

**THE COMPETITIVE SOURCING OF RETAIL ELECTRIC POWER:  
AN IDEA WHO'S TIME HAS (FINALLY) COME**

**A Presentation by**

**Dr. John A. Anderson  
Executive Director  
Electricity Consumers Resource Council (ELCON)**

**at the  
Utility Directors' Workshop  
Williamsburg, VA  
September 10, 1993**

**I. INTRODUCTION**

I am John Anderson, Executive Director of the Electricity Consumers Resource Council (ELCON). I am pleased to appear before you today to discuss "The Competitive Sourcing of Retail Electric Power: An Idea Who's Time Has (Finally) Come."

ELCON is a consumer group -- an association of large industrial consumers of electricity. Our members have facilities in most of the 50 states and in many foreign countries. They produce a wide range of products including aluminum, steel, chemicals, petroleum, industrial gases, glass, motor vehicles, electronics, textiles and food. Our 22 member companies represent over four percent of all electricity consumption in the United States.

Our members need an adequate and reliable electricity supply. However, it must be competitively priced. We believe that the increased competition that is now coming to the electrical utility industry will benefit all consumers. A critical component of this increased competition is retail wheeling. Retail wheeling of electric power will soon be with us for several reasons.

What I will do today is briefly review forces that have been bringing increased competition to the electric utility industry for a number of years. Then, I will describe the factors that motivate large industrial customers to seek increased retail wheeling. Finally, I will describe why I think that retail wheeling soon will be a fait accompli.

**II. BACKGROUND**

The electric utility industry is the last major producing sector of the U.S. economy that is largely shielded from competitive market forces. As a result, the industry is replete with wide price disparities that do not exist in any other commodity market. Fortunately a variety of factors have been working to infuse more market discipline into the industry. The Energy

Policy Act of 1992<sup>1</sup> focused attention on this trend and may significantly accelerate the movement. But competition was coming to the industry, with or without the new law.

ELCON has advocated increased competition in the electric power industry. We are not alone. Real competition is supported by almost all major consumer and producer interest groups -- except most investor-owned utilities (IOUs) and their major trade group, the Edison Electric Institute. Advocates of competition believe benefits such as the following can be achieved with restructuring:

- ▶ Inefficient planning and operation are not tolerated.
- ▶ Institutional changes are forced to facilitate market efficiencies. Cost control and innovation are encouraged and rewarded.
- ▶ Competitive markets do not sanction preferential or discriminatory treatment for certain customers or customer classes.
- ▶ Market efficiencies promote the proper use of energy resources which is the most effective way to ensure environmental protections.
- ▶ Most importantly, prices are driven to the lowest possible levels. Utilities are forced to meet the competition -- that is, they have to be price takers, not price makers.

Large industrial electricity consumers are fully aware of these benefits. They operate in competitive domestic and international markets. They purchase large quantities of raw materials and semi-finished goods in competitive markets. They also purchase electricity -- but not in competitive markets. *Indeed, electricity is their only purchase that is not competitively sourced -- and the contrasts and consequences are vivid.* The monopoly power of utilities shields them from the discipline of competitive markets and allows them to be insensitive to their customers' needs. Thus, inefficiencies and pervasive rate differentials are tolerated. Competition however, makes sellers view their buyers as customers -- not simply captive ratepayers.

The absolute monopoly control of an electric utility in its service territory has been rapidly diminishing for at least the last decade. Both qualified cogeneration facilities (QFs) and independent power producers (IPPs) now directly compete with utilities for the right to build new power plants and currently account for half of all new capacity additions. Utilities with excess capacity are searching for new markets (increasingly at market-based rates) and unwittingly or not are adding to the competition. Several cities have municipalized their power systems so that they can shop for the most economical power rather than continue to be captive to the single, high-priced utility surrounding them. They know that low cost energy service is necessary to sustain a healthy business climate and maintain jobs.

---

<sup>1</sup>P.L. N° 102-486, 106 Stat. 2776 (1992).

Significant steps to increase competition are being taken by both federal and state regulators. The Federal Energy Regulatory Commission (FERC) has aggressively promoted the independent power industry for a number of years. In addition, FERC recognized that increased transmission access was necessary in order for IPPs to fully participate in the wholesale markets. In response, FERC has required non-discriminatory wheeling services as a condition to approval of mergers or market-based pricing proposals. Several states also are aware that increased transmission access can benefit consumers and have taken an actions to encourage the movement towards a more competitive bulk power market.

The bottom line is that increased wholesale competition has been coming to the electric utility industry for a number of years. Complimenting this movement, the U.S. Congress enacted The Energy Policy Act of 1992 (EPAct or the Act). This Act will accelerate the trend towards a more competitive electric industry.

Figure 1

The EPAct is the most comprehensive federal energy policy legislation since enactment of the National Energy Act of 1978. That piece of legislation included such landmark bills as the Public Utility Regulatory Policies Act (PURPA), the Natural Gas Policy Act (NGPA), and three other major initiatives intended to address the energy market turmoil of the 1970s. However, in terms of the overall potential to influence and change the structure of the Nation's regulated energy markets, the new Act must be compared with the Public Utility Act of 1935 which produced the Public Utility Holding Company Act or PUHCA (Title I) and the Federal Power Act or the FPA (Title II). A cornerstone of the new

**KEY ELECTRICITY TITLES IN THE ENERGY POLICY ACT OF 1992**

- Title I - Energy Efficiency
- Title VI - Electric Motor Vehicles
- Title VII - Electricity
- Title XII - Renewable Energy
- Title XIII - Coal
- Title XVI - Global Climate Change
- Titles XVII & XXIV - Hydropower
- Title XIX - Revenue Provisions
- Title XXI - Energy and Environment
- Title XXVIII - Nuclear Plant Licensing

Act is Title VII ("Electricity") which amends PUHCA and the FPA, and in so doing, provides a statutory basis for restructuring wholesale electric generation markets. Title VII, and the provisions of Title IX which will privatize the domestic uranium enrichment industry, nearly complete the establishment of *competitive* energy markets President Reagan began to establish in 1981.

The Act consists of 30 titles that collectively impact nearly every energy market. The Act's provisions affecting the structure of the electric utility industry -- Title VII -- will have the greatest impact on the future of the electric utility industry. Title VII amends both PUHCA and the FPA to establish more competitive wholesale power markets. In addition, FERC is armed with new regulatory authorities to expand and enforce new competitive arrangements. While Title VII clearly will have a significant impact on the electric utility industry, other provisions

also will have great impacts. For example, the Act contains titles on energy efficiency, nuclear, coal, hydropower, electric vehicles, and tax issues relating to electric utilities.

#### A. EXEMPT WHOLESALE GENERATORS (EWGS)

Congress deliberately intended Title VII to increase competition in the electric utility industry. ELCON, which believes that competitive bulk power markets will benefit electric consumers and the nation, lobbied strongly for most of the provisions in Title VII.

Title VII first amends PUHCA to permit the creation of exempt wholesale generators (EWGs). This, by itself, is not necessarily good. The provision could result in *less* competition if utility-affiliated EWGs overwhelm non-utility generators and dominate the bulk power markets. The potential for self-dealing and other anti-competitive practices between affiliated EWGs and their parents also is rife.

