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# A BILL FOR AN ACT

RELATING TO ELECTRIC UTILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1.   The legislature finds that the production and  
2 sale of electricity is not a monopoly warranting regulation of  
3 rates, operations, and services and that the public interest in  
4 competitive electric markets requires that, except for  
5 transmission and distribution services and for the recovery of  
6 stranded costs, electric services and their prices should be  
7 determined by customer choices and the normal forces of  
8 competition.   As a result, this chapter is enacted to protect  
9 the public interest during the transition to and in the  
10 establishment of a fully competitive electric power industry as  
11 a well functioning competitive market will yield the greatest  
12 benefit to consumers in terms of price, investment and  
13 innovation.

14           The legislature recognizes that the cost of electricity in  
15 the state of Hawaii is disproportionately high when compared to  
16 the electric rates on the United States mainland.   Unlike  
17 Hawaii's consumers, many mainland consumers have the freedom to  
18 choose the company that supplies their electricity.



1 Deregulation of the electricity industry in the state will open  
2 the doors for increased competition while simultaneously  
3 encouraging alternative energy sources to enter the Hawaii  
4 market, also to the benefit of Hawaii's energy consumers.

5 The purpose of this Act is modify existing legislation and  
6 regulations and to establish standards and procedures in order  
7 to create direct access by retail customers to the competitive  
8 market while maintaining the safety and reliability of the  
9 electric system to all parties.

10 SECTION 2. Chapter 269, Hawaii Revised Statutes, is  
11 amended by adding a new part to be appropriately designated and  
12 to read as follows:

13 **"PART A. COMPETITIVE RETAIL ELECTRIC MARKET**

14 **§269-A Definitions.** Unless the context requires  
15 otherwise, as used in this part:

16 "Aggregator" or "market aggregator" means an entity,  
17 licensed by the commission, which purchases electric energy and  
18 takes title to electric energy as an intermediary for sale to  
19 retail customers.

20 "Bilateral contract" means an agreement, as approved by the  
21 commission, reached by two parties, each acting in its own  
22 independent self-interest, as a result of negotiations free of



1 undue influence, duress or favoritism, in which the electric  
2 energy supplier agrees to sell and the electric distribution  
3 company agrees to buy a quantity of electric energy at a  
4 specified price for a specified period of time under terms  
5 agreed to by both parties, and which follows a standard industry  
6 template widely accepted in the industry or variations thereto  
7 accepted by the parties. Standard industry templates may include  
8 the Edison Electric Institute Master Agreement for physical  
9 energy purchases and sales and the International Swaps and  
10 Derivatives Association Master Agreement for financial energy  
11 purchases and sales.

12 "Broker" or "marketer" means an entity, licensed by the  
13 commission, that acts as an agent or intermediary in the sale  
14 and purchase of electric energy but that does not take title to  
15 electric energy.

16 "Competitive transition charge" means a nonbypassable  
17 charge applied to the bill of every customer accessing the  
18 transmission or distribution network that is designed to recover  
19 an electric utility's transition or stranded costs as determined  
20 by the commission under sections 269-B, relating to standards  
21 for restructuring of electric industry, and 269-F, relating to  
22 competitive transition charge.



1 "Consumer" means a retail electric customer.

2 "Customer" means a retail electric customer.

3 "Default service provider" means an electric distribution  
4 company within its certified service territory or an alternative  
5 supplier approved by the commission that provides generation  
6 service to retail electric customers who:

7 (1) contract for electric power, including energy and  
8 capacity, and the chosen electric generation supplier does not  
9 supply the service; or

10 (2) do not choose an alternative electric generation  
11 supplier.

12 "Direct access" means the right of electric generation  
13 suppliers and end-use customers to utilize and interconnect with  
14 the electric transmission and distribution system on a  
15 nondiscriminatory basis at rates, terms and conditions of  
16 service comparable to the transmission and distribution  
17 companies' own use of the system to transport electricity from  
18 any generator of electricity to any end-use customer.

19 "Electric distribution company" means the public utility  
20 providing facilities for the jurisdictional transmission and  
21 distribution of electricity to retail customers, except building  
22 or facility owners/operators that manage the internal



1 distribution system serving such building or facility and that  
2 supply electric power and other related electric power services  
3 to occupants of the building or facility.

4 "Electric generation supplier" or "electricity supplier"  
5 means a person or corporation, except to the extent provided  
6 prior to the effective date of this part, brokers and marketers,  
7 aggregators or any other entities, that sells to end-use  
8 customers electricity or related services utilizing the  
9 jurisdictional transmission or distribution facilities of an  
10 electric distribution company or that purchases, brokers,  
11 arranges or markets electricity or related services for sale to  
12 end-use customers utilizing the jurisdictional transmission and  
13 distribution facilities of an electric distribution company. The  
14 term excludes building or facility owner/operators that manage  
15 the internal distribution system serving such building or  
16 facility and that supply electric power and other related power  
17 services to occupants of the building or facility.

18 "End-use customer" means a retail electric customer.

19 "Reliability" includes adequacy and security. As used in  
20 this definition, "adequacy" means the provision of sufficient  
21 generation, transmission and distribution capacity so as to  
22 supply the aggregate electric power and energy requirements of



1 consumers, taking into account scheduled and unscheduled outages  
2 of system facilities; "security" means designing, maintaining  
3 and operating a system so that it can handle emergencies safely  
4 while continuing to operate.

5 "Renewable resource" means technologies such as solar  
6 photovoltaic energy, solar thermal energy, wind power, low-head  
7 hydropower, geothermal energy, landfill and mine-based methane  
8 gas, energy from waste and sustainable biomass energy.

9 "Retail customer" means a retail electric customer.

10 "Retail electric customer" means a direct purchaser of  
11 electric power. The term excludes an occupant of a building or  
12 facility where the owners or operators manage the internal  
13 distribution system serving such building or facility and supply  
14 electric power and other related power services to occupants of  
15 the building or facility; where such owners or operators are  
16 direct purchasers of electric power; and where the occupants are  
17 not direct purchasers.

18 "Transition or stranded costs" means an electric utility's  
19 known and measurable net electric generation-related costs,  
20 determined on a net present value basis over the life of the  
21 asset or liability as part of its restructuring plan, which  
22 traditionally would be recoverable under a regulated environment



1 but which may not be recoverable in a competitive electric  
2 generation market and which the commission determines will  
3 remain following mitigation by the electric utility. This term  
4 includes:

5 (1) Regulatory assets and other deferred charges typically  
6 recoverable under current regulatory practice;

7 (2) Prudently incurred costs related to cancellation,  
8 buyout, buydown or renegotiation of nonutility generating  
9 projects, the recoverability of which shall be determined  
10 pursuant to section 269-F(c) (2); and

11 (3) The following costs, the recoverability of which shall  
12 be determined pursuant to section 269-F(c) (3):

13 (A) Net plant investments and costs attributable to  
14 the utility's existing generation plants and  
15 facilities.

16 (C) The utility's long-term purchase power  
17 commitments other than the costs defined in  
18 paragraphs (1) and (2).

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



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

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

16          "Transmission and distribution costs" means all costs  
17          directly or indirectly incurred to provide transmission and  
18          distribution services to retail electric customers. This  
19          includes the return of and return on facilities and other  
20          capital investments necessary to provide transmission and  
21          distribution services and associated operating expenses,  
22          including applicable taxes.





