21 deducted from such rates.

22 5. RELATIONSHIP TO STATE AND OTHER LAW.

23 a. The state pledges to, and agrees with, the holders of  
24 any transitional funding instruments who may enter into  
25 contracts with an incumbent provider, grantee, assignee, or  
26 issuer pursuant to this section that the state will not in any  
27 way limit, alter, impair, or reduce the value of intangible  
28 transition property created by, or instrument funding charges  
29 approved by, a transitional funding order so as to impair the  
30 terms of any contract made by such incumbent provider,  
31 grantee, assignee, or issuer with such holders or in any way  
32 impair the rights and remedies of such holders until the  
33 pertinent transitional funding instruments and interest,  
34 premium and other fees, costs, and charges related to such  
35 funding instruments, are fully paid and discharged. An

1 incumbent provider, grantee, or issuer is authorized to  
2 include these pledges and agreements of the state in any  
3 contract with the holders of transitional funding instruments  
4 or with any assignees pursuant to this section, and any  
5 assignees are similarly authorized to include these pledges  
6 and agreements of the state in any contract with any issuer,  
7 holder, or any other assignee. This section shall not  
8 preclude the state from requiring adjustments as may otherwise  
9 be allowed by law to eligible rates, so long as any such  
10 adjustment does not directly affect or impair any instrument  
11 funding charges previously authorized by a transitional  
12 funding order issued by the board.

13     b. A transitional funding instrument issued under this  
14 section does not constitute debt or liability of the state or  
15 of any political subdivision, and transitional funding orders  
16 authorizing such issuance do not constitute a pledge of the  
17 full faith and credit of the state or of any political  
18 subdivision. The issuance of transitional funding instruments  
19 shall not directly, indirectly, or contingently obligate the  
20 state or any political subdivision to levy or to pledge any  
21 form of taxation or to make any appropriation for the payment  
22 of such funding instruments. A transitional funding  
23 instrument shall be payable solely from the intangible  
24 transition property or from such other proceeds or property as  
25 may be pledged for such funding instrument. This section  
26 shall not be construed to prevent the state or any political  
27 subdivision from owning any interest in a grantee, assignee,  
28 or issuer or to prevent any incumbent provider, grantee,  
29 issuer, or assignee from selling, pledging, or assigning  
30 intangible transition property or from providing recourse or  
31 guarantees or any other third-party credit enhancement in  
32 connection with such sale, pledge, or assignment.

33     c. The procedures set forth in this section shall  
34 constitute the sole procedures by which rights in, to, or  
35 under intangible transition property may be created,

1 established, and granted, and no other approvals shall be  
2 required under other law for such creation, establishment,  
3 grant, or for the issuance of transitional funding  
4 instruments. The rights of incumbent providers, grantees,  
5 assignees, and holders in and to any such intangible  
6 transition property shall be interpreted in accordance with  
7 this section, which shall supersede any other law, rule, or  
8 regulation to the contrary.

9 6. SECURITY INTERESTS IN INTANGIBLE TRANSITION PROPERTY.

10 a. Intangible transition property or any right, title, or  
11 interest in such intangible transition property shall not  
12 constitute property in which a security interest may be  
13 created under the uniform commercial code. Additionally, such  
14 property, or any such right, title, or interest in such  
15 property shall not be deemed proceeds of any property which is  
16 not intangible transition property. For purposes of this  
17 paragraph, the terms "account" and "general intangible", as  
18 defined under section 554.9106 of the uniform commercial code,  
19 and the term "instrument", as used in the uniform commercial  
20 code, shall be deemed to exclude any such intangible  
21 transition property or any right, title, or interest in such  
22 intangible transition property.

23 b. The granting, perfection, and enforcement of security  
24 interests in intangible transition property shall be governed  
25 by this section and not by the uniform commercial code.

26 c. A valid and enforceable security interest in intangible  
27 transition property shall attach and be perfected only as  
28 follows:

29 (1) To the extent a transitional funding instrument is  
30 purported to be secured by intangible transition property as  
31 specified in the applicable transitional funding order, the  
32 lien of the transitional funding instrument shall attach  
33 automatically to such intangible transition property from the  
34 time of issuance of the transitional funding instrument. Such  
35 lien shall be a valid and enforceable security interest in the

1 intangible transition property securing the transitional  
2 funding instruments and shall be continuously perfected if,  
3 before the date of issuance of the applicable transitional  
4 funding instrument or within no more than ten days after such  
5 issuance, a filing has been made by or on behalf of the holder  
6 with the executive secretary of the board stating that such  
7 transitional funding instrument has been or is to be issued.  
8 Any such filing made with the board in respect to such  
9 transitional funding instrument shall take precedence over any  
10 subsequent filing except as may otherwise be provided in the  
11 applicable transitional funding order.

12 (2) A lien under this paragraph is enforceable against the  
13 incumbent provider, any grantee, issuer, or assignee, and any  
14 third party, including a judicial lien creditor, subject only  
15 to the rights of a third party holding a security interest in  
16 the intangible transition property previously perfected in the  
17 manner described in this subsection if value has been given by  
18 the purchaser of a transitional funding instrument. A  
19 perfected lien in intangible transition property is a  
20 continuously perfected security interest in all then existing  
21 or future revenues and proceeds arising with respect to the  
22 associated intangible transition property whether or not the  
23 electric power and related services included in the  
24 calculation of such revenues and proceeds have been provided.  
25 A lien created under this paragraph is perfected, and ranks  
26 prior to any other lien, including a judicial lien, which  
27 subsequently attaches to the intangible transition property  
28 and to any other rights created by the transitional funding  
29 order or any revenues or proceeds of the foregoing. The  
30 relative priority of a lien created under this subsection is  
31 not defeated or adversely affected by changes to the  
32 transitional funding order or to the instrument funding  
33 charges payable by a responsible consumer, class of  
34 responsible consumers, or other person or group of persons  
35 obligated to pay such charges.

1 (3) The relative priority of a lien created under this  
2 subsection is not defeated or adversely affected by the  
3 commingling of revenues arising with respect to intangible  
4 transition property with funds of the incumbent provider or  
5 other funds of the assignee, issuer, or grantee.

6 (4) If a default occurs under a transitional funding  
7 instrument, the holders of such instrument or their authorized  
8 representative, as secured parties, may foreclose or otherwise  
9 enforce the lien in the intangible transition property  
10 securing the transitional funding instrument, subject to the  
11 rights of any third parties holding prior security interests  
12 in the intangible transition property previously perfected as  
13 provided in this subsection. Upon application by a holder or  
14 such holder's authorized representative, without limiting any  
15 other remedies, the board shall order the sequestration and  
16 payment to such holder or authorized representative of  
17 revenues arising with respect to the intangible transition  
18 property pledged to the holder. An order under this  
19 subsection shall remain in full force and effect  
20 notwithstanding any bankruptcy, reorganization, or other  
21 insolvency proceeding with respect to the incumbent provider,  
22 grantee, assignee, or issuer.

23 (5) The board shall maintain segregated records which  
24 reflect the date and time of receipt of all filings made under  
25 this subsection. The board may provide that transfers of  
26 intangible transition property be filed in accordance with the  
27 same system.

28 7. TRUE SALE CHARACTERIZATION OF TRANSFER.

29 A sale, assignment, grant, or other transfer of intangible  
30 transition property in a transaction approved in a  
31 transitional funding order, unless otherwise provided in the  
32 documents governing such transaction, shall be irrevocable as  
33 against the incumbent provider requesting such transitional  
34 funding order and shall be treated as an absolute transfer of  
35 all of the transferor's right, title, and interest in, to, and

1 under such intangible transition property, or, in the case of  
2 a grant to a grantee, as an absolute vesting of such property  
3 in the name of the grantee. Any such sale, assignment, grant,  
4 or other transfer is perfected as against third persons,  
5 including judicial lien creditors, when the sale, assignment,  
6 grant, or other transfer has become effective as between the  
7 parties, and shall place such intangible transition property  
8 beyond the reach of the transferor or incumbent provider and  
9 their respective creditors, as in a true sale, and not as a  
10 pledge or other financing, of such intangible transition  
11 property. The characterization of a sale, assignment, grant,  
12 or other transfer as an absolute transfer or vesting and the  
13 corresponding characterization of the grantee's or  
14 transferee's property interest shall not be defeated or  
15 adversely affected by, among other things, any of the  
16 following: the commingling of revenues arising with respect  
17 to intangible transition property with funds of the incumbent  
18 provider or other funds of the assignee, issuer, or grantee;  
19 the granting to holders of transitional funding instruments a  
20 preferred right to the intangible transition property, whether  
21 direct or indirect; the provision by the incumbent provider,  
22 grantee, assignee, or issuer of any recourse, collateral, or  
23 credit enhancement with respect to transitional funding  
24 instruments; the retention by the assigning party of a partial  
25 interest in any intangible transition property, whether direct  
26 or indirect, or whether subordinate or otherwise; or the  
27 incumbent provider's responsibilities for collecting  
28 instrument funding charges and any retention of bare legal  
29 title for the purpose of such collection activities. The  
30 treatment of any such sale, assignment, grant, or other  
31 transfer for federal tax purposes shall be governed by  
32 applicable law without regard to this section.