Utilities may attempt to avoid ratebased construction (and state oversight) and meet all their new capacity requirements with purchases from affiliated EWGs -- particularly from their own affiliates. The new law makes no distinction between true independent power producers (IPPs) and affiliated power producers (APPs) although there are very significant differences between the two. Increased numbers of IPPs will increase competition. Increased numbers of APPs may actually decrease competition. The potential for self-dealing and preferential treatment is great without adequate regulatory oversight.

The Act gives state PUCs certain powers and authorities to protect consumers. However, each state must take the initiative and act constructively to use and enforce these powers and authorities. It is important state PUCs fight for proper enforcement of the Act. The goal of the Act must be the encouragement of competitive markets -- *not* exclusively the promotion of EWGs, particularly EWGs owned by electric utilities.

Anyone can apply to the FERC for EWG status. Once certified, an EWG may generate and sell power at wholesale, free from the restrictions of PUHCA. The burdens of PUHCA were a major impediment to the development of a thriving independent power industry before enactment of the new law.

Utilities, including registered and exempt holding companies, may create and own EWGs. This provision caused great concern during the legislative debate about the potential for utility-affiliate self-dealing and/or cross subsidization. ELCON and other consumer advocates lobbied for an outright ban on utility-affiliate transactions. However, Congress agreed to allow utility-affiliate transactions, but only with the explicit approval of the jurisdictional state PUCs.<sup>2</sup> Any requests for utility/affiliate transactions should be carefully considered. Self-dealing and/or cross

---

<sup>2</sup>§711 of the Energy Policy Act adding a new §32(k) to PUHCA.

subsidization often are extremely hard to detect *before* the fact. Once allowed, it is very difficult to require dissolution of a contractual relationship involving large amounts of money.

The Act allows utilities (including holding companies) to own EWGs in foreign countries. Such EWGs may make retail sales in foreign countries as long as they do not violate those countries' laws. Again, jurisdictional state PUCs must approve any such transactions.<sup>3</sup> State PUCs should carefully analyze any requests by their jurisdictional utilities to own and operate EWGs in foreign countries. Such transactions, may be good and may not harm ratepayers, but there are risks and they may be substantial.

The Act prohibits the transformation of existing, rate-based facilities into EWGs without explicit state PUC approval.<sup>4</sup> Such transformations have the potential to significantly harm ratepayers. A depreciated generator could be "sold" to a utility-affiliate at book value and then turned into an EWG. The profits from the sale of power would accumulate to the shareholders, not ratepayers who paid for the facility. State PUCs should carefully exercise their authority to review any transfer of rate-based facilities to EWGs and allow such transfers only if the benefits fully accrue to ratepayers.

Finally, there was substantial concern during the legislative debate over possible economic advantages of EWGs over utility generators due to their ability to use highly-leveraged financing. There was further concern that EWGs would be unreliable because they have unstable fuel supplies or were not built or operated according to utility standards. After an acrimonious debate, Congress required each state PUC, under section 712 of the Act, to consider establishing rules or policies on each of the following four issues:<sup>5</sup>

1. The effect of long-term wholesale power purchases on retail rates and cost-of-service;
2. Whether reliance on debt threatens the utility's reliability or gives EWGs unfair competitive advantages;
3. Whether state PUCs should adopt procedures for advance approval or disapproval of particular long-term wholesale suppliers; and
4. Whether long-term wholesale power purchases should be conditioned on assurance of access to fuel supplies.

The law does not require decisions on each point. However the law does require each state commission to decide how it will proceed before October 24, 1993.

---

<sup>3</sup>§715 of the Energy Policy Act adding a new §33(a)(2) to PUHCA.

<sup>4</sup>§711 of the Energy Policy Act adding a new §32(c) to PUHCA.

<sup>5</sup>§712 of the Energy Policy Act adding a new §111(10) to PURPA.

State PUCs should emphasize in these proceedings if they decide to hold them, the potential impacts on ratepayers of power purchases from EWGs and other wholesale suppliers. They should not lose sight of the real goal: competitive markets. They should carefully balance the need to encourage a robust independent power sector with vigilant ratepayer protections against the potentially anti-competitive practices of affiliated EWGs. The Act requires an evaluation of "any increases or decreases in the retail rates paid by electric consumers ..." State PUCs should always keep this objective clearly in mind.

## **B. TRANSMISSION ACCESS AND PRICING**

In our view, the most constructive provision in Title VII amends the Federal Power Act to provide for mandatory wholesale transmission access. The Act allows any electric utility or any other person generating electricity (*e.g.*, QFs or EWGs) to apply to FERC for an order requiring wholesale transmission services. The Act gives FERC the authority to issue an order requiring transmission if the application meets the requirements set forth in the law and otherwise is in the public interest. FERC may not issue any order that would unreasonably impair the continued reliability of electric systems affected by the order. FERC is required to set rates, charges, terms and conditions for transmission services to permit recovery of all costs incurred in providing transmission services, including an appropriate share, if any, of legitimate and verifiable economic costs, subject to the requirement that such rates be just and reasonable and not unduly discriminatory or preferential.

Many entities now deprived of transmission access will be able to apply to FERC for mandatory wholesale wheeling orders. FERC will have the authority to order both transmission access and the enlargement of constrained transmission facilities. This is a very important authorization. FERC's powers to order wheeling would be severely diluted if it were unable to require the construction of upgraded or new facilities to expand the transfer capability of the transmission network.

How will these changes affect the electric utility industry? In ELCON's view, more competitive bulk power markets will develop. Much depends on how successful FERC will be in promulgating rules implementing Title VII's provisions. FERC has already issued rule that provides for the certification of EWGs. FERC also must issue rules to establish transmission pricing policy, decide whether to allow the creation of so-called "regional transmission groups" (or "RTGs"), and other important matters. These rules will make -- or break -- competition in the bulk power markets. Assuming that competition is allowed to flourish, FERC's rules on wholesale transmission access and pricing will be the model for similar policies affecting retail wheeling. It will be very difficult to expand opportunities for retail wheeling if the rules for wholesale wheeling are ineffective and end up stifling wholesale competition.

### III. THE MOTIVATION FOR COMPETITION

Industrial electricity consumers face fierce domestic and international competition. They know from real-life experience that they must be very efficient to survive. They have learned the hard way that no producer can be low-cost if they have high-cost suppliers.

Unfortunately, many producers purchase electricity from high-cost suppliers. Indeed, pervasive rate differentials have existed between utilities, even utilities within a single state, for many years.