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

9 **§269-B Standards for restructuring of electric industry.**

10 (a) The following interdependent standards shall govern the  
11 commission's assessment and approval of an electric utility's  
12 restructuring plan, oversight of the transition process and  
13 regulation of the restructured electric utility industry:

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

17 (A) The maintenance of adequate reserve margins by  
18 electric suppliers in conformity with the  
19 standards required by the North American Electric  
20 Reliability Council and the regional reliability  
21 council appropriate to each supplier, or any  
22 successors to those reliability entities, and in



1 conformity with established industry standards  
2 and practices.

3 (B) The installation and maintenance of transmission  
4 and distribution facilities in conformity with  
5 established industry standards and practices,  
6 including the standards set forth in the National  
7 Electric Safety Code.

8 (2) Consistent with the time line set forth in section  
9 269-D, relating to implementation, pilot programs and  
10 performance-based rates, the commission shall allow  
11 customers to choose among electric generation  
12 suppliers in a competitive generation market through  
13 direct access. Customers should be able to choose  
14 among alternatives such as firm and interruptible  
15 service, flexible pricing and alternate generation  
16 sources, including reasonable and fair opportunities  
17 to self-generate and interconnect. These alternatives  
18 may be provided by different electric generation  
19 suppliers.

20 (3) The commission shall require the unbundling of  
21 electric utility services, tariffs and customer bills  
22 to separate the charges for generation, transmission



1 and distribution. The commission may require the  
2 unbundling of other services.

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

5 (A) For a period of fifty-four months from the  
6 effective date of this part or until an electric  
7 distribution utility is no longer recovering its  
8 transition or stranded costs through a  
9 competitive transition charge or intangible  
10 transition charge and all the customers of an  
11 electric distribution utility can choose an  
12 alternative provider of electric generation,  
13 whichever is shorter:

14 (i) The total charges of an electric  
15 distribution utility for service to any  
16 customer who purchases generation from that  
17 utility shall not exceed the total charges  
18 that have been approved by the commission  
19 for such service as of the effective date of  
20 this part; and

21 (ii) For customers who purchase generation from a  
22 supplier other than the electric



1 distribution utility, the charges of the  
2 utility for non-generation services that are  
3 regulated as of the effective date of this  
4 chapter, exclusive of the competitive  
5 transition charge and intangible transition  
6 charge, shall not exceed the non-generation  
7 charges that have been approved by the  
8 commission for such service as of the  
9 effective date of this part.

10 (B) In addition to the rate cap set forth in  
11 subparagraph (A), for a period of nine years from  
12 the effective date of this chapter or until an  
13 electric distribution utility is no longer  
14 recovering its transition or stranded costs  
15 through a competitive transition charge or  
16 intangible transition charge and all customers of  
17 an electric distribution utility can choose an  
18 alternative provider of electric generation,  
19 whichever is shorter, the generation component of  
20 a utility's charges to customers who purchase  
21 generation from the utility, including the  
22 competitive transition charge and intangible



1 transition charge, shall not exceed the  
2 generation component charged to the customers  
3 that has been approved by the commission for such  
4 service as of the effective date of this part.

5 (C) An electric distribution utility may seek, and  
6 the commission may approve, an exception to the  
7 limitations set forth in subparagraphs (A) and  
8 (B) only in any of the following circumstances:

9 (i) Either the electric distribution utility is  
10 required to begin payment under contracts  
11 with nonutility generation projects that  
12 have received commission orders, has been  
13 unable to mitigate such costs, such costs  
14 are not recoverable in a competitive  
15 generation market and such costs were not  
16 previously covered in the competitive  
17 transition charge or intangible transition  
18 charge, or the utility prudently incurs  
19 costs related to cancellation, buyout,  
20 buydown or renegotiation of nonutility  
21 generating project obligations of the  
22 utility and such costs were not previously



1 covered in the competitive transition charge  
2 or intangible transition charge. Costs  
3 related to cancellation, buyout, buydown or  
4 renegotiation shall be recovered from  
5 ratepayers over a period not to exceed three  
6 years, unless the commission determines  
7 within its discretion to require a longer  
8 recovery period due to the magnitude of such  
9 costs, but shall be accounted for by the  
10 utility on a levelized basis over the total  
11 period in which the generation portion of  
12 the utility's rates are capped.

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

19 (iii) The electric distribution utility is  
20 subject to significant increases in the unit  
21 rate of fuel for utility generation or the  
22 price of purchased power that are outside of



1 the control of the utility and that would  
2 not allow the utility to earn a fair rate of  
3 return.

4 (vi) The electric distribution utility is  
5 directed by the commission or an independent  
6 system operator or its functional equivalent  
7 to make expenditures to repair or upgrade  
8 its transmission or distribution system.

9 (vii) As permitted by paragraph (16).

10 (D) Consistent with the requirements of due process,  
11 the commission may expedite proceedings that  
12 invoke the provisions of subparagraph (C).

13 (E) If an electric distribution utility rolls its  
14 energy cost rate into base rates at a combined  
15 level that does not exceed its combined level of  
16 such rates which have been approved by the  
17 commission as of the effective date of this  
18 chapter, the utility shall not be required to  
19 reduce its capped rates below the capped level  
20 upon the complaint of any party if the commission  
21 determines that any excess earnings achieved  
22 under the cap are being utilized to mitigate



1 transition or stranded costs for the benefit of  
2 ratepayers or to offset other known and  
3 measurable cost increases that would be  
4 recoverable under traditional ratemaking but are  
5 not included within the capped rates.

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

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

12 (6) Consistent with the provision of section 269-D, the  
13 commission shall require that a public utility that  
14 owns or operates jurisdictional transmission and  
15 distribution facilities shall provide transmission and  
16 distribution service to all retail electric customers  
17 in their service territory and to electric cooperative  
18 corporations and electric generation suppliers,  
19 affiliated or nonaffiliated, on rates, terms of access  
20 and conditions that are comparable to the utility's  
21 own use of its system.





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

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

10          (9) The commission shall ensure that universal service and  
11          energy conservation policies, activities and services  
12          are appropriately funded and available in each  
13          electric distribution territory. Policies, activities  
14          and services under this paragraph shall be funded in  
15          each electric distribution territory by nonbypassable,  
16          competitively neutral cost-recovery mechanisms that  
17          fully recover the costs of universal service and  
18          energy conservation services. The commission shall  
19          encourage the use of community-based organizations  
20          that have the necessary technical and administrative  
21          experience to be the direct providers of services or  
22          programs which reduce energy consumption or otherwise



1 assist low-income customers to afford electric  
2 service. Programs under this paragraph shall be  
3 subject to the administrative oversight of the  
4 commission which will ensure that the programs are  
5 operated in a cost-effective manner.

6 (10) The commission shall establish rates for  
7 jurisdictional transmission and distribution services  
8 and shall continue to regulate distribution services  
9 for new and existing customers in accordance with this  
10 part.

11 (11) The time line for the transition to and phase-in of  
12 direct access to competitive electric generation shall  
13 be in accordance with section 269-D.

14 (12) The commission has the authority to order utility  
15 participation in retail access pilot programs as set  
16 forth in section 269-D and as further implemented or  
17 modified by the commission, with direct access to  
18 begin on April 1, 2013. The commission shall conduct  
19 milestone reviews of the transition to retail electric  
20 generation competition to assure a technically  
21 workable and equitable transition period.