33 8. TREATMENT OF TRANSITIONAL FUNDING INSTRUMENTS IN  
34 REGULATED RATES. The debt associated with a transitional  
35 funding instrument shall not be included in the regulated

1 capital structure for the purpose of determining regulated  
2 rates for any service.

3 9. ACTIONS WITH RESPECT TO INTANGIBLE TRANSITION PROPERTY  
4 AND RELATED INSTRUMENT FUNDING CHARGES.

5 a. The board shall have exclusive jurisdiction over any  
6 dispute arising out of the obligations to impose and collect  
7 instrument funding charges. This section does not prevent a  
8 holder from bringing an action in any court or from exercising  
9 any other legal or equitable remedy against an incumbent  
10 provider for failure to distribute collections of instrument  
11 funding charges or for any other failure by the incumbent  
12 provider to perform the contractual obligations agreed to by  
13 the incumbent provider under any documents pertaining to, or  
14 executed in connection with, a transitional funding instrument  
15 issued by or on behalf of the incumbent provider.

16 b. An incumbent provider, issuer, assignee, grantee, or  
17 holder is expressly permitted to bring an action against a  
18 responsible consumer or other person for nonpayment of any  
19 instrument funding charges constituting a part of the  
20 intangible transition property then held by the incumbent  
21 provider, issuer, assignee, grantee, or holder. Any such  
22 action shall be subject to any and all applicable consumer  
23 credit protection laws and other laws relating to origination,  
24 collection, and reporting of consumer credit obligations.

25 10. TAXATION OF TRANSFERS OF INTANGIBLE TRANSITION  
26 PROPERTY. A sale, grant, pledge, assignment, or other  
27 transfer of intangible transition property is exempt from any  
28 state or local sales, income, transfers, gains, receipts, or  
29 similar taxes. A transfer of intangible transition property  
30 shall be treated as a pledge or other financing for state tax  
31 purposes, including state and local income and franchise  
32 taxes, unless the documents governing such transfer  
33 specifically state that the transfer is intended to be treated  
34 otherwise.

35 Sec. 18. NEW SECTION. 476B.18 RECIPROCITY.

1 A person with an assigned service area in this state,  
2 including an affiliate of such person, shall not offer  
3 competitive power supply services within another person's  
4 assigned service area in this state until the former person  
5 allows the latter person a reasonable opportunity to offer  
6 competitive power supply services in the former person's  
7 assigned service area in this state. If the board suspends  
8 the dates for commencement of the option to choose competitive  
9 electric service pursuant to section 476B.7, the board shall  
10 determine the manner and extent to which this section applies.

11 Sec. 19. NEW SECTION. 476B.19 APPLICABILITY OF AUTHORITY  
12 -- CONSUMER-OWNED UTILITIES.

13 An electric cooperative and a municipal utility are not  
14 subject to regulation by the board except as specifically  
15 provided in this chapter.

16 Sec. 20. NEW SECTION. 476B.20 REMEDIES AND PENALTIES.

17 1. The board, after notice and opportunity for hearing,  
18 may impose the following penalties and remedies for the  
19 following violations:

20 a. The board may impose a civil penalty of up to two  
21 thousand dollars for each nonmaterial violation of a licensing  
22 requirement, including all board rules and orders, governing a  
23 competitive electric service provider. The maximum aggregate  
24 penalty per person pursuant to this paragraph shall not exceed  
25 twenty thousand dollars per calendar year.

26 b. The board may impose a civil penalty of up to ten  
27 thousand dollars for each material violation of a licensing  
28 requirement, including all board rules and orders, governing a  
29 competitive electric service provider. The maximum aggregate  
30 penalty per person pursuant to this paragraph shall not exceed  
31 two hundred thousand dollars per calendar year.

32 c. The board may impose a civil penalty of up to twenty-  
33 five thousand dollars for each repeat violation of a licensing  
34 requirement, including all board rules and orders, governing a  
35 competitive electric service provider if the board finds the

1 violation to be substantial. The maximum aggregate penalty  
2 per person under this paragraph shall not exceed one million  
3 dollars per calendar year.

4 d. For repeat violations of licensing requirements,  
5 including board rules and orders, governing a competitive  
6 electric service provider, the board may by order prohibit the  
7 competitive electric service provider or any other person  
8 acting on behalf of the competitive electric service provider  
9 from billing charges directly associated with the violation.

10 e. For repeat substantial violations under paragraph "c"  
11 occurring within a twenty-four-month period, the board may  
12 revoke the competitive electric service provider's license if  
13 the board determines that no less severe remedy is likely to  
14 correct the competitive electric service provider's conduct.  
15 A repeat violation for the purpose of this paragraph means  
16 that the occurrence of the second applicable violation takes  
17 place subsequent to the date the board has issued a notice of  
18 violation in a contested case on the initial violation, and  
19 the board finds that the same provision of this chapter, or  
20 the same requirement of a board rule or order, has been  
21 violated in both contested cases. The written notice of  
22 violation given by the board under this paragraph shall  
23 specify an appropriate and reasonable time for compliance.

24 f. The board may issue a cease and desist order if the  
25 board finds a competitive electric service provider has  
26 engaged in conduct to monopolize in the relevant competitive  
27 market, including, but not limited to predatory pricing as  
28 defined by applicable law. The board's determination of  
29 predatory pricing shall be given no weight in any legal action  
30 brought in court, except with respect to judicial review of a  
31 ruling brought pursuant to section 476B.23. For a repeat  
32 violation of a cease and desist order issued pursuant to this  
33 paragraph, the board may revoke a competitive electric service  
34 provider's license if the board determines that no less severe  
35 remedy is likely to result in a change in the competitive

1 electric service provider's conduct. This paragraph shall not  
2 be construed as creating an exemption from federal or state  
3 antitrust laws.

4 g. If a competitive electric service provider  
5 substantially defaults on its obligations such that a control  
6 area operator or other person provides emergency supply to  
7 serve a customer of the defaulting competitive electric  
8 service provider, the board may impose a monetary penalty on  
9 the competitive electric service provider which does not  
10 exceed three times the cost of the emergency supply and may  
11 also revoke a competitive electric service provider's license  
12 if the board determines that no less severe remedy is likely  
13 to result in a change in the competitive electric service  
14 provider's conduct.

15 h. The board may issue a cease and desist order if any  
16 competitive electric service provider has engaged or is  
17 engaging in any act or practice in violation of this chapter  
18 or rule or order of the board. Such order is effective when  
19 issued unless otherwise specified in the order. For a  
20 violation of a cease and desist order issued pursuant to this  
21 paragraph, the board may revoke a competitive electric service  
22 provider's license if the board determines that no less severe  
23 remedy is likely to result in a change of the competitive  
24 electric service provider's conduct.

25 i. The board may impose a civil penalty of up to five  
26 thousand dollars for each nonmaterial violation of this  
27 chapter, or a board rule or order, governing delivery service  
28 providers. The maximum aggregate penalty to which a delivery  
29 service provider may be subject pursuant to this paragraph  
30 shall not exceed twenty thousand dollars per calendar year.

31 j. The board may impose a civil penalty of up to ten  
32 thousand dollars for a material violation of this chapter, or  
33 a board rule or order, by a delivery service provider. The  
34 maximum aggregate penalty to which a delivery service provider  
35 may be subject pursuant to this paragraph shall not exceed two

1 hundred thousand dollars per calendar year.

2 k. The board may impose a civil penalty of up to twenty-  
3 five thousand dollars for each repeat violation of this  
4 chapter, or a board rule or order, by a delivery service  
5 provider if the board finds the violation to be substantial.  
6 The maximum aggregate penalty to which a delivery service  
7 provider may be subject pursuant to this paragraph shall not  
8 exceed one million dollars per calendar year.

9 1. For a violation of this chapter, or a board rule or  
10 order, by a delivery service provider, in addition to the  
11 penalties and remedies in this subsection, the board may issue  
12 a cease and desist order and disallow cost recovery of any  
13 associated costs in electric company rate proceedings. Such  
14 cease and desist order is effective when issued unless  
15 otherwise specified in the order.

16 2. The board may issue a cease and desist order in an  
17 emergency, without hearing or notice, if the board receives a  
18 written verified complaint or affidavit showing that a person  
19 is selling competitive electric services without being duly  
20 licensed or is engaging in conduct that creates an immediate  
21 danger to the public safety or reliability of the delivery  
22 system or is reasonably expected to cause significant,  
23 imminent, and irreparable public injury. An emergency cease  
24 and desist order is effective immediately and continues in  
25 force and effect until further order of the board or until  
26 stayed by a court of competent jurisdiction. A hearing shall  
27 be held by the board within ten business days of the issuance  
28 of the emergency cease and desist order in which the board  
29 shall in a final order affirm, modify, or set aside the  
30 emergency cease and desist order.