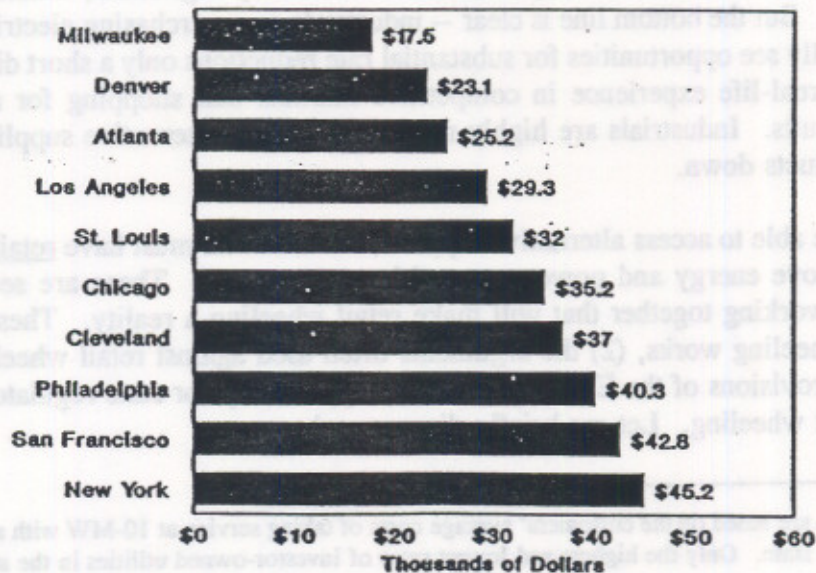
I want to emphasize the importance of this point. Industrial purchases of inputs and raw materials are made by individuals – people. These people purchase steel, plastic, and glass as well as oil, natural gas and coal. These same individuals also purchase electricity. They are treated as customers when they buy goods and services in competitive markets. However, these same people are treated as captive ratepayers when they purchase electricity. The contrasts are vivid.

While the monopoly attitudes may affect buyers' psychology, such feelings could be put aside if the results were acceptable. Unfortunately, they are not. Some industrials are required to pay far more for purchases of electricity than others -- often others with whom they compete.

In fact, rate differentials between utilities are, and have been, considerable. I offer two examples.

First, a representative of an investor-owned utility recently presented the data reproduced here. The data demonstrate that an industrial in New York would pay over two and a half times the amount as a competitor in Milwaukee for the same electricity purchase.

Figure 2

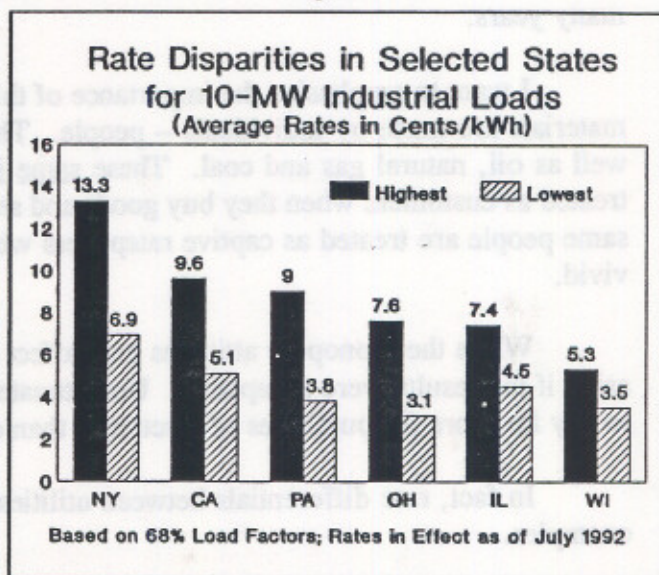


Second, ELCON calculated the costs of purchasing electricity from utilities in several states with large industrial bases. The results show that some industrials in one state often pay more than twice as much as other industrials in the same state for the same electricity purchases.

Figure 3 illustrates the size of rate differentials among only investor-owned utilities within selected states. These data show the differences in cents per kWh for six industrial states. The rate differentials result in sizeable bill impacts with potentially severe anticompetitive consequences. For

example, in New York, some industrial customers would pay over \$650,000 per month for 10-MW service with a load factor of 68%; while other customers -- such as a competitor -- would pay only \$338,000 for the same power requirements. On an annualized basis, the industrial load served by the high-priced utility would be forced to pay a yearly premium of between \$3 to 4 million compared to a competitor that might be located in the franchise area of the lower-priced utility. In Pennsylvania, monthly bills would vary from \$186,000 to \$441,000. The industrial served by the high-priced utility would pay a yearly premium of about \$3 million compared to the lower-priced services. The premium would even be greater if comparisons were made with lower-priced power in neighboring states.<sup>6</sup>

Figure 3



There are of course, many reasons -- some very legitimate, others less so -- for the differentials. But the bottom line is clear -- industrials now purchasing electricity from high-cost utilities usually see opportunities for substantial rate reductions only a short distance away. They know from real-life experience in competitive markets that shopping for alternative supplies produces results. Industrials are highly motivated to seek alternative supplies to keep the cost of their products down.

To be able to access alternative supplies, an industrial must have retail wheeling -- or the ability to move energy and power to an ultimate customer. These are several factors that I believe are working together that will make retail wheeling a reality. These are: (1) the fact that retail wheeling works, (2) the arguments often used against retail wheeling lack merit and (3) certain provisions of the EPAct provide the opportunity for state regulatory commissions to require retail wheeling. Let me briefly discuss each.

<sup>6</sup>These data are based on the customers' average costs of taking service at 10-MW with a 68% load factor from utilities in each state. Only the highest and lowest rates of investor-owned utilities in the states are displayed.



#### **IV. RETAIL WHEELING WORKS IN THE REAL WORLD**

The motivation to shop for power is great, and growing. But, can it work?

The answer is clearly yes. Although the number of examples is relatively small, retail wheeling clearly has worked and is working. I cite a few examples. Details regarding these examples are contained in the attached legal memorandum.

1. Stauffer Chemical Company entered into a contract with a municipal utility to purchase power which would have to be wheeled over lines owned by Gulf States Utilities to Stauffer's facility in St. Gabriel, Louisiana. A court battle over GSU's right to refuse the wheeling request resulted in a consent preliminary injunction under which GSU wheeled the power to Stauffer's plant.
2. Under a self-service arrangement, power produced by a Dow Chemical subsidiary in Sarnia, Ontario was wheeled through Ontario Hydro Company, Detroit Edison and Consumers Power for use by Dow's Midland, Michigan facility.
3. For a number of years the New York Power Authority (NYPA) has sold power to two industrial customers located in the service territory of Consolidated Edison Company (ConEd): Shearson Lehman Brothers (maximum of 16 MW) and General Motors Corporation (maximum of 10 MW). The power has been transmitted to these customers by ConEd.
4. Certain power produced by NYPA is wheeled by the Long Island Lighting Company (LILCO) and sold directly to Brookhaven National Laboratory and Grumman Corporation on Long Island.
5. Under an agreement between Niagara Mohawk Power Corporation (NiMo) and NYPA, NiMo purchases and delivers firm Replacement and Expansion power from NYPA's Niagara production facility to industrial customers located in NiMo's service area.
6. LILCO delivers power produced by NYPA at its FitzPatrick facility to certain Economic Development Customers on Long Island, including: Allusuisse Flex. Packaging, B. Dalton Bookseller, Inc., Burton Industries, Compositex, Computer Associates, General Instrument, Hazeltine Corp., Insert Color Press/Quality Color Press, Monitor Aerospace, Nature's Bounty, Inc., Newsday, Southside Laundry, and Ullman Co., Inc.
7. Under transmission service agreements with the New York City Public Utility Service and the County of Westchester Public Utility Service Agency, ConEd wheels power produced by NYPA to industrial customers designated by these

Public Utility Services and located in New York City or Westchester County. NYPA power is wheeled to other municipal distribution agencies in New York under similar arrangements.