1 (13) Consistent with section 269-F relating to competitive  
2 transition charge, the commission has the power and  
3 duty to approve a competitive transition charge for  
4 the recovery of transition or stranded costs it  
5 determines to be just and reasonable to recover from  
6 ratepayers.

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

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

18 (b) The following tax considerations shall apply to an  
19 electric utility's restructuring process:

20 (1) The commission shall issue regulations that  
21 permit the electric distribution company to  
22 recover any change in its State tax liability



1 under sections 269-D(h) and 269-G(c), relating to  
2 requirements for electric generation suppliers,  
3 to the extent that the resulting rate does not  
4 exceed the rate cap established in this section  
5 except as provided in this part.

6 (2) With regard to any portion of the change in an  
7 electric distribution company's tax liability  
8 under sections 269-D(h) and 269-G(c) which would  
9 cause it to exceed the price cap, upon  
10 certification to the commission by affidavit that  
11 the electric distribution company and the  
12 Department of Tax have not collected the taxes  
13 due pursuant to the other means set forth in  
14 sections 269-D(g)(3)(A) and (B) and 269-G(c) to  
15 recover the taxes due and any interest thereon,  
16 the electric distribution utility shall be  
17 permitted to recover that amount in the State tax  
18 adjustment surcharge.

19 **§269-C Procurement of power.** The commission may not order  
20 a default service provider to procure power from a specific  
21 generation supplier, from a specific generation fuel type, or  
22 from new generation only.



1           **§269-D Implementation, pilot programs and performance-**  
2 **based rates.** (a) The generation of electricity shall no longer  
3 be regulated as a public utility service or function except as  
4 otherwise provided for in this part at the conclusion of a  
5 transition and phase-in period beginning on the effective date  
6 of this part and ending, consistent with the commission's  
7 discretion under this section, January 1, 2017. As of January 1,  
8 2017, consistent with the commission's discretion under this  
9 section, all customers of electric distribution companies in  
10 this State shall have the opportunity to purchase electricity  
11 from their choice of electric generation suppliers. The ultimate  
12 choice of the electric generation supplier is to rest with the  
13 consumer.

14           (b) Recognizing that approximately five per cent of the  
15 peak load will have retail access through pilot programs, the  
16 following schedule for phased implementation of retail access  
17 shall be adhered to unless a determination is made by the  
18 commission under subsection (c):

19           (1) As of January 1, 2015, a maximum of thirty three per  
20 cent of the peak load of each customer class shall  
21 have the opportunity for direct access.



1 (2) As of January 1, 2016, a maximum of sixty six per cent  
2 of the peak load of each customer class shall have the  
3 opportunity for direct access.

4 (3) As of January 1, 2017, all customers of electric  
5 distribution companies in this State shall have the  
6 opportunity for direct access.

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

17 (c) The following additional time is authorized by this  
18 part:

19 (1) The commission may determine that an additional six-  
20 month transition period is necessary prior to the  
21 January 1, 2015, implementation date. A determination  
22 under this subsection must be made at least forty five



1 days in advance of the scheduled date for  
2 implementation and must be based on one or more of the  
3 following considerations:

- 4 (A) Implementation would materially affect the  
5 reliability of the electric system;
- 6 (B) Federal approvals necessary for the  
7 implementation of the provisions of this chapter  
8 have not been granted;
- 9 (C) Communications and information systems necessary  
10 for the implementation of retail access have not  
11 been installed for reasons beyond the utility's  
12 control, as measured by appropriate industry  
13 standards;
- 14 (D) Hawaii generators would be disadvantaged due to  
15 lack of regional reciprocity with respect to  
16 direct access;
- 17 (E) The interests of Hawaii consumers and the  
18 competitive position of Hawaii business and  
19 industry would be materially affected;
- 20 (F) Such other consideration as would materially  
21 affect the orderly implementation of the  
22 legislative purpose of this part.



1           (2) Consistent with the considerations listed in paragraph  
2           (1), the commission may determine that an additional  
3           six-month transition period is necessary. This  
4           determination must be made by the commission by May  
5           15, 2014.

6           (d) All electric utilities in this State shall submit to  
7           the commission, pursuant to a schedule to be determined by the  
8           commission in consultation with the electric utilities,  
9           beginning on April 1, 2013, but in no event later than September  
10          30, 2013, a restructuring plan to implement direct access to a  
11          competitive market for the generation of electricity.

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

21          (f) The commission shall review the restructuring plan  
22          filed by each electric utility and shall, after open evidentiary





1 hearings with proper notice and opportunity for all parties to  
2 cross-examine witnesses, issue an order accepting, modifying or  
3 rejecting such plan at the earliest date possible, but no later  
4 than nine months from the filing of such restructuring plan. If  
5 the commission rejects a restructuring plan, it shall state the  
6 specific reasons in writing for rejection and direct the  
7 electric utility to file an alternative plan addressing these  
8 objections within thirty days of the entry date of the  
9 commission order rejecting the plan. The commission shall review  
10 the alternative plan, solicit comments from interested parties  
11 and issue a final order within forty-five days of the filing of  
12 the revised plan.

13 (g) As of the effective date of this part, the commission  
14 has authority to order electric utilities to submit proposals  
15 for retail access pilot programs to begin April 1, 2013. The  
16 commission shall provide guidelines for retail access pilot  
17 programs by order.

18 (1) In order to determine whether all customers classes  
19 can benefit from competitive markets, utilities shall  
20 tailor proposed retail access pilot programs to  
21 accommodate the specific geographic, demographic and  
22 socioeconomic characteristics of their customer base.



1           Retail access pilot programs must include an equal  
2           opportunity for the broadest practical direct access  
3           by all customer classes to electric generation  
4           suppliers.

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

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

13          (A) Each participating electricity supplier shall do  
14          all of the following:

15               (i) Certify to the commission that it will pay  
16               and in subsequent years has paid the full  
17               amount of taxes imposed law and this part.

18               (ii) Provide the commission with the address of  
19               the participant's principal office in this  
20               State or the address of the participant's  
21               registered agent in this State, the latter



1                   being the address at which the participant  
2                   may be served process.

3                   (iii) Agree that it shall be subject to all taxes  
4                   imposed by law and any tax imposed by this  
5                   part.

6                   (B) Failure of an electricity supplier to pay a tax  
7                   referred to in subparagraph (A) or to otherwise  
8                   comply with the provisions of this paragraph  
9                   shall be cause for the commission to revoke the  
10                  license of the electricity supplier.

11                  (C) If an electricity supplier, other than an  
12                  electric distribution company, does not pay the  
13                  tax imposed upon gross receipts law or this part,  
14                  the electric distribution company to whose retail  
15                  customer the electricity supplier provided  
16                  generation service shall remit the unpaid tax, as  
17                  a tax on the use of electricity in this State, to  
18                  the Department of Tax and may collect or seek  
19                  reimbursement of the tax so paid from the  
20                  electricity provider or any other appropriate  
21                  party that used the electricity in this State.  
22                  Failure of the electric distribution company to



1 pay the amount within thirty days after notice  
2 provided by the department shall cause interest  
3 to be imposed on the electric distribution  
4 company in accordance as provided by law.