31 3. The board, after notice and opportunity for hearing,  
32 may order restitution for a person injured by a violation of  
33 any board rule including, but not limited to, rules concerning  
34 deceptive, abusive, and unfair sales practices, and the  
35 provision of safe, reliable, and prompt delivery services and

1 competitive electric services. The board shall not have  
2 authority to order special, incidental, consequential, or  
3 punitive damages.

4 4. The board, after written notice and opportunity for  
5 hearing, may impose a civil penalty of up to twenty-five  
6 thousand dollars per occurrence upon a delivery service  
7 provider for an excessive number of delivery-related outages,  
8 excessive outage durations, or failure to undertake reasonable  
9 and prudent maintenance measures to avoid outages. For  
10 purposes of this subsection, an occurrence does not mean per  
11 day or per consumer affected by an occurrence. The board  
12 shall adopt rules specifying the circumstances under which  
13 penalties would apply and shall give due consideration to  
14 conditions within and beyond the control of the delivery  
15 service provider. Delivery service providers that are  
16 electric companies shall not include such civil penalties in  
17 regulated rates. The initial rules shall be proposed by  
18 November 1, 2001.

19 5. A person, after previously having been found by the  
20 board to have violated a provision of this chapter or a rule  
21 or order of the board, who willfully violates the same  
22 provision of this chapter, the same rule or provision of an  
23 order, shall after notice and opportunity for hearing be  
24 subject to a civil penalty of up to twenty-five thousand  
25 dollars per violation. For the purposes of this subsection,  
26 "willful" means knowing and deliberate, with a specific intent  
27 to violate.

28 6. Except as provided in subsection 4, each violation is a  
29 separate offense, and in the case of a continuing violation,  
30 each day a violation continues, after a reasonable time  
31 specified for compliance in the written notice by the board,  
32 is a separate and distinct offense. A civil penalty assessed  
33 under this section may be compromised below the maximum by the  
34 board. In determining the amount of the penalty, or the  
35 amount agreed upon in the compromise, the board may consider

1 the appropriateness of the penalty in relation to the  
2 financial resources of the person being penalized, the gravity  
3 of the violation, the good faith of the person in attempting  
4 to achieve compliance following notification of a violation,  
5 and any other relevant factors. The board shall not impose a  
6 civil penalty for any single violation in excess of fifty  
7 thousand dollars and for any continuing violation in excess of  
8 five hundred thousand dollars.

9 7. Civil penalties collected by the board under this  
10 section shall be forwarded to the treasurer of state.

11 8. The board may apply to the district court of any county  
12 of the state to enforce any order made or action taken by the  
13 board pursuant to this section or to have a violation stopped  
14 or prevented by injunction, mandamus, or other appropriate  
15 remedy.

16 9. The board may award costs of litigation, including  
17 reasonable attorney and expert witness fees, actually incurred  
18 by a person found by the board to have materially contributed  
19 to the enforcement of the remedies or penalties provided for  
20 in this section. Litigation costs, in an amount approved by  
21 the board and not to exceed twenty-five thousand dollars,  
22 shall be paid by the person or persons found by the board to  
23 be in violation of this chapter. In determining the award,  
24 the board may consider the financial resources of such person.

25 10. A person who suffers harm as a result of a violation  
26 of this chapter or of any rule or order lawfully issued by the  
27 board pursuant to this chapter shall have a right to bring an  
28 action in the courts of this state to recover any damages  
29 caused by such violation.

30 Sec. 21. NEW SECTION. 476B.21 REHEARINGS BEFORE THE  
31 BOARD.

32 Notwithstanding chapter 17A, a party, as defined in the  
33 rules adopted by the board, to a contested case before the  
34 board may within twenty days after the issuance of the final  
35 decision apply for a rehearing. The board shall either grant

1 or refuse an application for rehearing within thirty days  
2 after the filing of the application or, after giving the  
3 interested parties notice and opportunity to be heard and  
4 after consideration of all the facts, including those arising  
5 since the making of the order, may abrogate or modify its  
6 order. A failure by the board to act upon the application for  
7 rehearing within the thirty-day period shall be deemed a  
8 denial of the application. Neither the filing of an  
9 application for rehearing nor the granting of the application  
10 shall stay the effectiveness of an order unless the board so  
11 directs.

12 Sec. 22. NEW SECTION. 476B.22 JUDICIAL REVIEW.

13 1. Notwithstanding chapter 17A, the district court for  
14 Polk county has exclusive venue for the judicial review under  
15 chapter 17A of actions of the board pursuant to section  
16 476B.4, subsection 1, section 476B.8, subsections 1, 2, and 3,  
17 and section 476B.9, subsections 5 and 7.

18 2. Upon the filing of a petition for judicial review  
19 pursuant to subsection 1, the clerk of the district court  
20 shall notify the chief justice of the supreme court for  
21 purposes of assignment of a district judge under section  
22 602.1212. The judicial review proceeding shall be heard by  
23 the district judge appointed by the supreme court under  
24 section 602.1212, but in the court of venue under subsection  
25 1.

26 3. Notwithstanding chapter 17A, if a delivery service  
27 provider that is an electric company seeks judicial review of  
28 an order approving rates for the delivery service provider,  
29 the level of rates that may be collected, under bond and  
30 subject to refund, while the judicial review proceeding is  
31 pending is limited to the level of the temporary rates set by  
32 the board, or the level of the final rates set by the board,  
33 whichever is greater. During the period the judicial review  
34 proceeding is pending, the board shall retain jurisdiction to  
35 determine the rate of interest to be paid on any refunds

1 eventually required on rates collected during judicial review.

2 Sec. 23. NEW SECTION. 476B.23 CONTRACT RIGHTS.

3 Except as provided in this section, this chapter shall not  
4 affect the rights and duties of parties under a contract for  
5 electric service in effect on the effective date of this  
6 chapter. Notwithstanding a provision in a contract to the  
7 contrary, contracts for bundled electric service executed  
8 before the effective date of this chapter between an incumbent  
9 provider and a nonresidential end-use consumer that uses fewer  
10 than one hundred thousand kilowatt-hours in 2001 or a  
11 residential end-use consumer may be terminated without penalty  
12 by the consumer on or after May 1, 2002, upon thirty days  
13 prior written notice.

14 Sec. 24. NEW SECTION. 476B.24 UTILITY EMPLOYEE  
15 TRANSITION SERVICES AND BENEFITS.

16 1. The general assembly finds, based on experience in  
17 other industries that have undergone similar transitions, that  
18 the introduction of competition into the state's electric  
19 utility industry may result in workforce reductions by  
20 electric companies which may adversely affect persons who have  
21 been employed by this state's electric utilities in functions  
22 important to the public convenience and welfare. The general  
23 assembly further finds that the impacts on employees and their  
24 communities of any necessary reductions in the utility  
25 workforce caused by this restructuring of the electric  
26 industry shall be mitigated to the extent practicable through  
27 such means as offers of voluntary severance, retraining, early  
28 retirement, outplacement, and related benefits. Therefore,  
29 before any such reduction in the workforce during the period  
30 between the effective date of this chapter and January 1,  
31 2006, an electric utility shall present to its employees or  
32 their representatives a workforce reduction plan outlining the  
33 means by which the electric utility intends to mitigate the  
34 impact of such workforce reduction on its employees. For the  
35 purpose of this section, the term "electric utility" means the

1 electric delivery service operations in Iowa and the electric  
2 generating operations and units located in Iowa of incumbent  
3 providers other than consumer-owned utilities.

4     2. In the event of a sale, purchase, or any other transfer  
5 of ownership by an electric utility, during the period from  
6 the effective date of this chapter to January 1, 2006, of one  
7 or more Iowa divisions, business units, generating stations,  
8 or generating units located in Iowa, the electric utility's  
9 contract or agreement with the acquiring person shall require  
10 that the acquiring person hire a sufficient number of  
11 nonsupervisory employees to operate and maintain the station,  
12 division, or unit by initially making offers of employment to  
13 the nonsupervisory workforce of the electric utility's  
14 division, business unit, generating stations, or generating  
15 unit at no less than the wage rates and substantially  
16 equivalent fringe benefits and terms and conditions of  
17 employment that are in effect at the time of transfer of  
18 ownership of the division, business unit, generating station,  
19 or generating units. The wage rates and substantially  
20 equivalent fringe benefits and terms and conditions of  
21 employment shall continue for at least thirty months from the  
22 time of the transfer of ownership unless the parties mutually  
23 agree to different terms and conditions of employment within  
24 that thirty-month period. The electric utility shall offer a  
25 transition plan to those nonsupervisory employees who are not  
26 offered jobs by the acquiring person because that person has a  
27 need for fewer workers. If there is litigation concerning the  
28 sale or other transfer of ownership of the electric utility's  
29 divisions, business units, generating stations, or generating  
30 units, the thirty-month period will begin on the date the  
31 acquiring person takes control or management of the divisions,  
32 business units, generating stations, or generating units of  
33 the electric utility.