8. NYPA sells power from its FitzPatrick nuclear facility directly to a number of other industrial end-users in transactions involving wheeling over third-party transmission lines. For example, under contracts with NiMo, NYPA power is wheeled to the Occidental Chemical Corporation, Airco Ind. Gases (Buffalo), Airco Ind. Gases (Selkirk), SKW Alloys, Inc. and Owens-Corning Fiberglas.
9. Under an interconnection agreement between the city of San Francisco and Pacific Gas & Electric Company (PG&E), PG&E wheels power from certain city-operated hydro-electric facilities to the city as an end-user.
10. The Capital District Energy Center, a qualifying cogeneration facility (QF) in Hartford, Connecticut, sells 11 MW of electricity to Aetna Life and Casualty Insurance Company under a 20-year agreement. The power is wheeled from the Capital District QF by Connecticut Light & Power.
11. The Western Area Power Administration (WAPA) sells electric power directly to 59 federal agencies, 51 state agencies and 52 irrigation districts. At least some of these power sales have involved wheeling over transmission lines owned by a third-party utility. For example, until 1991 WAPA power sold to the Lawrence Livermore National Laboratory was wheeled by PG&E. In addition, Utah Power & Light has wheeled power from the Colorado River Storage Project to the Ogden Defense Depot of the U.S. Department of Defense.
12. The Bonneville Power Administration (BPA) sells electric power directly to eight industrial consumers in the aluminum industry, eight end-users in various other industries, several irrigation districts, and a number of federal agencies. At least some of these direct power sales involve wheeling over transmission lines owned by a third-party utility. For example, BPA power is wheeled over transmission lines of Puget Sound Power and Light to Georgia-Pacific Corp., over the lines of Public Utility District No. 1 of Snohomish County, Washington to a U.S. Navy facility, and over PacifiCorp lines to Glenbrook Nickel Co. and Oremet.

#### **V. THE STANDARD ARGUMENTS AGAINST RETAIL WHEELING LACK SUBSTANCE**

The motivation for retail wheeling is great, and growing. Further, actual experiences with retail wheeling clearly demonstrate that it works. In spite of these facts, the IOUs (and publicly-owned utilities as well) staunchly oppose retail wheeling.

Let's examine four basic arguments often used against retail wheeling.

#### **A. Stranded Investment**

Utilities argue that retail wheeling will cause so-called "stranded investment." Generally, this seems to mean that utilities have planned for the expected future needs of customers (both existing and new), and they have made investments in facilities to meet the expected needs. If an anticipated load does not actually appear due to retail wheeling, other customers must pay costs that were incurred to meet the expected loads of the customer who is now shopping for power.

First, if any investment is "stranded" on one utility's system, it must, by definition, be offset -- dollar for dollar -- by an investment "unstranded" at another location. Electrons do not appear out of thin air. If a wheeling customer is able to purchase from a distant source, that source must have generation in place and ready to operate, but not operating, before the transaction. Thus, the retail wheeling transaction simply unstrands the more efficient (lower cost) generator while temporarily stranding the less efficient (or higher cost) generator. The higher cost generator is stranded only as long as its owner refuses to lower the price enough to sell the power.

Second, the argument for so-called "stranded investment" disappears whenever the wheeling utility needs capacity. In such circumstances, the utility avoids either building or purchasing additional power supply capacity by providing the wheeling customer with transmission access.

Third, the argument for stranded investment is eliminated with adequate notice provided by the customer. "Adequacy" is a term that will require definition. I would suggest, however, that anything more than five years is inappropriate since plants that require that much time to construct probably are uneconomic and thus shouldn't even be in the utilities' planning horizon.

Finally, industrial customers currently have options that they increasingly are being forced to take. These options have the potential to cause so-called "stranded investment."

For example, industrial customers can and have been forced to close plants, shift production to other locations, cancel planned expansions at existing facilities, join with the local municipality to form a municipal utility, install cogeneration or form joint ventures with exempt wholesale generators. Figure 3 summarizes these options. Each of these actions shifts costs to other ratepayers without providing any offsetting revenues to the utility. However, the so-called "stranded investment" argument is not raised in these cases.

## **COMPETITIVE SOURCING: Alternatives to Retail Wheeling**

**Self-Service Wheeling** - A state PUC may define retail wheeling as the movement of power to a customer when the power is owned neither by the utility nor the customer. A state PUC conceivably could agree that it was in the public interest for an industrial with multiple facilities to consume surplus power generated at one plant at a distant plant's location. Similarly, joint owners of a generator which may not be located physically next to each other, may be allowed to consume power from the generator at different locations. These are not "retail" wheeling transactions because the power is owned by the consumer.

**Utility Brokered Power** - Some utilities may decide that it would be in their best interest to make direct purchases of power at wholesale, then resell the power to a specific customer at the wholesale purchase price plus a mark-up. This may be implemented as a buy-through provision in an interruptible contract. Clearly, this is not "retail" wheeling.

**Jumping Franchises** - Some industrials may be able to obtain the right-of-way to a neighboring utility or other power source. This would provide industrials with multiple suppliers of power. However, it is not "retail" wheeling.

**Joint Ventures With LDCs** - Some industrials might seek joint ventures with gas distribution companies to develop gas-fired QFs or EWGs and wheel the surplus power to other sites or customers within the gas company's existing franchise area. The Southern Union Gas Company (SUG) in El Paso, Texas, proposed to do this. SUG's new *electric* customers would bypass the higher cost (and bankrupt) El Paso Electric. Nobody said competitive markets had to be pretty.

**Municipalization** - A city might decide to municipalize its power system for any number of reasons. Once a municipal, the city may shop for the lowest-cost power source. The city may request wheeling orders from FERC. FERC has the authority to order both wheeling and the enlargement of the transmission system to accommodate the request. This would benefit all consumers of the new municipal utility. An example is the city of Clyde, Ohio. Clyde has a peak load of approximately 22 MWs. Whirlpool Corporation consumes 16 of those 22 MWs. After municipalizing, Whirlpool is not receiving retail wheeling and Clyde's actions would not have violated the Energy Policy Act's prohibition of "sham" transactions. A city of 22 MWs with a single industrial comprising 16 MWs of the total is not a "sham." But would a city of 22 MW with a single 21 MW industrial load be a sham? Would a city with one residential customer be a sham -- even if the one residential customer happens to be the plant manager whose employer comprises the remaining load? These definitional issues will get resolved over time and hopefully competition will win.

**Franchise Competition** - It should not be a foregone conclusion that an existing franchise utility has a permanent and irrevocable right to serve a particular franchise area. Some states might be encouraged to allow greater competition for the right to serve all or some ratepayers within a franchise area as a means to promote more efficient planning and operation.