5 Interest shall be calculated from the thirty  
6 first day after the department gives the notice  
7 required in this subparagraph. An electric  
8 distribution company or other appropriate person  
9 may challenge the imposition of the tax and  
10 interest by filing a petition with the department  
11 not later than thirty days after the date on  
12 which the tax became due.

13 (4) The percentage of utility load committed to a retail  
14 access pilot program must be approximately five per  
15 cent of utility's peak load for each customer class.

16 Waivers of this condition may be considered by the  
17 commission for economic development purposes or  
18 special circumstances.

19 (h) In addition to the implicit authority of the  
20 commission under Chapter 269, the commission has the authority  
21 to approve flexible pricing and flexible rates, including  
22 negotiated, contract-based tariffs designed to meet the specific



1 needs of a utility customer and to address competitive  
2 alternatives.

3 (i) The commission has authority to use performance-based  
4 rates as an alternative to existing rate base/rate of return  
5 ratemaking, subject to the restrictions pertaining to rate caps  
6 in section 269-B(a)(4), relating to standards for restructuring  
7 of electric industry.

8 **§269-E Duties of electric distribution companies.** (a) Each  
9 electric distribution company shall maintain the integrity of  
10 the distribution system at least in conformity with the National  
11 Electric Safety Code and such other standards practiced by the  
12 industry in a manner sufficient to provide safe and reliable  
13 service to all customers connected to the system consistent with  
14 this title and the commission's regulations. In performing such  
15 duties, the electric distribution company shall implement  
16 procedures to require all electric generation suppliers to  
17 deliver energy to the electric distribution company at locations  
18 and in amounts which are adequate to meet the energy supplier's  
19 obligations to its customers. Subject to commission approval,  
20 the electric distribution company may require that the customer  
21 install, at the customer's expense, enhanced metering capability



1 sufficient to match the energy delivered by the electric  
2 generation suppliers with consumption by the customer.

3 (b) There shall be a rebuttable presumption that the  
4 electric distribution company has the ability to receive energy  
5 at all points on its system sufficient to meet the needs of all  
6 electric generation suppliers' customers on its system. The  
7 electric distribution company shall not have an obligation to  
8 install nonstandard facilities, either as to type or location,  
9 for the purpose of receiving energy from the energy supplier  
10 unless the energy supplier or its customer pays the full cost of  
11 these facilities. Nothing in this chapter shall prevent the  
12 electric distribution company from upgrading its system to meet  
13 changing customer requirements, and the commission may establish  
14 incentive programs to encourage such system upgrades. Disputes  
15 concerning facilities shall be subject to the jurisdiction of  
16 the commission and may be initiated by the filing of a complaint  
17 by the electric generation supplier or the customer.

18 (c) Subject to the right of an end-use customer to choose  
19 to receive separate bills from its electric generation supplier,  
20 the electric distribution company may be responsible for billing  
21 customers for all electric services, consistent with the



1 regulations of the commission, regardless of the identity of the  
2 provider of those services.

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

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

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

18 (d) The electric distribution company shall continue to  
19 provide customer service functions consistent with the  
20 regulations of the commission, including meter reading,  
21 complaint resolution and collections. Customer services shall,



1 at a minimum, be maintained at the same level of quality under  
2 retail competition.

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

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

18 (3) Prior to the implementation of any restructuring plan  
19 under section 269-D, relating to implementation, pilot  
20 programs and performance-based rates, each electric  
21 distribution company, in conjunction with the  
22 commission, shall implement a consumer education





1 program informing customers of the changes in the  
2 electric utility industry. The program shall provide  
3 consumers with information necessary to help them make  
4 appropriate choices as to their electric service. The  
5 education program shall be subject to approval by the  
6 commission.

7 (e) A default service provider's obligation to provide  
8 electric generation supply service following the expiration of a  
9 generation rate cap specified under section 269-B(a)(4),  
10 relating to standards for restructuring of electric industry, or  
11 a restructuring plan under section 269-D(f) is revised as  
12 follows:

13 (1) While an electric distribution company collects either  
14 a competitive transition charge or an intangible  
15 transition charge or until one-hundred per cent of its  
16 customers have choice, whichever is longer, the  
17 electric distribution company shall continue to have  
18 the full obligation to serve, including the connection  
19 of customers, the delivery of electric energy and the  
20 production or acquisition of electric energy for  
21 customers.



1           (2) Following the expiration of an electric distribution  
2           company's obligation to provide electric generation  
3           supply service to retail customers at capped rates, if  
4           a customer contracts for electric generation supply  
5           service and the chosen electric generation supplier  
6           does not provide the service or if a customer does not  
7           choose an alternative electric generation supplier,  
8           the default service provider shall provide electric  
9           generation supply service to that customer pursuant to  
10          a commission-approved competitive procurement plan.  
11          The electric power acquired shall be procured through  
12          competitive procurement processes and shall include  
13          one or more of the following:  
14                (A) Auctions;  
15                (B) Requests for proposal; or  
16                (C) Bilateral agreements entered into at the sole  
17                discretion of the default service provider which  
18                shall be at prices which are:  
19                    (i) No greater than the cost of obtaining  
20                    generation under comparable terms in the  
21                    wholesale market, as determined by the



1                    commission at the time of execution of the  
2                    contract; or

3                    (ii) Consistent with a commission-approved  
4                    competition procurement process. Any  
5                    agreement between affiliated parties shall  
6                    be subject to review and approval of the  
7                    commission. In no case shall the cost of  
8                    obtaining generation from any affiliated  
9                    interest be greater than the cost of  
10                   obtaining generation under comparable terms  
11                   in the wholesale market at the time of  
12                   execution of the contract.

13                   (3) The electric power procured pursuant to paragraph (2)  
14                   shall include a prudent mix of the following:

- 15                   (A) Spot market purchases;
- 16                   (B) Short-term contracts; and
- 17                   (C) Long-term purchase contracts, entered into as a  
18                   result of an auction, request for proposal or  
19                   bilateral contract that is free of undue  
20                   influence, duress or favoritism, of more than  
21                   four and not more than twenty years. The default  
22                   service provider shall have sole discretion to



1 determine the source and fuel type. Long-term  
2 purchase contracts under this subparagraph may  
3 not constitute more than twenty five per cent of  
4 the default service provider's projected default  
5 service load unless the commission, after a  
6 hearing, determines for good cause that a greater  
7 portion of load is necessary to achieve least  
8 cost procurement. This subparagraph shall not  
9 apply to contracts executed under paragraph (12).

10 (4) The commission may determine that a contract is  
11 required to be extended for a longer term of up to  
12 twenty years, if the extension is necessary to ensure  
13 adequate and reliable service at least cost to  
14 customers over time.

15 (5) The prudent mix of contracts entered into pursuant to  
16 paragraphs (3) and (4) shall be designed to ensure:

17 (A) Adequate and reliable service;

18 (B) The least cost to customers over time; and

19 (C) Compliance with the requirements of paragraph

20 (2).

21 (6) Except as set forth in paragraph (12) (B), the  
22 provisions of this section shall apply to any type of



1 energy purchased by a default service provider to  
2 provide electric generation supply service.