34     3. If an electric utility transfers ownership of one or  
35 more of its divisions, business units, generating stations, or

1 generating units located in Iowa to an affiliate, during the  
2 period from the effective date of this chapter to January 1,  
3 2006, that affiliate shall comply with the transition  
4 provisions in subsection 2. If ownership of the affiliate is  
5 subsequently sold or transferred to another person during the  
6 transition period, the transition provisions in subsection 2  
7 shall continue to apply.

8 Sec. 25. NEW SECTION. 476B.25 REPORTS TO GENERAL  
9 ASSEMBLY.

10 1. After providing an opportunity for public input, the  
11 board shall submit to the secretary of the senate and the  
12 chief clerk of the house of representatives for transmittal to  
13 the Iowa senate and house of representatives a report on or  
14 before January 10, 2005, which includes both of the following:

15 a. An evaluation of the effectiveness of competition in  
16 the market for each competitive electric service.

17 b. Recommendations, if any, that the general assembly  
18 should consider to increase the effectiveness of competition  
19 in the markets for all competitive electric services.

20 2. On or before January 10, 2005, the consumer advocate  
21 shall provide a written report to the general assembly that  
22 sets forth the consumer advocate's conclusions regarding the  
23 effectiveness of competition in the market for competitive  
24 electric services. The report may include any recommendations  
25 which the consumer advocate believes the general assembly  
26 should consider in light of the conclusions.

27 Sec. 26. NEW SECTION. 28F.15 POWERS -- CONFLICTING  
28 PROVISIONS.

29 In addition to the powers conferred elsewhere in this  
30 chapter, an electric power agency may exercise all other  
31 powers reasonably necessary or appropriate for or incidental  
32 to the effectuation of its authorized purposes including  
33 without limitation, the powers enumerated in chapters 6A and  
34 6B for purposes of constructing or acquiring electric power  
35 facilities within this state. The failure of a city to comply

1 with requirements of section 28F.1, relating to joining an  
2 electric power agency for the purpose of financing electric  
3 power facilities, shall not limit the ability of that electric  
4 power agency to jointly finance open access transmission  
5 facilities pursuant to this subchapter. An electric power  
6 agency may exercise in connection with its property and  
7 affairs, and in connection with property within its control,  
8 any and all powers which might be exercised by a natural  
9 person or a private corporation in connection with similar  
10 property and affairs. The enumeration of specific powers and  
11 functions in this subchapter is not a limitation of the powers  
12 of a public agency or an electric power agency as otherwise  
13 provided by law. For purposes of this subchapter, open access  
14 transmission facilities are those available for use by others  
15 in a manner comparable to the use of transmission facilities  
16 of a public utility subject to the federal Power Act.

17 Sec. 27. NEW SECTION. 28F.16 ISSUANCE OF BONDS AND NOTES  
18 -- PURPOSES.

19 An electric power agency may from time to time issue its  
20 bonds or notes in such principal amounts as the electric power  
21 agency deems necessary to provide sufficient funds to carry  
22 out the following corporate purposes and powers:

23 a. The construction of open access transmission facilities  
24 to be owned or leased by the electric power agency, or the  
25 acquisition of any interest or any right to capacity in such  
26 facilities constructed on or after July 1, 1999.

27 b. The funding or refunding of the principal of, or  
28 interest or redemption premiums on, any bonds or notes issued  
29 by the electric power agency whether or not the bonds or notes  
30 or interest to be funded or refunded has become due.

31 c. The establishment or increase of reserves to secure or  
32 to pay the bonds or notes, or interest on such bonds or notes.

33 d. The payment of all other costs or expenses of the  
34 electric power agency incident to and necessary to carry out  
35 the foregoing corporate purposes and powers.

1     Sec. 28. NEW SECTION. 28F.17 BONDS AND NOTES AUTHORIZED  
2 BY RESOLUTION OF BOARD -- TERMS.

3     1. Bonds or notes of an electric power agency shall be  
4 authorized by resolution of its board of directors and may be  
5 issued under the resolution or under a trust indenture or  
6 other security agreement, in one or more series, which shall  
7 include all of the following:

8     a. Date of issue.

9     b. Date of maturity.

10    c. Rate of interest.

11    d. Amount of denomination.

12    2. The terms and conditions in the resolution, trust  
13 indenture, or other security agreement shall provide for all  
14 of the following:

15    a. The form of the bond or note, either coupon or  
16 registered.

17    b. Conversion, registration, and exchange privileges.

18    c. Rank or priority.

19    d. Execution requirements.

20    e. Medium and place of payment.

21    f. Terms of redemption with or without premium.

22    g. Such other terms and conditions as the resolution,  
23 trust indenture, or other security agreement may provide.

24    3. Bonds and notes issued pursuant to this subchapter  
25 shall not be restricted by any other law limiting the amounts,  
26 maturities, interest rates, or other terms of obligation of  
27 public agencies or private persons. Chapter 75 shall not  
28 apply to such bonds or notes.

29     Sec. 29. NEW SECTION. 28F.18 BONDS AND NOTES PAYABLE  
30 SOLELY FROM AGENCY REVENUES OR FUNDS.

31     The principal of and interest upon any bonds or notes  
32 issued by an electric power agency shall be payable solely  
33 from the revenues or funds pledged or available for their  
34 payment as authorized in this subchapter. Each bond and note  
35 shall contain a statement that the principal or interest

1 associated with such bond or note is payable solely from  
2 revenues or funds of the electric power agency, and that the  
3 state, any political subdivision of the state other than the  
4 electric power agency, or any public agency which is a member  
5 of the electric power agency is not obligated to pay the  
6 principal or interest and that the full faith and credit or  
7 the taxing power of the state, any political subdivision of  
8 the state, or any such public agency is not pledged to the  
9 payment of the principal of or the interest on the bonds or  
10 notes.

11 Sec. 30. NEW SECTION. 28F.19 BONDS AND NOTES -- TYPES --  
12 SOURCES FOR PAYMENT -- SECURITY.

13 Except as may be otherwise expressly provided by this  
14 subchapter or by the electric power agency, every issue of  
15 bonds or notes of the electric power agency shall be payable  
16 out of any revenues or funds of the electric power agency,  
17 subject only to any agreements with the holders of particular  
18 bonds or notes pledging any particular revenues or funds. An  
19 electric power agency may issue types of bonds or notes as it  
20 may determine, including bonds or notes as to which the  
21 principal and interest are payable exclusively from the  
22 revenues from one or more projects, or from an interest in  
23 such projects or a right to capacity of such projects, or from  
24 one or more revenue-producing contracts made by the electric  
25 power agency with any person, or from its revenues generally.  
26 Any bonds or notes may be additionally secured by a pledge of  
27 any grant, subsidy, or contribution from any public agency or  
28 other person, or a pledge of any income or revenues, funds, or  
29 moneys of the electric power agency from any source  
30 whatsoever.

31 Sec. 31. NEW SECTION. 28F.20 BONDS, NOTES, AND RATES FOR  
32 DEBT SERVICE NOT SUBJECT TO STATE APPROVAL.

33 Bonds or notes of an electric power agency may be issued  
34 under this subchapter, and rents, rates, and charges may be  
35 established pursuant to section 28F.5 and pledged for the

1 security of bonds or notes, and interest and redemption  
2 premiums on such bonds or notes, without obtaining the consent  
3 of any department, division, commission, board, bureau, or  
4 agency of the state and without any other proceeding or the  
5 happening of any other condition or occurrence except as  
6 specifically required by this subchapter.

7 Sec. 32. NEW SECTION. 28F.21 BONDS AND NOTES TO BE  
8 NEGOTIABLE.

9 All bonds and notes of an electric power agency shall be  
10 negotiable within the meaning and for all the purposes of the  
11 uniform commercial code, subject only to any registration  
12 requirement.

13 Sec. 33. NEW SECTION. 28F.22 VALIDITY OF BONDS AND NOTES  
14 AT DELIVERY -- TEMPORARY BONDS.

15 Any bonds or notes may be issued and delivered,  
16 notwithstanding that one or more of the officers executing  
17 them shall have ceased to hold office at the time when the  
18 bonds or notes are actually delivered. Pending preparation of  
19 definitive bonds, an electric power agency may issue temporary  
20 bonds which shall be exchanged for the definitive bonds.