**Meeting the Competition** - The motive to competitively source an end-user's retail power requirements is to acquire the product at the lowest possible price. A rational buyer does not pick favorites nor discriminates among the viable suppliers. The franchise utility can "meet the competition" by lowering their costs so that they can offer their product at a price that matches the end-user's available opportunities.

Retail wheeling, on the other hand, would provide revenues to the utility in the form of wheeling charges and thus other ratepayers would be better off under retail wheeling than under these other options. The loss of these industrial and other customers would not only increase the rates of the remaining customers but also would contribute to job loss and other economic harm. A major positive aspect of retail wheeling is that this option may help to retain jobs and promote business growth due to increased economic efficiency by industrial customers.

I assure you that industrial customers are very concerned about stranded investment. Most industrials will not take advantage of retail wheeling even if it is offered. Others have multiple plants where one may participate while the others do not. Further, industrials expect that if costs actually are stranded, there will be strong efforts to make industrials absorb all of the stranded costs. The bottom line is that if stranded investment is a real problem, it probably will hurt industrials more than other customers.

However, in spite of the rhetoric, the argument basically lacks merit. Indeed, retail wheeling actually may leave the utility and other customers better, rather than worse off, when compared to other realistic options.

The stranded investment argument clearly is one that must be carefully analyzed. However, it is one often grossly overblown and one that should not stop retail wheeling from becoming a real option for industrial consumers.

#### B. Opportunity Costs

Utilities often argue that providing retail or other third-party wheeling will require them to discontinue economy energy transactions, thus depriving customers of the associated savings.

ELCON suggests exactly the opposite is the case: attempts to use opportunity cost pricing will harm customers.

Arguments for opportunity cost pricing are fraught with problems. First, opportunity cost pricing is not based on cost-of-service. Second, opportunity costs defy accurate identification, measurement, and validation, and therefore, their use in rates encourages inefficient bulk power purchase decisions. Third, opportunity cost pricing allows transmission-owning monopolists to extract monopoly rents thus harming all native load customers. Finally, opportunity cost pricing allows for "double dipping:" *i.e.*, the transmitting utility profits from both third-party transmission contracts and from any potential coordination transactions foregone because of contracts with third-party transmission users.

As I said before, we represent consumers. As such, we believe that the interests of native load customers always must be protected. This simple concept often gets confused by the adjective "native load" placed before "customer". We shouldn't let this confusion complicate an otherwise simple situation. To clarify, a former FERC Chairman once stated: "Every

customer is somebody's native load customer."<sup>7</sup> We must always remember, attempts to protect one native load customer by allowing a monopolist to charge above-cost rates probably will harm other native load customers.

Holding the native load customers of one utility totally harmless means that there will be no overall gains made from trade whenever the transmission system is constrained, only uneconomic and inefficient losses owing to artificial market barriers associated with the opportunity cost provision. Further, it is incorrect to assert that retail wheeling or other forms of third-party transmission do not benefit the native load customers of the wheeling utility. Revenues derived from wheeling contracts should accrue solely to the benefit of the native load by driving down the cost of the utility's transmission facilities that must be recovered from its customers.

The monopoly power exercised over transmission service is all too apparent when an utility can voluntarily enter a market with a financial motive, then claim additional profits or revenues because it suffers capacity constraints "caused" by its third-party wheeling contracts. Opportunity cost pricing stretches market power to new heights; it is the paradigm of monopoly abuse.

### C. Obligation To Serve

Utilities argue that they have a complete and inflexible obligation to serve. That is, they always must be able to meet all loads placed on their system under any circumstance. According to the argument, it would be impossible to plan for this unconditional obligation to serve if customers were able to shop for alternative supplies.

This argument simply is incorrect. Most utilities do not have an unconditional obligation to serve. Rather, most state laws give some flexibility to utilities. They are required to make "best efforts" or some similar effort to meet the needs of their customers.

Utilities often counter this charge by saying that customers view the obligation as unconditional even if technically it isn't. The "political reality" requires them to stand ready to meet all loads.

This simply is not realistic. No new large load can possibly drop out of the sky without some notification -- it takes time to build a manufacturing facility just like it takes time to build a power plant.

---

<sup>7</sup>Prepared remarks of FERC Chairman Martin L. Allday, DOE/NARUC Meeting, Washington, D.C., September 30, 1991.

Theoretically, a shopping customer could try to return overnight. However, much more realistically, a shopping customer is going to have a contract with the distant supplier. This contract will spell out termination provisions since that supplier doesn't want to be left unexpectedly with unused capacity. The customer, who doesn't want an interrupted power supply, will be highly motivated to line up future supplies. This is the way procurement practices work when competitive suppliers deal with customers and prospective customers in any market. The utility argument regarding obligation to serve simply spotlights how monopolists attempt to treat captive ratepayers.

As a final aside, a flourishing retail wheeling market may require a reevaluation of current obligation to serve requirements. However, I would be quite surprised if the reevaluation resulted in more than a specified notification period, linked to the realistic planning horizon of the utility.

#### **D. Return Rights**

Utilities often argue that returning shopping customers are bad, should be served only at the option of the utility and at nonregulated prices or at arbitrarily selected prices in excess of retail rates.

First, I suggest that it would be impossible to implement such a practice. Several examples highlight the problems. How would the arbitrary price be set? Would it have to be just and reasonable and not unduly discriminatory? How would the revenue requirement be reconciled? Would a monopolistic utility be able to discriminate forever or for only some length of punishment time? Who sets the time? How would the utility distinguish between an "old" customer who wants to return and a "new" customer who purchased the plant from the old shopping customer? How could the utility differentiate between, for example, the shrinking "old" shopping load and a "new" growing load at the same facility?

But beyond the practical problems, it defies logic that any utility would not want to resume providing service to such customers. The absurdity of the utilities' position is highlighted by the recent commercials on behalf of AT&T in which Rodney Dangerfield is begging to be taken back as a customer. To the extent that a company has the capability to produce more goods than it normally sells and it can sell them at a profit, the company will seek more customers.

Even AT&T finally recognized this fact although it cost them billions of dollars to learn the lesson.

**E. Summary of the Arguments Against Retail Wheeling**

Utilities traditionally argue that problems associated with stranded investment, opportunity costs, obligation to serve, and return rights make it impossible to implement a retail wheeling regime. I argue that such is not the case.

Certainly, these (and other) issues deserve careful consideration. However, they are either without merit or not without resolve. Either way, they will not stand in the way of retail wheeling.

**VI. CERTAIN PROVISIONS OF THE EPACT ENCOURAGE RETAIL WHEELING?**

Most utilities certainly will continue to oppose the implementation of retail wheeling. Such opposition is substantial and will be difficult to overturn. Inevitably, however, economic forces will prevail. This means that retail wheeling will be demanded with increasing frequency and intensity. The results will be varied.