3 (7) The default service provider shall file a plan for  
4 competitive procurement with the commission and obtain  
5 commission approval of the plan considering the  
6 standards in paragraphs (2), (3), (4) and (5) before  
7 the competitive process is implemented. The commission  
8 shall hold hearings as necessary on the proposed plan.  
9 If the commission fails to issue a final order on the  
10 plan within nine months of the date that the plan is  
11 filed, the plan shall be deemed to be approved and the  
12 default service provider may implement the plan as  
13 filed. Costs incurred through an approved competitive  
14 procurement plan shall be deemed to be the least cost  
15 over time as required under paragraph (5)(B).

16 (8) At the time the commission evaluates the plan and  
17 prior to approval, in determining if the default  
18 electric service provider's plan obtains generation  
19 supply at the least cost, the commission shall  
20 consider the default service provider's obligation to  
21 provide adequate and reliable service to customers and  
22 that the default service provider has obtained a



1 prudent mix of contracts to obtain least cost on a  
2 long-term, short-term and spot market basis and shall  
3 make specific findings which shall include the  
4 following:

5 (A) The default service provider's plan includes  
6 prudent steps necessary to negotiate favorable  
7 generation supply contracts;

8 (B) The default service provider's plan includes  
9 prudent steps necessary to obtain least cost  
10 generation supply contracts on a long-term,  
11 short-term and spot market basis and

12 (C) Neither the default service provider nor its  
13 affiliated interest has withheld from the market  
14 any generation supply in a manner that violates  
15 Federal law.

16 (9) The commission may modify contracts or disallow costs  
17 only when the party seeking recovery of the costs of a  
18 procurement plan is, after hearing, found to be at  
19 fault for the following:

20 (A) Not complying with the commission-approved  
21 procurement plan; or



1 (B) The commission of fraud, collusion or market  
2 manipulation with regard to these contracts.  
3 (10) The default service provider shall have the right to  
4 recover on a full and current basis all reasonable  
5 costs incurred under this section and a commission-  
6 approved competitive procurement plan.  
7 (11) If a customer that chooses an alternative supplier and  
8 subsequently desires to return to the local  
9 distribution company for generation service, the local  
10 distribution company shall treat that customer exactly  
11 as it would any new applicant for energy service.  
12 (12) Notwithstanding paragraph (2), the electric  
13 distribution company or commission-approved  
14 alternative supplier may, in its sole discretion,  
15 offer large customers with a peak demand of fifteen  
16 megawatts or greater at one meter at a location in its  
17 service territory any negotiated rate for service at  
18 all of the customers' locations within the service  
19 territory for any duration agreed upon by the electric  
20 distribution company or commission-approved  
21 alternative supplier and the large customer. The  
22 commission shall permit, but shall not require, an



1 electric distribution company or commission-approved  
2 alternative supplier to provide service to large  
3 customers under this paragraph. Contract rates entered  
4 into under this paragraph shall be subject to review  
5 by the commission in order to ensure that all costs  
6 related to the rates are borne by the parties to the  
7 contract and that no costs related to the rates are  
8 borne by other customers or customer classes. If no  
9 costs related to the rates are borne by other  
10 customers or customer classes, the commission shall  
11 approve the contract within 90 days of its filing, or  
12 it shall be deemed approved by operation of law upon  
13 expiration of the ninety days. Information submitted  
14 under this paragraph shall be subject to the  
15 commission's procedures for the filing of confidential  
16 and proprietary information.

17 (13) A default service plan approved by the commission  
18 prior to the effective date of this section shall  
19 remain in effect through its approved term. At its  
20 sole discretion, the default service provider may  
21 propose amendments to its approved plan that are  
22 consistent with this section, and the commission shall





1 issue a decision whether to approve or disapprove the  
2 proposed amendments within nine months of the date  
3 that the amendments are filed. If the commission fails  
4 to issue a final order within nine months, the  
5 amendments shall be deemed to be approved and the  
6 default service provider may implement the amendments  
7 as filed.

8 (14) The default service provider shall offer residential  
9 and small business customers a generation supply  
10 service rate that shall change no more frequently than  
11 on a quarterly basis. All default service rates shall  
12 be reviewed by the commission to ensure that the costs  
13 of providing service to each customer class are not  
14 subsidized by any other class.

15 **§269-F Competitive transition charge.** (a) To provide each  
16 electric utility with an opportunity to recover its transition  
17 or stranded costs following the commission's determination under  
18 subsection (c), every customer accessing the transmission or  
19 distribution network shall pay a competitive transition charge  
20 to the electric distribution company in whose certificated  
21 territory that customer is located. The costs to be recovered  
22 shall be allocated to customer classes in a manner that does not



1 shift interclass or intraclass costs and maintains consistency  
2 with the allocation methodology for utility production plant  
3 accepted by the commission in the electric utility's most recent  
4 base rate proceeding. If a customer installs on-site generation  
5 which operates in parallel with other generation on the public  
6 utility's system and which significantly reduces the customer's  
7 purchases of electricity through the transmission and  
8 distribution network, the customer's fully allocated share of  
9 transition or stranded costs shall be recovered from the  
10 customer through a competitive transition charge. The recovery  
11 of transition or stranded costs associated with existing  
12 generating facilities is contingent on continued operation at  
13 reasonable availability levels of the generation facilities for  
14 which recovery has been approved, except when the generation  
15 facility is uneconomic on a production cost basis because of the  
16 transition to a competitive market.

17 (b) The competitive transition charge shall be included on  
18 bills to customers for a period not to exceed nine years from  
19 the effective date of this chapter unless an alternative payment  
20 methodology is mutually agreed upon by the customer and the  
21 utility or unless the commission in its discretion and for good  
22 cause shown orders an alternative payment period. In



1 establishing the length of the period for collection of the  
2 competitive transition charge, the commission shall consider the  
3 effect on the ability of the State to compete in attracting  
4 industry and jobs, on the financial health of electric utilities  
5 and other relevant factors.

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

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



- 1 utility to pursue such an arrangement with a  
2 nonutility generating project.
- 3 (2) The commission shall allow recovery of an electric  
4 utility's prudently incurred costs related to  
5 cancellation, buyout, buydown or renegotiation of  
6 nonutility generating projects.
- 7 (3) The commission shall determine the level of other  
8 generation-related transition or stranded costs that  
9 may be recovered through the competitive transition  
10 charge.
- 11 (4) The commission shall consider the extent to which the  
12 electric utility has undertaken efforts to mitigate  
13 generation-related transition or stranded costs by  
14 appropriate means in a manner that is reasonable under  
15 all of the circumstances, including consideration of  
16 whether mitigation has been commensurate with the  
17 magnitude of the electric utility's generation-related  
18 transition or stranded costs. During the transition  
19 period, electric utilities shall have the duty to  
20 mitigate generation-related transition or stranded  
21 costs to the extent practicable. Efforts may include  
22 the following:



- 1 (A) Acceleration of depreciation and amortization of
  - 2 existing rate base generation assets;
  - 3 (B) Minimization of new capital spending for existing
  - 4 rate base generation assets;
  - 5 (C) Reallocation of depreciation reserves to existing
  - 6 rate base generation assets;
  - 7 (D) Reduction of book assets by application of new
  - 8 proceeds of any sale of idle or underutilized
  - 9 existing rate base generation assets; and
  - 10 (E) Maximization of market revenues from existing
  - 11 rate base generation assets.
- 12 (5) Of equal importance to the mitigation efforts under
- 13 paragraph (4), the commission shall consider efforts
- 14 undertaken over time, prior to the enactment of this
- 15 chapter, to reduce or moderate customer rate levels
- 16 while maintaining safe and efficient operations.
- 17 (d) As a component of its restructuring plan, each
- 18 electric utility shall file with the commission a recovery plan,
- 19 including a proposed competitive transition charge and
- 20 supporting documentation. In evaluating a recovery plan and any
- 21 proposed competitive transition charge, the commission shall
- 22 schedule open evidentiary hearings with proper notice and



1 opportunity for all parties to cross-examine witnesses as  
2 necessary.