21 Sec. 34. NEW SECTION. 28F.23 PUBLIC OR PRIVATE SALE OF  
22 BONDS AND NOTES.

23 Bonds or notes of an electric power agency may be sold at  
24 public or private sale for a price and in a manner as  
25 determined by the agency.

26 Sec. 35. NEW SECTION. 28F.24 BONDS AND NOTES SUITABLE  
27 INVESTMENTS FOR GOVERNMENTAL UNITS, FINANCIAL INSTITUTIONS,  
28 AND FIDUCIARIES.

29 A bank, trust company, savings bank, building and loan  
30 association, savings and loan association, credit union,  
31 investment company, insurance company, insurance association,  
32 executor, guardian, trustee, and other fiduciaries responsible  
33 for the investment of funds, may legally invest any debt  
34 service funds, money, or other funds belonging to them or  
35 within their control in any bonds or notes issued pursuant to

1 this subchapter, and the bonds or notes shall be authorized  
2 security for any and all public deposits.

3 Sec. 36. NEW SECTION. 28F.25 RESOLUTION, TRUST  
4 INDENTURE, OR SECURITY AGREEMENT CONSTITUTES CONTRACT --  
5 PROVISIONS.

6 1. The resolution, trust indenture, or other security  
7 agreement under which any bonds or notes are issued shall  
8 constitute a contract with the holders of the bonds or notes,  
9 and may contain provisions, among others, prescribing any of  
10 the following:

11 a. The terms and provisions of the bonds or notes.

12 b. The mortgage or pledge of and the grant of a security  
13 interest in any real or personal property and all or any part  
14 of the revenue from any project or any revenue-producing  
15 contract made by the electric power agency with any person to  
16 secure the payment of bonds or notes, subject to any  
17 agreements with the holders of bonds or notes which might then  
18 exist.

19 c. The custody, collection, securing, investment, and  
20 payment of any revenues, assets, money, funds, or property  
21 with respect to which the electric power agency may have any  
22 rights or interest.

23 d. The rates or charges for electric energy sold by, or  
24 services rendered by, the electric power agency, the amount to  
25 be raised by the rates or charges, and the use and disposition  
26 of any or all revenue.

27 e. The creation of reserves or debt service funds and the  
28 regulation and disposition of such reserves or funds.

29 f. The purposes to which the proceeds from the sale of any  
30 bonds or notes to be issued may be applied, and the pledge of  
31 the proceeds to secure the payment of the bonds or notes.

32 g. Limitations on the issuance of any additional bonds or  
33 notes, the terms upon which additional bonds or notes may be  
34 issued and secured, and the refunding of outstanding bonds or  
35 notes.

1 h. The rank or priority of any bonds or notes with respect  
2 to any lien or security.

3 i. The creation of special funds or moneys to be held in  
4 trust or otherwise for operating expenses, payment, or  
5 redemption of bonds or notes, reserves or other purposes, and  
6 the use and disposition of moneys held in these funds.

7 j. The procedure by which the terms of any contract with  
8 or for the benefit of the holders of bonds or notes may be  
9 amended or abrogated, the amount of bonds or notes the holders  
10 of which must consent to such amendment or abrogation, and the  
11 manner in which consent may be given.

12 k. The definition of the acts or omissions to act which  
13 shall constitute a default in the duties of the electric power  
14 agency to holders of its bonds or notes, and the rights and  
15 remedies of the holders in the event of default including, if  
16 the electric power agency so determines, the right to  
17 accelerate the due date of the bonds or notes or the right to  
18 appoint a receiver of the property or revenues subject to the  
19 lien of the resolution, trust indenture, or other security  
20 agreement.

21 l. Any other or additional agreements with or for the  
22 benefit of the holders of bonds or notes or any covenants or  
23 restrictions necessary or desirable to safeguard the interests  
24 of the holders.

25 m. The custody of any of its properties or investments,  
26 the safekeeping of such properties or investments, the  
27 insurance to be carried on such properties or investments, and  
28 the use and disposition of insurance proceeds.

29 n. The vesting in a trustee, within or outside the state,  
30 of such properties, rights, powers, and duties in trust as the  
31 electric power agency may determine; or the limiting or  
32 abrogating of the rights of the holders of any bonds or notes  
33 to appoint a trustee, or the limiting of the rights, powers,  
34 and duties of such trustee.

35 o. The appointment of, and the establishment of the duties

1 and obligations of, any paying agent or other fiduciary within  
2 or outside the state.

3 Sec. 37. NEW SECTION. 28F.26 MORTGAGE OR TRUST DEED TO  
4 SECURE BONDS.

5 For the security of bonds or notes issued, or to be issued,  
6 by an electric power agency, the electric power agency may  
7 mortgage or execute deeds of trust of the whole or any part of  
8 its property.

9 Sec. 38. NEW SECTION. 28F.27 NO PERSONAL LIABILITY ON  
10 BONDS OR NOTES.

11 An official, director, or member of an electric power  
12 agency, or any person executing bonds or notes pursuant to  
13 this subchapter shall not be liable personally on the bonds or  
14 notes or be subject to any personal liability or  
15 accountability by reason of the issuance of such bonds or  
16 notes.

17 Sec. 39. NEW SECTION. 28F.28 REPURCHASE OF SECURITIES.

18 An electric power agency may purchase, out of any funds  
19 available for such purchase, bonds or notes, and may hold,  
20 pledge, cancel, or resell the bonds or notes, subject to and  
21 in accordance with any agreements with the holders.

22 Sec. 40. NEW SECTION. 28F.29 PLEDGE OF REVENUE AS  
23 SECURITY.

24 An electric power agency may pledge its rates, rents, and  
25 other revenues, or any part of such rates, rents, or other  
26 revenues, as security for the repayment, with interest and  
27 redemption premiums, if any, of the moneys borrowed by it or  
28 advanced to it for any of its authorized purposes and as  
29 security for the payment of amounts due and owed by it under  
30 any contract.

31 Sec. 41. Section 384.24, subsection 4, Code 1999, is  
32 amended by adding the following new paragraph:

33 NEW PARAGRAPH. j. The acquisition of competitive electric  
34 services, as defined in chapter 476B, to meet the demands of  
35 city residents.

1     Sec. 42. Section 384.84, subsection 1, Code 1999, is  
2 amended to read as follows:

3     1. The governing body of a city utility, combined utility  
4 system, city enterprise, or combined city enterprise may  
5 establish, impose, adjust, and provide for the collection of  
6 rates and charges to produce gross revenues at least  
7 sufficient to pay the expenses of operation and maintenance of  
8 the city utility, combined utility system, city enterprise, or  
9 combined city enterprise. When revenue bonds or pledge orders  
10 are issued and outstanding pursuant to this division, the  
11 governing body shall establish, impose, adjust, and provide  
12 for the collection of rates to produce gross revenues at least  
13 sufficient to pay the expenses of operation and maintenance of  
14 the city utility, combined utility system, city enterprise, or  
15 combined city enterprise, and to leave a balance of net  
16 revenues sufficient to pay the principal of and interest on  
17 the revenue bonds and pledge orders as they become due and to  
18 maintain a reasonable reserve for the payment of principal and  
19 interest, and a sufficient portion of net revenues must be  
20 pledged for that purpose. Rates must be established by  
21 ordinance of the council or by resolution of the trustees,  
22 published in the same manner as an ordinance. However, prices  
23 for electric services subject to direct competition under  
24 chapter 476B may be changed in accordance with a policy that  
25 has been adopted in the same manner as rates.

26     Sec. 43. Section 388.6, Code 1999, is amended to read as  
27 follows:

28     388.6 DISCRIMINATION IN RATES.

29     A city utility or a combined utility system may not provide  
30 use or service at a discriminatory rate, except to the city or  
31 its agencies, as provided in section 384.91. However, the  
32 pricing of competitive electric services, as defined in  
33 section 476B.3, at market rates is not prohibited.

34     Sec. 44. Section 474.9, Code 1999, is amended by striking  
35 the section and inserting in lieu thereof the following:

## 1 474.9 GENERAL JURISDICTION OF UTILITIES BOARD.

2 1. The board shall have broad general powers to effect the  
3 purposes of this chapter and chapters 476, 476A, 476B, 478,  
4 479, 479A, and 479B. The board may issue subpoenas and pay  
5 the same fees and mileage as are payable to witnesses in the  
6 courts of record of general jurisdiction. The board shall  
7 adopt rules pursuant to chapter 17A to govern the exercise of  
8 its powers and duties, the practice and procedure before it,  
9 and to govern the form, contents, and filing of reports,  
10 documents, and other papers as required.

11 2. The board shall employ at rates of compensation  
12 consistent with current standards in industry, such  
13 professionally trained economists, engineers, accountants,  
14 attorneys, and skilled examiners and inspectors, secretaries,  
15 clerks, and other employees as it may find necessary for the  
16 full and efficient discharge of its duties and  
17 responsibilities as required by this chapter and chapters 476,  
18 476A, 476B, 478, 479, 479A, and 479B.