As a result of EPAct, the forum for dealing with retail wheeling will be the states. Indeed, the Act explicitly prohibits FERC from ordering or conditioning an order on retail wheeling and so-called "sham" transactions which meet the technical requirements for a wholesale transaction but are (or are alleged to be) essentially retail in nature. But while the Act bans FERC from ordering retail wheeling, it codifies the right of any state to order retail wheeling under state law. Specifically, the Act states:

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.<sup>8</sup>

Several states already have laws on their books giving their PUCs the authority to order retail wheeling. Many states' enabling legislation establishing their commissions are written in such a manner that they arguably have authority over retail wheeling. Any state could enact legislation giving the authority over retail wheeling to their state PUC if they so desired.

I assert that this provision is a powerful stimulus for retail wheeling. Several states already have considered retail wheeling. Others will follow this lead. Let me cite a few examples:

1. On June 23, 1993, Nevada became the first state to enact a retail wheeling statute. This law is designed to attract a new industrial to locate in Nevada and thus spur economic development.

---

<sup>8</sup>§722 of the Energy Policy Act adding a new §212(h) to the Federal Power Act.



2. The New Mexico legislature recently established a joint interim committee to study and report back to the legislature on whether and how retail wheeling should be implemented in New Mexico.<sup>9</sup> In the same state, the U.S. Army and the U.S. Air Force have notified El Paso Electric Company of their intention to seek full and open competition for the provision of retail electric power service to the White Sands Missile Range and the Holloman Air Force Base in New Mexico. El Paso has requested a declaratory order from the New Mexico PSC that El Paso has exclusive right and authority to provide retail service to the two facilities and that no other New Mexico utility has a right to compel El Paso to wheel power to the two facilities.<sup>10</sup>
3. The Michigan Public Service Commission is considering a proposal by the Association of Businesses Advocating Tariff Equity (ABATE -- an association of industrial electricity consumers in Michigan) for an experimental retail wheeling tariff for Consumers Power Company (Case No. U-10143). In addition, the Commission is considering on its own motion an experimental retail wheeling tariff for The Detroit Edison Company (Case No. U-10176).<sup>11</sup> Although the Administrative Law Judge in this docket recently issued an order recommending that the experiment not be implemented, we are still quite optimistic that the Michigan PSC will approve the experiment.
4. The Public Service Commission of South Carolina has issued an order in which it encouraged Carolina Power & Light Company to evaluate and consider retail wheeling as part of its overall integrated resource planning.<sup>12</sup>
5. The California Public Utilities Commission is considering several alternatives for restructuring the electric utility industry. Two of the proposed strategies involve distinguishing between "core" and "non-core" utility customers. Non-core

---

<sup>9</sup>S. Memorial 54, as amended (41st Leg., 1st Sess. 1993) (appointing joint interim committee); Retail Wheeling Act, S.B. 501 (41st Leg., 1st Sess., 1993).

<sup>10</sup>Petition of El Paso Electric Company for a Declaratory Order, New Mex. Pub. Serv. Comm. Case No. 2505 (filed Apr. 1, 1993).

<sup>11</sup>In the matter of the Association of Businesses Advocating Tariff Equity and In the matter of the Detroit Edison Company, Mich. Pub. Serv. Comm. Case Nos. U-10143 and U-10176 (Sept. 11, 1992) (order and notice of hearing).

<sup>12</sup>In re Integrated Resource Plan Filed by Carolina Power & Light Company, Pub. Serv. Comm. of S.C. Order No. 93-261 at 20 (Docket No. 92-209-E) (Apr. 8, 1993).

customers could elect or be required to contract with entities other than the utility for generation services, though the utility would still offer transmission and distribution services to these non-core customers.<sup>13</sup>

6. A bill recently filed in the Massachusetts legislature by the Massachusetts Division of Energy Resources would permit non-utility generators to make limited direct power sales to commercial and industrial end-users in designated areas of economic hardship.<sup>14</sup>
7. Hydro-Quebec recently proposed the delivery of 250 MW of firm power to the Rhode Island Public Utility Commission to be wheeled by Rhode Island utilities and sold to industrial end-users.<sup>15</sup>
8. In February of 1992, the Texas Public Utility Commission set forth for comment proposed rule changes at the recommendation of the Texas Industrial Energy Consumers (TIEC) -- an association of industrial electricity consumers in Texas. These changes would have required utilities, in certain circumstances, to wheel power between non-utility suppliers and consumers of the power. In August of 1992 the PUC determined that for the time being it would not adopt these rule changes, stating that "retail wheeling is an issue that should be decided as part of the broader rulemaking effort that [the PUC] is undertaking."<sup>16</sup> The important point is that the Texas PUC actually set for hearing and received testimony on the issue. The proposal certainly was not summarily rejected.

The savings clause in the EPAct is not the only stimulus for retail wheeling. In fact, an equally powerful stimulus is contained in the energy efficiency provisions of the Act.

---

<sup>13</sup>"California's Electric Services Industry: Perspectives on the Past, Strategies for the Future," 180-93 (Report by the Division of Strategic Planning, California Public Utilities Commission, Feb., 1993).

<sup>14</sup>An Act Promoting Economic Development By Providing For An Exemption Of Certain Cogenerators and Small Power Producers From Certain Department Of Public Utilities Regulation, House No. 80 (1993); Letter of Stephen J. Remen, Commissioner of Energy Resources, to Albert Herren and Mark Montigny, Chairmen, Joint Legislative Committee on Energy, (Apr. 8, 1993) (in support of House No. 80).

<sup>15</sup>Electric Utility Week, May 17, 1993 at 3.

<sup>16</sup>Proposed Amendments to PUC Subs. R. 23.26, 17 Tex. Reg. 998 (Feb. 7, 1992); Proposed Amendments to PUC Sub. R. 23.31, 17 Tex. Reg. 993, 998 (Feb. 7, 1992) (discussing proposed amendments, Project No. 10780); Adoption of Amendments to PUC Subs. R. 23.31, 17 Tex. Reg. 5683, 5687 (Aug. 14, 1992) (determination not to adopt provisions regarding retail wheeling); Questions Concerning Integrated Resource Planning, 18 Tex. Reg. 1107 (Feb. 19, 1993) (request for comments on staff's proposed rule, Project No. 11365).

Title I of the EPA Act is named Energy Efficiency. This title is over 200 pages long -- clearly the longest in the Act. The thrust of Title I is to federally mandate energy and to a lesser extent water conservation.

Figure 5

Subtitle B establishes three new federal ratemaking standards. Each state regulatory commission now must consider requiring all electric utilities under jurisdiction to implement integrated resource planning (IRP) that includes aggressive demand-side management (DSM) programs. In addition, each state PUC must ensure that DSM is at least "as profitable" to utilities (but not necessarily to ratepayers) as supply side measures. Rates also should encourage investments in efficiency measures in generation, transmission and distribution. Each commission must consider adoption of the new standards within three years. An evidentiary proceeding must commence before October 1994 and be completed by October 1995.

The first new standard requires each state to consider a *particular brand* of IRP. States that already have considered the *precise* type of IRP specified in the Act may not have to reconsider their previous decisions.