3 (e) The commission shall establish procedures for the  
4 annual review of the competitive transition charge. The review  
5 shall reconcile the annual revenues received from the charge  
6 with the annual amortization of transition or stranded costs  
7 approved by the commission under this section. The commission  
8 shall adjust the competitive transition charge based upon  
9 underrecovery or overrecovery of the annual amortization amount

10 **§269-G Requirements for electric generation suppliers.**

11 (a) No person or corporation, brokers and marketers, aggregators  
12 and other entities, shall engage in the business of an electric  
13 generation supplier in this State unless the person or  
14 corporation holds a license issued by the commission. Electric  
15 cooperative corporations must possess a certificate for service  
16 to supply generation services beyond their territorial limits.

17 (b) An application for an electric generation supplier  
18 license must be made to the commission in writing, be verified  
19 by oath or affirmation and be in such form and contain such  
20 information as the commission may by its regulations require. A  
21 license shall be issued to any qualified applicant, authorizing  
22 the whole or any part of the service covered by the application,



1 if it is found that the applicant is fit, willing and able to  
2 perform properly the service proposed and to conform to the  
3 provisions of this title and the lawful orders and regulations  
4 of the commission under this title, including the commission's  
5 regulations regarding standards and billing practices, and that  
6 the proposed service, to the extent authorized by the license,  
7 will be consistent with the public interest and the policy  
8 declared in this chapter; otherwise, such application shall be  
9 denied.

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

14 (1) Furnishes a bond or other security approved by the  
15 commission in form and amount to ensure the financial  
16 responsibility of the electric generation supplier and  
17 the supply of electricity at retail in accordance with  
18 contracts, agreements or arrangements;

19 (2) Certifies to the commission that it will pay and in  
20 subsequent years has paid the full amount of taxes  
21 imposed by law and any tax imposed by this part;



1 (3) Provides the commission with the address of the  
2 participant's principal office in this State or the  
3 address of the participant's registered agent in this  
4 State, the latter being the address at which the  
5 participant may be served process.

6 (4) Agrees that it shall be subject to all taxes imposed  
7 by law and any tax imposed by this part.

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

12 (d) If an electricity supplier other than an electric  
13 distribution company does not pay the tax imposed upon gross  
14 receipts as imposed by law or this part, the electric  
15 distribution company to whose retail customer the electricity  
16 supplier provided generation service shall remit the unpaid tax,  
17 as a tax on the use of electricity in this State, to the  
18 Department of Tax and may collect or seek reimbursement of the  
19 tax so paid from the electricity provider or any other  
20 appropriate party that used the electricity in this State. The  
21 Department of Tax shall collect and enforce any use tax herein  
22 provided or as provided by law. Failure of the electric





1 distribution company to pay the amount within thirty days after  
2 notice provided by the Department of Tax shall cause interest to  
3 be imposed on the electric distribution company in accordance  
4 with law. Interest shall be calculated from the thirty first day  
5 after the department gives the notice required in this  
6 paragraph. An electric distribution company or other appropriate  
7 person may challenge the imposition of the tax and interest by  
8 filing a petition with the department not later than thirty days  
9 after the date on which the tax became due.

10 (e) No license issued under this part may be transferred  
11 without prior commission approval.

12 (f) The commission may forbear from applying requirements  
13 of this part which it determines are unnecessary due to  
14 competition among electric generation suppliers. In regulating  
15 the service of electric generation suppliers, the commission  
16 shall impose requirements necessary to ensure that the present  
17 quality of service provided by electric utilities does not  
18 deteriorate, including assuring that adequate reserve margins of  
19 electric supply are maintained.

20 (g) Prior to approving the licensure of any broker and  
21 marketer or aggregator, the commission shall set forth standards  
22 to ensure that all retail customer classes may choose to



1 purchase electricity through a broker and marketer or  
2 aggregator.

3       **§269-H Market power remediation.** (a) The commission shall  
4 monitor the market for the supply and distribution of  
5 electricity to retail customers and take steps as set forth in  
6 this section to prevent anticompetitive or discriminatory  
7 conduct and the unlawful exercise of market power.

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

16       (c) The commission may require an electricity supplier to  
17 provide information, including documents and testimony, in  
18 accordance with the commission's regulations regarding the  
19 discovery of information from any electricity supplier.

20 Confidential, proprietary or trade secret information provided  
21 under this subsection shall not be disclosed to any person not  
22 directly employed or retained by the commission to conduct the



1 investigation without the consent of the party providing the  
2 information. The commission shall disclose information obtained  
3 under this subsection to the Division of Consumer Advocacy under  
4 an appropriate confidentiality agreement. The commission may  
5 disclose the information to appropriate Federal or State law  
6 enforcement officials if it determines that the disclosure of  
7 the information is necessary to prevent or restrain a violation  
8 of Federal or State law and it provides the party that provided  
9 the information with reasonable notice and opportunity to  
10 prevent or limit disclosure.

11 (d) If, as a result of an investigation conducted under  
12 this section, the commission has reason to believe that  
13 anticompetitive or discriminatory conduct, including the  
14 unlawful exercise of market power, is preventing the retail  
15 electricity customers in this State from obtaining the benefits  
16 of a properly functioning and workable competitive retail  
17 electricity market, the commission, pursuant to its regulations,  
18 shall:

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



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

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

8           (e) In the exercise of authority the commission otherwise  
9           may have to approve the mergers or consolidations by electric  
10          utilities or electricity suppliers, or the acquisition or  
11          disposition of assets or securities of other public utilities or  
12          electricity suppliers, the commission shall consider whether the  
13          proposed merger, consolidation, acquisition or disposition is  
14          likely to result in anticompetitive or discriminatory conduct,  
15          including the unlawful exercise of market power, which will  
16          prevent retail electricity customers in this State from  
17          obtaining the benefits of a properly functioning and workable  
18          competitive retail electricity market. Upon request for  
19          approval, the commission shall provide notice and an opportunity  
20          for open, public evidentiary hearings. If the commission finds,  
21          after hearing, that a proposed merger, consolidation,  
22          acquisition or disposition is likely to result in



1 anticompetitive or discriminatory conduct, including the  
2 unlawful exercise of market power, which will prevent retail  
3 electricity customers in this State from obtaining the benefits  
4 of a properly functioning and workable competitive retail  
5 electricity market, the commission shall not approve such  
6 proposed merger, consolidation, acquisition or disposition,  
7 except upon such terms and conditions as it finds necessary to  
8 preserve the benefits of a properly functioning and workable  
9 competitive retail electricity market.