19 3. The board may intervene in any proceedings before the  
20 federal energy regulatory commission or any other federal or  
21 state regulatory body when it finds that any decision of the  
22 commission would adversely affect the costs of regulated or  
23 competitive utility services within this state.

24 4. The board shall have authority to inquire into the  
25 management of the business of all public utilities and  
26 delivery service providers that are electric companies, and  
27 shall keep itself informed as to the manner and method in  
28 which the same is conducted, and may obtain from any public  
29 utility or delivery service provider all necessary information  
30 to enable the board to perform its duties.

31 5. To the maximum extent fair and equitable, the board  
32 shall directly charge its expenses and those of the consumer  
33 advocate to the person causing the board or consumer advocate  
34 to incur those expenses in accomplishing the purposes of the  
35 board. No part of such expenses shall be charged to persons,

1 who without expanding the scope of the proceeding, intervene  
2 in good faith in a board proceeding initiated by an entity  
3 subject to the board's rate and licensing jurisdiction, the  
4 consumer advocate, or the board on its own motion. For  
5 allocations in complaint proceedings, the board may consider  
6 the financial resources of the parties and the contribution to  
7 the public interest.

8 6. a. In order to carry out the duties imposed upon it by  
9 law, the board may allocate the expenses attributable to such  
10 duties to the parties to proceedings before the board or to  
11 persons participating in other matters before the board. The  
12 board shall ascertain the certified expenses incurred by the  
13 consumer advocate division of the department of justice in the  
14 performance of its duties under the law and may allocate those  
15 expenses that are directly chargeable.

16 b. The board shall ascertain the total of the division's  
17 expenditures during each year that is reasonably attributable  
18 to the performance of its duties under the law. The board  
19 shall add to this total the certified expenses of the consumer  
20 advocate as provided under section 475A.6 and shall deduct all  
21 amounts chargeable directly to any person under any law. The  
22 remainder may be assessed by the board to all entities  
23 providing service over which the board has jurisdiction. The  
24 assessment shall be in proportion to the respective gross  
25 operating revenues of such entities during the last calendar  
26 year from intrastate operations over which the board has  
27 jurisdiction. The board shall not assess the same transaction  
28 twice. If any portion of the remainder can be identified with  
29 a specific type of utility service, the board may allocate  
30 those expenses to the corresponding entities over which the  
31 board has jurisdiction. Assessments may be made quarterly  
32 based upon estimates of the expenditures for the fiscal year  
33 of the utilities division and the consumer advocate. Not more  
34 than ninety days following the close of the fiscal year, the  
35 utilities division shall conform the amount of the prior

1 fiscal year's assessments to the requirements of this section.  
2 The total amount that may be assessed to an entity under  
3 authority of this paragraph shall not exceed six-tenths of one  
4 percent of the total gross operating revenues during the  
5 calendar year derived from intrastate operations over which  
6 the board has jurisdiction. For public utilities exempted  
7 from board rate regulation pursuant to chapter 476 and  
8 delivery service providers that are incumbent provider  
9 consumer-owned utilities pursuant to chapter 476B, the  
10 assessments under this paragraph shall be computed at one-half  
11 the rate used in computing the assessment for other utilities  
12 and delivery service providers that are electric companies.

13 c. A person subject to assessment shall pay the division  
14 the amount assessed against it within thirty days from the  
15 time the division mails notice to it of the amount due unless  
16 it shall file with the board objections in writing setting out  
17 the grounds upon which it claims that such assessment is  
18 excessive, erroneous, unlawful, or invalid. Upon the filing  
19 of such objections the board shall set the matter down for  
20 hearing and issue its order in accordance with its findings in  
21 such proceeding, which order shall be subject to review as  
22 provided in this chapter. All amounts collected by the  
23 division pursuant to this section shall be deposited with the  
24 treasurer of state and credited to the general fund of the  
25 state.

26 d. Whenever the board deems it necessary in order to carry  
27 out the duties imposed by law, the board may expend additional  
28 sums beyond those sums appropriated. However, the authority  
29 to add additional personnel or contract for additional  
30 assistance must first be approved by the director of the  
31 department of management. The costs of any additional  
32 employees and contract services shall be assessed and paid in  
33 the same manner as other expenses are paid under this section.  
34 There is appropriated out of any funds in the state treasury  
35 not otherwise appropriated, such sums as may be necessary to

1 enable the board to hire additional staff and contract for  
2 services under this section. The authority to hire additional  
3 temporary or permanent staff that is granted to the board by  
4 this section shall not be subject to limitation by an  
5 administrative or executive order or decision that restricts  
6 the number of state employees or the filling of employee  
7 vacancies, and shall not be subject to limitation by any law  
8 of this state that restricts the number of state employees or  
9 the filling of employee vacancies unless that law is made  
10 applicable by express reference to this section. Fees paid to  
11 the utilities division shall be deposited in the general fund  
12 of the state. These funds, upon appropriation by the general  
13 assembly, shall be used for payment of the expenses of the  
14 utilities division and the consumer advocate division.  
15 Subject to this section, the utilities division or the  
16 consumer advocate division may keep on hand with the treasurer  
17 of state funds in excess of the current needs of the utilities  
18 division or the consumer advocate division.

19 e. The administrator and consumer advocate shall account  
20 for receipts and disbursements according to the separate  
21 duties imposed upon the utilities division and the consumer  
22 advocate division by the laws of this state and each separate  
23 duty shall be fiscally self-sustaining.

24 f. All fees and other moneys collected under this section  
25 shall be deposited into the general fund of the state and  
26 expenses required to be paid under this section shall be paid  
27 from funds appropriated for those purposes. Moneys deposited  
28 into the general fund of the state pursuant to this section  
29 shall be used in accordance with section 8.60.

30 Sec. 45. Section 476.1, subsection 1, Code 1999, is  
31 amended to read as follows:

32 1. Furnishing gas by piped distribution system or  
33 electricity to the public for compensation.

34 Sec. 46. Section 476.1, Code 1999, is amended by adding  
35 the following new subsection:

1 NEW SUBSECTION. 4. Furnishing electricity to the public  
2 for compensation, except to the extent inconsistent with  
3 chapter 476B, as follows:

4 a. (1) Until May 1, 2002, for an electric company, as  
5 defined in section 476B.3.

6 (2) Until the date selected by the governing body of each  
7 consumer-owned utility, as defined in section 476B.3.

8 b. Except as provided in paragraph "c", after the dates  
9 specified in paragraph "a", an electric company and a  
10 consumer-owned utility, as so defined, shall not be subject to  
11 this chapter.

12 c. The dates specified in paragraph "a" shall be adjusted,  
13 if necessary, consistent with an action of the board  
14 suspending the dates for commencement of the option to choose  
15 competitive electric services pursuant to section 476B.7,  
16 subsection 4.

17 Sec. 47. Section 476A.6, Code 1999, is amended to read as  
18 follows:

19 476A.6 DECISION -- CRITERIA.

20 The board shall render a decision on the application in an  
21 expeditious manner. A certificate shall be issued to the  
22 applicant if the board finds ~~at~~ both of the following:

23 ~~1--The-services-and-operations-resulting-from-the~~  
24 ~~construction-of-the-facility-are-required-by-the-present-or~~  
25 ~~future-public-convenience,-use-and-necessity-~~

26 ~~2-~~ 1. The applicant is willing to perform such services  
27 and construct, maintain, and operate the facility pursuant to  
28 the provisions of the certificate and this chapter.

29 ~~3-~~ 2. The construction, maintenance, and operation of the  
30 facility will cause minimum adverse land use, environmental,  
31 and aesthetic impact and are consonant with reasonable  
32 utilization of air, land, and water resources ~~for-beneficial~~  
33 ~~purposes-considering-available-technology-and-the-economics-of~~  
34 ~~available-alternatives.~~

35 ~~4--The-applicant,-if-a-public-utility-as-defined-in~~

1 section-476.17-has-in-effect-a-comprehensive-energy-management  
2 program-designed-to-reduce-peak-loads-and-to-increase  
3 efficiency-of-use-of-energy-by-all-classes-of-customers-of-the  
4 utility,-and-the-facility-in-the-application-is-necessary  
5 notwithstanding-the-existence-of-the-comprehensive-energy  
6 management-program;--As-used-in-this-subsection,-a  
7 "comprehensive-energy-management-program"--includes-at-a  
8 minimum-the-following:

9 a.--Establishment-of-load-management-and-interruptible  
10 service-programs,-where-cost-effective-

11 b.--Development-of-wheeling-agreements-and-other-energy  
12 sharing-agreements,-where-cost-effective-with-utilities-that  
13 have-available-capacity-

14 c.--Establishment-of-cost-effective-energy-efficiency-and  
15 renewable-energy-services-and-programs-