However, few states (if any) have considered IRP *as required in the Act*. Specifically, the Act contains the following specific definition of IRP:

The term "integrated resource planning" means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates the *full range of alternatives*, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers *at the lowest system cost*. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; *shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time*; and shall treat demand and supply resources on a consistent and integrated basis.<sup>17</sup> (emphasis added)

<p><b>ORIGINAL FEDERAL RATEMAKING STANDARDS</b> (Section 111, PURPA)</p> <p>Cost-of-Service Declining Block Rates Time-of-Day Rates Seasonal Rates Interruptible Rates Load Management</p> <p><b>NEW FEDERAL STANDARDS</b></p> <p>Integrated Resource Planning Demand Side Management Supply Side Efficiency</p>
--

<sup>17</sup>§111(d) of the Energy Policy Act (emphasis added).

The Act's definition is quoted in its entirety to emphasize that most earlier state IRP proceedings did not focus on IRP *as now defined by the Act*. There are at least three inconsistencies between the new federal standards and prevailing state practices with respect to DSM and IRP.

Primarily, most states have not considered a "full range of alternatives." They may have considered many options, but not the full range of *all* options that result in reduced load on the utility.

We believe that state commissions now must consider retail wheeling as a IRP option to be in compliance with the EAct:

- ▶ Retail wheeling reduces load on the local utility.
- ▶ DSM programs require utility payments to customers to reduce load.
- ▶ Retail wheeling results in payment to the utility for reductions in loads.

It seems highly inconsistent, if not illegal, for a utility to refuse to consider proposals that reduce load and at the same time contribute revenues to the utility while simultaneously implementing programs that reduce load but require payments of money, indeed money taken from other customers.

As I mentioned, the Texas PUC issued a proposed rule on precisely this issue just last summer. The recent South Carolina order mentioned earlier is another example. Again, the South Carolina PUC encouraged CP&L to consider retail wheeling as a resource option in its IRP process. We expect other states will consider the option in the near term.

Neither the savings clause nor the EAct's IRP provisions have yet led to actual retail wheeling. However, there have been some real economic results.

For example, the Michigan PSC is considering an experiment to determine if retail wheeling is administratively, economically and technically feasible. They set the docket for hearing. Testimony was filed by many parties including both industrial consumers and the affected IOUs.<sup>18</sup>

Not surprisingly, the IOUs filed reams of testimony opposing the proposed experiment. They hired expensive consultants to describe why the experiment would harm other ratepayers and cause reliability problems.

---

<sup>18</sup>See Case Nos. U-10143 and U-10176, Michigan Public Service Commission.

However, a fascinating aspect of the case involved the testimony of one IOU employee.<sup>19</sup> This individual recognized that the retail wheeling experiment was an attempt by the industrial customers to obtain "competitively priced electric supplies."<sup>20</sup> He recognized that the customers "are facing increasing competitive pressures and are continually forced to seek out and implement cost reduction strategies."<sup>21</sup> He stated that the utility must work very hard to meet the needs of their customers by providing competitively priced options. As a result, he proposed new tariffs for customers that would keep "industrial production and jobs in Michigan."<sup>22</sup>

It is fascinating, in a positive way, that the utility recognizes that the industrial motivation for retail wheeling is one of economics and proposes a special tariff to directly deal with this need. However, this witness went further. He explicitly acknowledged that there are deep-rooted problems with various aspects of the ratemaking process and made specific recommendations for utilities to change:<sup>23</sup>

- ▶ Eliminate cross-subsidization in rates.
- ▶ Collect fixed costs only in the demand component of rates.
- ▶ Utilize a single high on-peak reading for each billing period.
- ▶ Allocate fixed costs on a demand basis rather than on both a demand and energy basis.
- ▶ Restructure tariffs to reflect each customer class's relative size and service requirements.
- ▶ Expand existing rate class groupings.
- ▶ Recognize that mandated conservation programs cannot co-exist with a competitive market environment.
- ▶ Recognize that the retention of existing load is like attraction of new load; similar promotional devices should be considered.
- ▶ Recognize that as long as the customer pays a price greater than variable costs, that customer is helping to reduce the price to all customers.

---

<sup>19</sup>Qualifications and Direct Testimony of J.L. Welch, Manager of Regulatory Affairs, Detroit Edison Company, before the Michigan Public Service Commission in Case Nos. U-10143 and U-10176, March 1, 1993.

<sup>20</sup>Ibid., page 7.

<sup>21</sup>Ibid., page 8.

<sup>22</sup>Ibid., page 9.

<sup>23</sup>Ibid., pages 11-17.

The interesting thing is not that these recommendations are made. In fact, industrials have been making these recommendations for years. Rather, the lesson to be learned is that the competitive pressure caused by the threat of retail wheeling convinced the utility to react as a supplier trying to make a sale to a customer rather than simply extract revenues from a captive ratepayer. The power of competition should not be underrated.

Industrials recognize the power of competition. They continually experience the pressure from competitive forces to reduce costs and operate more efficiently. They will continue to push state PUCs to use the authority granted them under the Energy Policy Act of 1992<sup>24</sup> to order retail wheeling. In some instances, they will be successful. In others, they will achieve similar results through other options while "failing" to achieve retail wheeling. That's not a bad downside.

## VI. CONCLUSION

Although my crystal ball is cloudy, I cannot help but conclude that the time for retail wheeling is now. John Hayes, (Chief Executive Officer of Western Resources -- an investor-owned electric utility) said it better than I ever could:

"Retail wheeling is probably inevitable because some customers will demand it, the technology will make it feasible, and the economics will be such that two parties can profit by it."

"[L]et me remind you that change is inevitable and it is fruitless to resist marketplace forces. But we are all managers of change. Wholesale and retail wheeling are not the issue, vision and competitiveness are."<sup>25</sup>

I would like to work with you to achieve a managed movement toward increased competitiveness in a way that benefits all.

Thank you for the opportunity to appear before you today. I look forward to your questions.

---

<sup>24</sup>§722 of the Energy Policy Act adding a new §212 (h) to the Federal Power Act.

<sup>25</sup>Hayes, op. cit., pages 15-16.

CLEARY, GOTTlieb, STEEN & HAMILTON

1752 N STREET, N.W.

WASHINGTON, D.C. 20036

TELEPHONE (202) 728-2700

FACSIMILE (202) 429-0946

July 8, 1993

MEMORANDUM FOR DR. JOHN A. ANDERSON

Re: Retail Wheeling Examples

Below is a list of examples of retail wheeling or similar transactions which have taken place or are being considered in the United States. Also listed below are several instances in which states have considered retail wheeling or similar arrangements.

A. Examples of Retail Wheeling or Similar Transactions

-- The Western Area Power Administration (WAPA) markets hydropower to numerous customers in the central and western United States. According to information provided by WAPA (copy attached as Exhibit A), WAPA hydropower is wheeled over the lines of 42 different transmission agents and sold directly to 148 "End-User Customers" located in Arizona, California, Colorado, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah and Wyoming. An "End-User Customer" is any

entity which purchases WAPA power and uses that power at the facility where it is received.

See Western Area Power Administration Annual Report, 1992; List of End-User Customers prepared by WAPA, dated June 18, 1993 (attached as Exhibit A hereto).