10 (f) If an electric distribution company or any of its  
11 affiliated companies or any company that an electric  
12 distribution company has purchased generation from is found  
13 guilty of market manipulation, exercising market power or  
14 collusion by the Federal Energy Regulatory Commission or any  
15 Federal or State court or, if an electric distribution company  
16 or any one of its affiliated companies or any company that an  
17 electric distribution company has purchased generation from  
18 settles a claim of market manipulation, exercising market power  
19 or collusion that is brought by a regional transmission  
20 operator's market monitoring unit, the Federal Energy Regulatory  
21 Commission or another entity, the commission:



1           (1) Shall direct the electric distribution company to take  
2           any and all reasonable action to quantify the effect  
3           of the market misconduct upon Pennsylvania ratepayers.

4           (2) Following public hearing on the matter and a finding  
5           of public interest, may direct the electric  
6           distribution company to take any and all reasonable  
7           legal action, including the filing of a lawsuit as may  
8           be necessary, to recover the quantified damages which  
9           shall be used to recompense Pennsylvania ratepayers  
10          affected by the market misconduct.

11 If the electric distribution company fails to pursue reasonable  
12 action to quantify or seek recovery of damages for Hawaii  
13 ratepayers affected by market manipulation, the exercise of  
14 market power or collusion, the commission is authorized,  
15 following notice and an opportunity of the electric distribution  
16 company to comply or contest, to assess a civil penalty, which  
17 shall not be recovered in rates, of not more than \$10,000 per  
18 day for failure or neglect to obey an order of the commission,  
19 the continuance of the failure or neglect being a separate  
20 offense and any monetary damages recovered by the electric  
21 distribution company shall be paid to affected Hawaii ratepayers  
22 in the form of a credit to their electric bills or as refunds.



1 (g) Nothing in this section shall restrict the right of any  
2 party to pursue any other remedy available to it under this  
3 part.

4 **§269-I Force majeure.** (a) An electric utility may  
5 recover losses resulting from force majeure through an increase  
6 in its retail base rates during any rate cap period.

7 (b) The commission, after a hearing to determine the  
8 electric utility's losses from force majeure, shall permit the  
9 utility to fully collect any approved force majeure increase  
10 through an appropriate customer surcharge mechanism.

11 (c) For purposes of this section, "force majeure" means a  
12 major event or combination of major events, including new or  
13 expanded state or federal statutory or regulatory requirements;  
14 hurricanes, tornadoes, ice storms, or other natural disasters;  
15 or acts of war, terrorism, or civil disturbance, beyond the  
16 control of an electric utility that the regulatory authority  
17 finds increases the utility's total reasonable and necessary  
18 nonfuel costs or decreases the utility's total nonfuel revenues  
19 related to the generation and delivery of electricity by more  
20 than ten percent for any calendar year during the freeze period.  
21 The term does not include any changes in general economic



1 conditions such as inflation, interest rates, or other factors  
2 of general application."

3 SECTION 3. Chapter 269, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 **"§269- Provisions not applicable to electric utilities.**

7 The provisions of sections 269-17, 269-17.5, 269-18, 269-19, and  
8 269-19.5 shall not apply to electric utilities, as defined in  
9 section 269-1."

10 SECTION 4. Section 269-1, Hawaii Revised Statutes, is  
11 amended by adding a new definition to be appropriately inserted  
12 and to read as follows:

13 "Electric utility" includes a public utility, as defined  
14 herein, which produces, conveys, transmits, delivers, or  
15 furnishes electric power."

16 SECTION 5. Section 269-6, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 **"§269-6 General powers and duties.** (a) The public  
19 utilities commission shall have the general supervision  
20 hereinafter set forth over all public utilities, and over  
21 electric utilities to the extent provided within part A, and  
22 shall perform the duties and exercise the powers imposed or





1 conferred upon it by this chapter. Included among the general  
2 powers of the commission is the authority to adopt rules  
3 pursuant to chapter 91 necessary for the purposes of this  
4 chapter."

5 SECTION 6. Section 269-7, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) The commission may investigate any person acting in  
8 the capacity of or engaging in the business of a public utility  
9 within the State, without having a certificate of public  
10 convenience and necessity or other authority previously obtained  
11 under and in compliance with this chapter or the rules  
12 promulgated under this chapter[-] in cases where such  
13 certificate or authority is required."

14 SECTION 7. Section 269-7.5, Hawaii Revised Statutes, is  
15 amended by adding a new subsection to be appropriately  
16 designated and to read as follows:

17 "( ) No electric utility, as defined in section 269-1,  
18 shall be required to obtain a certificate of public convenience  
19 and necessity under this section."

20 SECTION 8. Section 269-15, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:



1           "(b) In addition to any other remedy available, the  
2 commission or its enforcement officer may issue citations to any  
3 person acting in the capacity of or engaging in the business of  
4 a public utility within the State, without having a certificate  
5 of public convenience and necessity or other authority  
6 previously obtained under and in compliance with this chapter or  
7 the rules adopted thereunder[-], if such certificate or  
8 authority is required.

9           (1) The citation may contain an order of abatement and an  
10 assessment of civil penalties as provided in section  
11 269-28(c). All penalties collected under this  
12 subsection shall be deposited in the treasury of the  
13 State. Service of a citation issued under this  
14 subsection shall be made by personal service whenever  
15 possible, or by certified mail, restricted delivery,  
16 sent to the last known business or residence address  
17 of the person cited.

18           (2) Any person served with a citation under this  
19 subsection may submit a written request to the  
20 commission for a hearing, within twenty days from the  
21 receipt of the citation, with respect to the  
22 violations alleged, the scope of the order of



1 abatement and the amount of civil penalties assessed.  
2 If the person cited under this subsection timely  
3 notifies the commission of the request for a hearing,  
4 the commission shall afford an opportunity for a  
5 hearing under chapter 91. The hearing shall be  
6 conducted by the commission or the commission may  
7 designate a hearings officer to hold the hearing.  
8 (3) If the person cited under this subsection does not  
9 submit a written request to the commission for a  
10 hearing within twenty days from the receipt of the  
11 citation, the citation shall be deemed a final order  
12 of the commission. The commission may apply to the  
13 appropriate court for a judgment to enforce the  
14 provisions of any final order, issued by the  
15 commission or designated hearings officer pursuant to  
16 this subsection, including the provisions for  
17 abatement and civil penalties imposed. In any  
18 proceeding to enforce the provisions of the final  
19 order of the commission or designated hearings  
20 officer, the commission need only show that the notice  
21 was given, a hearing was held or the time granted for  
22 requesting the hearing has run without such a request,



1 and a certified copy of the final order of the  
 2 commission or designated hearings officer.

3 (4) If any party is aggrieved by the decision of the  
 4 commission or the designated hearings officer, the  
 5 party may appeal to the intermediate appellate court,  
 6 subject to chapter 602, in the manner provided for  
 7 civil appeals from the circuit court; provided that  
 8 the operation of an abatement order shall not be  
 9 stayed on appeal unless specifically ordered by a  
 10 court of competent jurisdiction after applying the  
 11 stay criteria enumerated in section 91-14(c). The  
 12 sanctions and disposition authorized under this  
 13 subsection shall be separate and in addition to all  
 14 other remedies either civil or criminal provided in  
 15 any other applicable statutory provision. The  
 16 commission may adopt rules under chapter 91 as may be  
 17 necessary to fully effectuate this subsection."

18 SECTION 9. Section 269-16, Hawaii Revised Statutes, is  
 19 amended by adding a new subsection to be appropriately  
 20 designated and to read as follows:

21 "( ) This section shall not apply to electric utilities,  
 22 as defined in section 269-1."



