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1996 Survey of Rhode Island Law: Legislation: Public Utilities and Carriers. An Act Relating To The Utility Restructuring Act of 1996

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Public Utilities and Carriers. *An Act Relating To The Utility Restructuring Act of 1996.* Provides for competition in the electricity industry by deregulating power generating operations and separating them from the transmission and distribution functions of electric utilities. Power generating and transmission operations are no longer classified as public utilities, although distribution facilities remain public utilities. The legislation also provides for rate adjustments based upon eighty percent of the change in the consumer price index, a restructuring of the public utilities commission, and various consumer protection provisions. Effective, August 7, 1996. 1996 R.I. Pub. Laws ch. 316.

This legislation (the Act) provides for competition in the electric utilities industry by requiring electrical distribution companies to file plans to restructure the different services currently provided by an electric utility.¹ The result of the restructuring will be the deregulation of the industry to provide greater competition.² The Act also restructures the Public Utilities Commission.³

The Act first amends the General Assembly's declaration of policy by eliminating the finding that the business of "generating" electrical energy is affected with a public interest.⁴ Next, the Act declares that lower retail electricity rates will promote the health and general welfare of the citizens of Rhode Island, and that current research indicates greater competition would decrease electricity rates over time.⁵ The findings continue by stating that competition would stimulate economic growth,⁶ and that it is in the public interest to promote competition and establish performance based rate making for utilities.⁷ The Act also provides that during the transition to open competition, the utilities should have a reasonable opportunity to recover transition costs incurred due to prior commitments.⁸ Further, the Act states that the protection

1. R.I. Gen. Laws § 39-1-27(a) (Supp. 1996).

2. *Id.* § 39-1-1(d)(3).

3. *Id.* § 39-1-3(b).

4. *Id.* § 39-1-1(a)(1) (1990 & Supp. 1996).

5. *Id.* § 39-1-1(d)(1)-(2).

6. *Id.* § 39-1-1(d)(3).

7. *Id.* § 39-1-1(d)(4).

8. *Id.* § 39-1-1(d)(5).

of the state's air quality should be encouraged,⁹ and the protection currently afforded low income customers shall continue.¹⁰

In its definition section,¹¹ the Act no longer classifies the generation of electricity as a public utility.¹² It also exempts two newly defined categories: "nonregulated power producer"¹³ and "electric transmission company."¹⁴ These entities will be required to provide service to all nonregulated power producers and customers on comparable, nondiscriminatory prices and terms, notwithstanding any affiliation with a nonregulated power producer.¹⁵ "Electric distribution company" is also a newly defined category and is classified as a public utility.¹⁶

The Act changes the composition of the Public Utilities Commission by prohibiting any commissioner from being the administrator of the division of public utilities and carriers.¹⁷ The Act also changes the funding structure of both the commission and the division.¹⁸

Next, the Act provides that each electric distribution company must submit a restructuring plan that separates it from its generation and transmission facilities.¹⁹ The generation facility must be transferred to a nonregulated power producer.²⁰ Plans must be reviewed for compliance by the Public Utilities Commission within

9. *Id.* § 39-1-1(d)(6).

10. *Id.* § 39-1-1(d)(7).

11. *Id.* § 39-1-2.

12. *Id.* § 39-1-2(7).

13. *Id.* § 39-1-2(7.1) (Supp. 1996). These companies produce, generate, or buy electricity for wholesale or retail sale to the public. Under this provision, a "non-regulated power producer" shall not be subject to regulation as a public utility unless provided elsewhere in the General Laws. *Id.*

14. *Id.* § 39-1-2(7.2). These companies are not regulated as public utilities, unless otherwise provided by the General Laws, but shall be regulated by the Federal Energy Regulatory Commission. *Id.*

15. *Id.*

16. *Id.* § 39-1-2(7.3). These companies may own, operate or control distribution facilities, which are used to distribute electricity, and are not transmission facilities. *Id.* § 39-1-2(7.5).

17. *Id.* § 39-1-3 (1990 & Supp. 1996). Under this provision, the administrator implements the regulations and orders of the public utilities commission. *Id.* Prior to the Act, the chairperson of the Public Utilities Commission was statutorily designated as the public utilities administrator. *Id.*

18. *Id.* §§ 39-1-23, -26.

19. *Id.* § 39-1-27(a) (Supp. 1996).

20. *Id.* All three facilities are to be transferred at book value, "net of depreciation and deferred taxes, as of the date of the transfer." *Id.*

six months of submission,²¹ and upon approval, must be implemented. The distribution company must then end its "all requirements contract" with its wholesale power supplier on terms set forth in the Act.²²

Under the Act, the retail electric licensing commission must submit a plan to the legislature that includes a taxing/assessment scheme for electric transmission companies and nonregulated power producers, recommendations as to regional power pools, and proposals for consumer protection.²³

The Act also provides that all nonregulated power producers seeking to do business in Rhode Island must file a registration statement with the division of public utilities and carriers.²⁴ The registration application becomes effective thirty days after filing unless rejected by the division.²⁵

A major component of the Act is the authorized recovery of transition charges, which include certain costs incurred prior to the Act.²⁶ In order to moderate the impact of transition charges on electricity rates, the transition period extends to December 31, 2009.²⁷ However, notwithstanding the transition recovery charges, an electric distribution company may recover two and eight-tenths of one cent (2.8 cents) per kilowatt-hour from July 1, 1997, until December 31, 2000.²⁸

In addition, employees, books and records of affiliated electric distribution companies and nonregulated power producers must be maintained separately.²⁹ The Act also allows for rate adjustments

21. *Id.* § 39-1-27(b).

22. *Id.* § 39-1-27.

23. *Id.* § 39-1-27.1(a). The required plan was to be submitted by January 1, 1997. *Id.*

24. *Id.* § 39-1-27.1. The specific information required to be contained in a registration application is set forth in this provision. *Id.*

25. *Id.* § 39-1-27.1(d). Rejections of registration applications must be written, contain the applicable reasons, and if practicable, identify alternative ways to overcome the deficiencies. *Id.*

26. *Id.* § 39-1-27.3. Such costs include fees imposed for terminating all requirements contracts, nuclear obligations, unrecovered capital costs, and above market payments to power suppliers. *Id.*

27. *Id.*

28. *Id.* § 39-1-27.3(d).

29. *Id.* § 39-1-27.6.

equal to eighty percent of the change in the consumer price index for the preceding twelve months.³⁰

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30. *Id.* § 39-1-27.2(d). Factors “beyond the control” of the companies may also be considered with the approval of the commission. *Id.* Section 39-1-27.4 of the Rhode Island General Laws also provides a formula for performance based rates for electric distribution companies for the period beginning January 1, 1997, and ending December 31, 1998. *Id.* § 39-1-27.4. This formula, according to the Act, is intended to ensure that residential customers do not pay higher rates due to the phased introduction of competition for commercial and industrial electricity customers. *Id.*