16 d.--Compliance-with-board-rules-on-energy-management  
17 procedures-

18 5.--The-applicant,-if-a-public-utility-as-defined-in  
19 section-476.17-shall-demonstrate-to-the-board-that-the-utility  
20 has-considered-sources-for-long-term-electric-supply-from  
21 either-purchase-of-electricity-or-investment-in-facilities  
22 owned-by-other-persons-

23 6.--The-applicant,-if-a-public-utility-as-defined-in  
24 section-476.17-has-considered-all-feasible-alternatives-to-the  
25 proposed-facility-including-nongeneration-alternatives,-has  
26 ranked-those-alternatives-by-cost,-has-implemented-the-least-  
27 cost-alternatives-first,-and-the-facility-in-the-application  
28 is-necessary-notwithstanding-the-implementation-of-these  
29 alternatives-

30 Sec. 48. Section 476A.7, subsection 1, paragraph b, Code  
31 1999, is amended to read as follows:

32 b. Gives To the extent the applicant proves the location  
33 of generation at the site is required to maintain or enhance  
34 the reliability of the delivery system serving the public,  
35 gives the applicant the power of eminent domain to-the-extent

1 and under such conditions as the board may approve, prescribe,  
2 and find necessary ~~for the public convenience, use and~~  
3 ~~necessity,~~ proceeding in the manner of works of internal  
4 improvement under chapter 6B. The burden of proving the  
5 necessity for the exercise of the power of eminent domain  
6 shall be on the person issued seeking the certificate.

7 Sec. 49. Section 476A.15, Code 1999, is amended to read as  
8 follows:

9 476A.15 WAIVER.

10 The board, if it determines that the public interest would  
11 not be adversely affected, may waive any of the requirements  
12 of this chapter ~~for facilities with a capacity of one hundred~~  
13 ~~or fewer megawatts.~~

14 Sec. 50. Section 478.3, subsection 1, paragraph h, Code  
15 1999, is amended to read as follows:

16 h. An allegation that the proposed construction is  
17 necessary to serve a public use. This allegation may be  
18 satisfied by the filing of an order of the federal energy  
19 regulatory commission or its successor directing that the  
20 project be constructed.

21 Sec. 51. NEW SECTION. 478.34 RELATIONSHIP TO COMPETITIVE  
22 SERVICES.

23 The rights and powers conferred under this chapter,  
24 including the right of eminent domain, shall be interpreted  
25 and exercised in a manner consistent with the provisions of  
26 chapter 476B.

27 Sec. 52. Section 499.14A, Code 1999, is amended to read as  
28 follows:

29 499.14A ELECTRIC COOPERATIVE ASSOCIATION MEMBERSHIPS.

30 An electric ~~generation and transmission~~ cooperative  
31 association may have one or more classes of members.  
32 Qualifications, requirements, methods of acceptance, terms,  
33 conditions, termination, and other incidents of membership  
34 shall be set forth in the bylaws of the association. An  
35 ~~electric utility as defined in section 476.22 and a person who~~

1 ~~generates or transmits electric power for sale at wholesale to~~  
2 ~~an electric utility may become a member in accordance with the~~  
3 ~~bylaws.~~

4 Sec. 53. Section 499.30, subsection 5, Code 1999, is  
5 amended to read as follows:

6 5. Notwithstanding an association's articles of  
7 incorporation, for each taxable year of the association, the  
8 association shall allocate all remaining net earnings to the  
9 account of each member, including subscribers described in  
10 section 499.16, ratably in proportion to the business the  
11 member did with the association during that year. The  
12 directors shall determine, or the articles of incorporation or  
13 bylaws of the association may specify, the percentage or the  
14 amount of the allocation to be currently paid in cash.

15 However, for a cooperative association, other than an electric  
16 cooperative association other than a public utility as defined  
17 in section 476.1, the amount to be currently payable in cash  
18 shall not exceed twenty percent of the allocation during any  
19 period when unpaid local deferred patronage dividends of  
20 deceased members for prior years are outstanding.

21 Notwithstanding the twenty percent allocation limitation, the  
22 directors of a cooperative association or the articles of  
23 incorporation or bylaws of the association may specify any  
24 percentage or amount to be currently paid in cash to the  
25 estates of deceased natural persons who were members. All the  
26 remaining allocation not paid in cash shall be transferred to  
27 a revolving fund as provided in section 499.33 and credited to  
28 the members and subscribers. The credits in the revolving  
29 fund are referred to in this chapter as deferred patronage  
30 dividends.

31 Sec. 54. Section 499.33, subsection 2, paragraphs a and b,  
32 Code 1999, are amended to read as follows:

33 a. Prior to other payments of deferred patronage dividends  
34 or redemption of preferred stock held by members, the  
35 directors of a cooperative association, other than a an

1 ~~electric~~ cooperative association ~~which-is-a-public-utility-as~~  
2 ~~defined-in-section-476-1~~, shall pay local deferred patronage  
3 dividends and redeem local deferred patronage preferred stock  
4 of deceased natural persons who were members, and may pay  
5 deferred patronage dividends or may redeem preferred stock of  
6 deceased natural persons who were members or of members who  
7 become ineligible, without reference to the order of priority.

8 b. The directors of a an electric cooperative association  
9 ~~which-is-a-public-utility-as-defined-in-section-476-1~~ may pay  
10 deferred patronage dividends and redeem preferred stock of  
11 deceased natural persons who were members, and may pay all  
12 other deferred patronage dividends or redeem preferred stock  
13 of members without reference to priority.

14 Sec. 55. STATUTORY CONSTRUCTION. This Act shall not be  
15 construed to invalidate any proceedings under statutes  
16 existing prior to the effective date of this Act.  
17 Additionally, this Act shall not affect any action,  
18 litigation, or appeal pending prior to the effective date of  
19 this Act.

20 Sec. 56. DIRECTIONS TO CODE EDITOR. The Code editor shall  
21 codify sections 28F.15 through 28F.29, as enacted in this Act,  
22 as a separate subchapter of chapter 28F.

23 Sec. 57. EFFECTIVE DATE. This Act takes effect on June 1,  
24 1999.

#### 25 EXPLANATION

26 This bill creates new Code chapter 476B, which provides for  
27 restructuring of portions of the electric utility industry and  
28 related matters. Generally, the bill provides that all  
29 consumers will be given the option to choose an electric  
30 supplier at some future date as determined in the bill.

31 New Code section 476B.1 establishes the title of the  
32 chapter as the "Electric Choice and Competition Act".

33 New Code section 476B.2 sets forth legislative findings  
34 concerning restructuring.

35 New Code section 476B.3 establishes definitions for key

1 terms used in the new Code chapter.

2 New Code section 476B.4 provides for the unbundling of  
3 rates and charges by electric companies and consumer-owned  
4 utilities (electric cooperatives and municipal utilities).  
5 The bill directs the electric companies and consumer-owned  
6 utilities to post such rates and charges on the utilities  
7 board's website. The section also provides for the posting of  
8 all tariffs for transmission service and ancillary services  
9 applicable to competitive electric service provider and end-  
10 use consumer transactions by delivery service providers  
11 providing transmission service and by control area operators.

12 New Code section 476B.5 provides that within 90 days of the  
13 effective date of new Code chapter 476B, the board is to  
14 convene a meeting of persons interested in participating in  
15 the development of a consumer education program. Such  
16 education program is to consist of two steps including message  
17 development and message dissemination. The board is to  
18 determine the method of message dissemination for electric  
19 companies, and each local governing body is to determine the  
20 method of message dissemination for consumer-owned utilities.  
21 The bill provides that the total cost of message development  
22 and dissemination shall not exceed \$6 million. The program is  
23 to be funded through the imposition of a nonbypassable charge  
24 on bills issued for electric service, with collection to be  
25 completed by May 1, 2002.

26 New Code section 476B.6 establishes consumer protections,  
27 as well as defining the rights of consumers with respect to  
28 competitive electric services. The section prohibits a person  
29 from providing or offering to provide competitive electric  
30 services to an end-use consumer, or from aggregating end-use  
31 consumers for the acquisition of competitive electric services  
32 without first obtaining a license from the board. The section  
33 authorizes the board to adopt rules to require a competitive  
34 electric service provider to disclose to residential end-use  
35 consumers information regarding service prices, terms, and

1 conditions. The board is authorized to adopt additional  
2 licensing requirements regarding adequate notice to end-use  
3 consumers prior to automatic contract renewal; circumstances  
4 under which an end-use consumer has the right to terminate a  
5 competitive electric service contract; and other reasonable  
6 conditions or restrictions on a license. The board is  
7 directed to maintain, and make available upon request, a list  
8 of all licensed providers of competitive electric services.  
9 The bill exempts from the licensing requirement an incumbent  
10 provider that is a consumer-owned utility who chooses to  
11 provide competitive electric services only within its assigned  
12 service area.