1 SECTION 10. Section 269-16.3, Hawaii Revised Statutes, is  
2 amended by adding a new subsection to be appropriately  
3 designated and to read as follows:

4 "( ) This section shall not apply to electric utilities,  
5 as defined in section 269-1."

6 SECTION 11. Section 269-28, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) Notwithstanding the provisions of subsection (a), any  
9 person acting in the capacity of or engaging in the business of  
10 a public utility in the State without having a certificate of  
11 public convenience and necessity or other authority previously  
12 obtained under and in compliance with this chapter and the rules  
13 promulgated thereunder, if such certificate or authority is  
14 required, may be subject to a civil penalty not to exceed \$5,000  
15 for each such offense, and, in the case of a continuing  
16 violation, \$5,000 for each day that uncertified activity  
17 continues."

18 SECTION 12. Section 269-54, Hawaii Revised Statutes, is  
19 amended by amending subsection (d) to read as follows:

20 "(d) Whenever it appears to the consumer advocate that:  
21 (1) any public utility has violated or failed to comply with any  
22 provision of this part or of any state or federal law; (2) any



1 public utility has failed to comply with any rule, regulation,  
2 or other requirement of the public utilities commission or of  
3 any other state or federal agency; (3) any public utility has  
4 failed to comply with any provision of its charter or franchise;  
5 (4) changes, additions, extensions, or repairs to the plant or  
6 service of any public utility are necessary to meet the  
7 reasonable convenience or necessity of the public; or (5) the  
8 rates, fares, classifications, charges, or rules of any public  
9 utility whose rates are regulated by the public utilities  
10 commission are unreasonable or unreasonably discriminatory, the  
11 consumer advocate may institute proceedings for appropriate  
12 relief before the public utilities commission. The consumer  
13 advocate may appeal any final decision and order in any  
14 proceeding to which the consumer advocate is a party in the  
15 manner provided by law."

16 SECTION 13. Section 269-27.2, Hawaii Revised Statutes, is  
17 repealed.

18 [~~"§269-27.2 Utilization of electricity generated from~~  
19 ~~nonfossil fuels.~~ (a) ~~The public utilities commission shall~~  
20 ~~investigate and determine the extent to which electricity~~  
21 ~~generated from nonfossil fuel sources is available to public~~  
22 ~~utilities that supply electricity to the public, which~~



1 ~~electricity is in excess of that utilized or otherwise needed by~~  
2 ~~the producers for their internal uses and which the producers~~  
3 ~~are willing to make available to the electric public utilities.~~

4 ~~(b) The public utilities commission may direct public~~  
5 ~~utilities that supply electricity to the public to arrange for~~  
6 ~~the acquisition of and to acquire electricity generated from~~  
7 ~~nonfossil fuel sources as is available from and the producers~~  
8 ~~are willing and able to make available to the public utilities,~~  
9 ~~and to employ and dispatch the nonfossil fuel generated~~  
10 ~~electricity in a manner consistent with the availability thereof~~  
11 ~~to maximize the reduction in consumption of fossil fuels in the~~  
12 ~~generation of electricity to be provided to the public. To~~  
13 ~~assist the energy resources coordinator in effectuating the~~  
14 ~~purposes of chapter 201N, the public utilities commission may~~  
15 ~~develop reasonable guidelines and timetables for the creation~~  
16 ~~and implementation of power purchase agreements.~~

17 ~~(c) The rate payable by the public utility to the producer~~  
18 ~~for the nonfossil fuel generated electricity supplied to the~~  
19 ~~public utility shall be as agreed between the public utility and~~  
20 ~~the supplier and as approved by the public utilities commission;~~  
21 ~~provided that in the event the public utility and the supplier~~  
22 ~~fail to reach an agreement for a rate, the rate shall be as~~



1 ~~prescribed by the public utilities commission according to the~~  
2 ~~powers and procedures provided in this chapter.~~

3 ~~The commission's determination of the just and reasonable~~  
4 ~~rate shall be accomplished by establishing a methodology that~~  
5 ~~removes or significantly reduces any linkage between the price~~  
6 ~~of fossil fuels and the rate for the nonfossil fuel generated~~  
7 ~~electricity to potentially enable utility customers to share in~~  
8 ~~the benefits of fuel cost savings resulting from the use of~~  
9 ~~nonfossil fuel generated electricity. As the commission deems~~  
10 ~~appropriate, the just and reasonable rate for nonfossil fuel~~  
11 ~~generated electricity supplied to the public utility by the~~  
12 ~~producer may include mechanisms for reasonable and appropriate~~  
13 ~~incremental adjustments, such as adjustments linked to consumer~~  
14 ~~price indices for inflation or other acceptable adjustment~~  
15 ~~mechanisms.~~

16 ~~(d) Upon application of a public utility that supplies~~  
17 ~~electricity to the public, and notification of its customers,~~  
18 ~~the commission, after an evidentiary hearing, may allow payments~~  
19 ~~made by the public utility to nonfossil fuel producers for firm~~  
20 ~~capacity and related revenue taxes to be recovered by the public~~  
21 ~~utility through an interim increase in rates until the effective~~  
22 ~~date of the rate change approved by the commission's final~~





1 ~~decision in the public utility's next general rate proceeding~~  
2 ~~under section 269-16, notwithstanding any requirements to the~~  
3 ~~contrary of any other provision in this chapter or in the~~  
4 ~~commission's rules or practices; provided the amount recovered~~  
5 ~~by the utility and the amount of increase in rates due to the~~  
6 ~~payments for firm capacity and related revenue taxes to be~~  
7 ~~charged to the consumers of the electricity are found by the~~  
8 ~~commission to be:~~

- 9       ~~(1) Just and reasonable;~~  
10       ~~(2) Not unduly prejudicial to the customers of the public~~  
11           ~~utility;~~  
12       ~~(3) Promotional of Hawaii's long-term objective of energy~~  
13           ~~self-sufficiency;~~  
14       ~~(4) Encouraging to the maintenance or development of~~  
15           ~~nonfossil fueled sources of electrical energy; and~~  
16       ~~(5) In the overall best interest of the general public.~~

17 ~~The evidentiary hearing provided for in this subsection shall be~~  
18 ~~conducted expeditiously and shall be limited to evidence related~~  
19 ~~to the above findings. Notwithstanding section 269-16, no~~  
20 ~~public hearing shall be required, except as the commission in~~  
21 ~~its discretion may require.]"~~



1 SECTION 14. In codifying the new sections added by section  
 2 of this Act, the revisor of statutes shall substitute  
 3 appropriate section numbers for the letters used in designating  
 4 the new sections in this Act.

5 SECTION 15. If any provision of this Act, or the  
 6 application thereof to any person or circumstance, is held  
 7 invalid, the invalidity does not affect other provisions or  
 8 applications of the Act that can be given effect without the  
 9 invalid provision or application, and to this end the provisions  
 10 of this Act are severable.

11 SECTION 16. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 17. This Act shall take effect upon its approval.  
 14

INTRODUCED BY.

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**Report Title:**

Electric companies; Customer choice; Deregulation

**Description:**

Creates a competitive market for the generation of electricity; deregulates electric utilities with respect to rates and other matters with consideration to transition costs; provides direct access by retail customers to the competitive market.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