13 The section provides that an end-use consumer shall have  
14 access to competitive electric services and regulated delivery  
15 services as provided in the new Code chapter. The section  
16 sets forth rights of consumers under the bill.

17 New Code section 476B.7 provides that an end-use consumer  
18 located in the assigned service area of an electric company  
19 will have the option to choose competitive electric services  
20 from competitive electric service providers and unbundled  
21 delivery services from the delivery service provider beginning  
22 on May 1, 2002. An end-use consumer located in the assigned  
23 service area of a consumer-owned utility will have the option  
24 to choose such services on a date as determined by the  
25 consumer-owned utility's local governing body, but in no event  
26 prior to May 1, 2002, or after October 1, 2002. The section  
27 provides that the board may suspend the dates for commencement  
28 of the option to choose if the board determines that essential  
29 deadlines cannot reasonably be met or there is a threat to  
30 service reliability or the public safety.

31 New Code section 476B.8 provides for standard offer  
32 service. Standard offer service will be available for  
33 nonresidential end-use consumers that purchased fewer than  
34 25,000 kilowatt-hours of electric service in 2001 and  
35 subsequent calendar years and residential end-use consumers

1 who do not chose a competitive electric service provider. The  
2 service will be provided by the incumbent provider and shall  
3 be regulated. Such service shall continue until the earlier  
4 of the end-use consumer making a choice of competitive  
5 electric service, the end-use consumer no longer qualifies to  
6 receive standard offer service, or January 1, 2006.

7 Termination of standard offer service on January 1, 2006, is  
8 conditioned upon the board making certain findings. The  
9 section provides for transitional service for certain end-use  
10 consumers and for universal service protections and provides  
11 that low-income consumers receiving universal service are  
12 protected from disconnection of service from November 1  
13 through April 1.

14 New Code section 476B.9 sets forth the responsibilities and  
15 rights of delivery service providers. A delivery service  
16 provider is required to provide safe, reliable, and prompt  
17 delivery services and facilities. The board is given general  
18 oversight responsibility for delivery service safety  
19 requirements and inspection and maintenance activities for all  
20 delivery service providers. The section provides that  
21 unbundled delivery service must be provided on a  
22 nondiscriminatory and comparable service basis. The section  
23 provides that an incumbent provider and a delivery service  
24 provider do not have any obligation to provide competitive  
25 electric services to an end-use consumer that has an option to  
26 choose competitive electric services. The section also  
27 provides for assigned service areas for delivery service  
28 providers, certificates of authority to furnish delivery  
29 service to end-use consumers already receiving delivery  
30 service; the obligation to extend delivery service facilities;  
31 delivery service rate regulation; and rate complaints filed by  
32 the consumer advocate. The section also provides that a  
33 delivery service provider that is an electric company shall  
34 not directly or indirectly include in distribution service  
35 rates or charges any costs or expenses attributable to the

1 sale, lease, or other conveyance of commercial and residential  
2 electric appliances, interior lighting systems or fixtures, or  
3 electric heating, ventilating, or air conditioning systems and  
4 component parts, or the servicing, repair, or maintenance of  
5 such equipment.

6 New Code section 476B.10 sets forth the responsibilities  
7 and rights of competitive electric service providers.

8 New Code section 476B.11 provides that a delivery service  
9 provider shall install, own, and maintain metering as deemed  
10 necessary by the delivery service provider. The section also  
11 provides that an end-use consumer may install metering not  
12 owned by the delivery service provider on the consumer's side  
13 of the main disconnect, subject to reasonable connection  
14 requirements of the delivery service provider and board rules.

15 New Code section 476B.12 sets forth billing requirements  
16 associated with electric services. The section provides that  
17 an end-use consumer is entitled to request a single  
18 consolidated bill for competitive electric services, delivery  
19 services, and control area services. Unless otherwise agreed  
20 by the affected service providers, such consolidated billing  
21 is the responsibility of the competitive electric service  
22 provider selling competitive billing services.

23 New Code section 476B.13 sets forth the low-income  
24 affordability and energy efficiency programs. These programs  
25 are to be administered by the division of community action  
26 agencies within the department of human rights.

27 New Code section 476B.14 provides that a competitive  
28 electric service provider, a delivery service provider, and a  
29 control area operator must develop and post on the board's  
30 website the procedures for filing a complaint regarding their  
31 services and operations. The board is authorized to hear all  
32 complaints.

33 New Code section 476B.15 provides for the imposition and  
34 collection of transition charges. Such charges are for the  
35 purpose of allowing electric companies to recover a portion of

1 their transition costs associated with electric generation.  
2 Transition charges are to be billed commencing with service  
3 rendered on May 1, 2002, and concluding with service rendered  
4 on December 31, 2005. The section also provides that the  
5 board may permit, but not require, an incumbent provider that  
6 is an electric company to divest itself of its generation  
7 assets and contracts for power and energy.

8 New Code section 476B.16 provides for the decommissioning  
9 of nuclear generating facilities and the recovery of costs  
10 associated with such decommissioning.

11 New Code section 476B.17 provides for securitization, or  
12 the issuance of transitional funding instruments. The board  
13 is authorized to issue transitional funding orders which  
14 create intangible transition property in favor of an incumbent  
15 provider or grantee representing the right to impose and  
16 collect instrument funding charges necessary to pay the  
17 principal and interest on the transitional funding  
18 instruments. The section establishes the permissible uses of  
19 the proceeds from such instruments. Such instruments do not  
20 create an obligation on the part of the state.

21 New Code section 476B.18 prohibits a person with an  
22 assigned service area in this state from offering competitive  
23 power supply services within another person's assigned service  
24 area in this state until the offering person allows the latter  
25 person a reasonable opportunity to offer competitive power  
26 supply services in the offering person's assigned service area  
27 in this state.

28 New Code section 476B.19 provides that an electric  
29 cooperative and a municipal utility are not subject to  
30 regulation by the board except as specifically provided in  
31 this chapter.

32 New Code section 476B.20 grants authority to the board to  
33 impose civil remedies and penalties for certain violations.

34 New Code section 476B.21 provides for rehearings before the  
35 board after the issuance of a final decision by the board.

1 New Code section 476B.22 provides for judicial review of  
2 board decisions.

3 New Code section 476B.23 establishes certain contractual  
4 rights and provides that certain end-use consumers may  
5 terminate a contract for electric service in effect before the  
6 effective date of the new Code chapter.

7 New Code section 476B.24 provides for certain benefits for  
8 electric utility employees adversely affected as a result of  
9 restructuring.

10 New Code section 476B.25 provides for reports to be  
11 prepared by the board and the consumer advocate and submitted  
12 to the general assembly.

13 New Code sections 28F.15 through 28F.29 provide for the  
14 funding of construction of open access transmission facilities  
15 to be owned or leased by an electric power agency. An  
16 electric power agency is defined in new Code chapter 476B as a  
17 political subdivision that acquires or finances electric  
18 facilities pursuant to Code chapter 28E or 28F.

19 The bill makes certain conforming and transitional  
20 amendments to existing Code sections.

21 The bill takes effect June 1, 1999.

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## HOUSE FILE 740

H-1156

1 Amend House File 740 as follows:

2 1. By striking page 128, line 34, through page  
3 129, line 3, and inserting the following: "impact of  
4 such workforce reduction on its employees. At a  
5 minimum, such plan shall include all of the following:

6 a. Tuition reimbursement at any college,  
7 vocational or technical school, or other similar  
8 program in this state attended by the employee within  
9 two years of the employee's severance, up to a total  
10 of three thousand dollars.

11 b. Continuation of health or medical insurance  
12 coverage at existing coverage and contribution levels  
13 for the employee and eligible family members for a  
14 period of eighteen months or until the employee  
15 obtains health care coverage under another employee  
16 health care coverage plan, whichever period is  
17 shorter.

18 c. When appropriate, an early retirement program  
19 may be offered to those employees affected by loss of  
20 employment. Such program shall provide supplemental  
21 payments of at least seven hundred twenty dollars per  
22 month and continued health care coverage at applicable  
23 rates in effect for active employees until age sixty-  
24 two.

25 d. Lump sum severance payments based on years of  
26 service and rates of pay in effect on the date of  
27 separation. Such payments shall be at least ten  
28 percent of the employee's base pay for employees with  
29 one through five years of service; fifty percent of  
30 base pay for employees with six through ten years of  
31 service; and seventy-five percent of base pay for  
32 employees with eleven or more years of service.

33 e. Subject to applicable federal or state law,  
34 such plan shall provide that affected employees  
35 receive a preference in employment selection for work  
36 the employee is qualified to perform.

37 For the purpose of this section, the term "electric  
38 utility" means the electric delivery service  
39 operations in Iowa and the electric generating  
40 operations and units located in Iowa of incumbent  
41 providers other than consumer-owned utilities."

By WISE of Lee  
CHAPMAN of Linn

H-1156 FILED MARCH 23, 1999