-- The Bonneville Power Administration (BPA) sells electric power directly to eight industrial consumers in the aluminum industry, eight end-users in various other industries, several irrigation districts and a number of federal agencies. At least some of these direct power sales have involved wheeling over transmission lines owned by a third-party utility. For example, BPA power has been wheeled over transmission lines of Puget Sound Power and Light to Georgia-Pacific Corp., over the lines of Public Utility District No. 1 of Snohomish County, Washington to a U.S. Navy facility and over PacificCorp lines to Glenbrook Nickel Co. and Oremet.

See Bonneville Power Administration Annual Report, 1992; Amendatory Agreement dated May 25, 1989 between BPA and Puget Sound Power and Light Company (concerning delivery of BPA power by PSP&L to BPA customers); Transfer Agreement dated June 30, 1972 between BPA and Public Utility District No. 1 of Snohomish County, Washington (concerning delivery of BPA power by District No. 1 to the U.S. Navy at East Arlington); Transfer Agreement dated May 4, 1982 between BPA and Pacific Power & Light Company (concerning delivery of BPA power by PP&L to BPA customers).

-- Pursuant to a special New York law, the New York Power Authority (NYPA) sells power to two customers located in the service territory of Consolidated Edison Company (ConEd):



Shearson Lehman Brothers and General Motors Corporation. The power has been transmitted to these customers by ConEd.

See Consolidated Edison Company of New York, Inc., 39 FERC ¶ 61,003 (Docket No. ER85-459-001) (Apr. 1, 1987) (order accepting compliance filing); Consolidated Edison Company of New York, Inc., 31 FERC ¶ 61,338 (Docket No. ER85-459-000) (June 20, 1985) (order accepting filing of transmission agreement); Consolidated Edison Company of New York, Inc. - PASNY No.3, N.Y. Pub. Util. Comm. Opinion No. 86-25 (Case 29098), 78 PUR 4th 308 (Oct. 14, 1986) (opinion and order determining delivery rates); 1984 N.Y. Laws 521; N.Y. Public Authorities Law § 1005 (McKinny 1993 supp.); transmission data provided by NYPA, dated May 1, 1993.

-- NYPA-produced power is wheeled by the Long Island Lighting Company (LILCO) and sold directly by NYPA to Brookhaven National Laboratory and Grumman Corporation on Long Island.

See Transmission Agreement between NYPA and LILCO dated as of Oct. 1, 1981, amended Nov. 21, 1984 (agreement for transmission service to Brookhaven and Grumman); Long Island Lighting Company, 60 FERC ¶ 61,069 (Docket No. ER92-26-001) (July 23, 1992) (order on proposed rate increases, LILCO-FERC Rate Schedule No. 34); Long Island Lighting Company, 58 FERC ¶ 61,213 (Docket No. ER92-26-000) (Feb. 26, 1992) (proposed rate increases); transmission data provided by NYPA, dated May 1, 1993.

-- LILCO delivers Economic Development Power produced by NYPA at its FitzPatrick facility to NYPA customers on Long Island, including: Allusuisse Flex. Packaging (Cellucraft), B. Dalton Bookseller, Inc., Burton Industries, Composittech, Computer Associates, General Instrument, Hazeltine Corporation, Insert Color Press/Quality Color Press, Monitor Aerospace, Nature's Bounty, Inc., Newsday, Southside Laundry and Ullman Company, Inc.

See Delivery Agreement between LILCO and NYPA, dated as of June 1, 1991 (providing for transmission of NYPA Economic

Development Power to Economic Development Consumers); Long Island Lighting Company, 60 FERC ¶ 61,069 (Docket No. ER92-31-001) (July 23, 1992); Long Island Lighting Company, 58 FERC ¶ 61,213 (Docket No. ER92-31-000) (Feb. 26, 1992); transmission data provided by NYPA, dated May 1, 1993.

-- NYPA sells power from its FitzPatrick nuclear facility directly to a number of industrial end-users, including Occidental Chemical Corp., Airco Ind. Gases (Buffalo), Airco Ind. Gases (Selkirk), SKW Alloys, Inc. and Owens-Corning Fiberglas Corp. Under an agreement between NYPA and the Niagara Mohawk Power Corporation (NiMo), this power is wheeled over NiMo lines.

See NYPA Annual Report, 1992; Power Authority of the State of New York, Contract UD-5 for the Sale, Transmission and Distribution of Power to Niagara Mohawk Power Corporation, at 5 (delivery of NYPA power from FitzPatrick to high load manufacturers and priority customers) (accepted July 28, 1975); transmission data provided by NYPA, dated May 1, 1993.

-- Under an agreement between NiMo and NYPA, NiMo purchases and delivers firm Replacement and Expansion power from NYPA's Niagara production facility to industrial customers located in NiMo's service area. Although NiMo "resells" the power to the industrial customers, the cost of the electricity is set by NYPA

-- NiMo sets only the transmission and delivery charges.

See Niagara Mohawk Power Corporation, 42 FERC ¶ 61,143 (Docket No. ER85-109-000) (Feb. 3, 1988) (opinion and order affirming initial decision on transmission rates); Niagara Mohawk Power Corporation, 33 FERC ¶ 63,002 (Docket No. ER85-109-000) (Oct. 1, 1985) (initial decision).

-- Under transmission service agreements with the New York City Public Utility Service and the County of Westchester Public Utility Service Agency, ConEd transmits and distributes NYPA power purchased by these agencies for resale to designated customers located in New York City or Westchester County.

See Consolidated Edison Company of New York, Inc., 52 FERC ¶ 61,239 (Docket No. ER90-494-000) (Sept. 7, 1990) (accepting rates for delivery of Niagara power); NYPA Annual Report, 1992.

-- Stauffer Chemical Company entered into a contract with a municipal utility to purchase power which would have to be wheeled over lines owned by Gulf States Utilities to Stauffer's facility in St. Gabriel, Louisiana. A court battle over GSU's right to refuse the wheeling request resulted in a consent preliminary injunction under which GSU wheeled the power to Stauffer's plant. (In this instance, the municipal utility actually leased the receiving end of Stauffer's electric facilities and wheeled power over GSU lines to its own delivery point.)

See Gulf States Utilities Company v. City of Lafayette, Louisiana, et. al, Civ. Act. No. 84-132 (M.D.La. Oct. 11, 1984) (preliminary injunction); "Non-Technical Impediments to Power Transfers" at 221-230 (report of the National Regulatory Research Institute, Sept., 1987).

-- Under a self-service arrangement, power produced by a Dow Chemical subsidiary in Sarnia, Ontario was wheeled through a series of back-to-back sales by Ontario Hydro Company, Detroit

Edison and Consumers Power for use by Dow's Midland, Michigan facility.

See Notice of Filing of Limited Term Transmission Service Agreement Between The Detroit Edison Company and The Dow Chemical Company (Dow Midland) dated May 25, 1979, 44 Fed. Reg. 37040 (1979) (FERC Docket No. ER79-437); Notice of Filing by Consumers Power, 47 Fed. Reg. 57759 (1982) (Docket No. ER83-185-000) (amending May 25, 1979 Transmission Agreement accepted for filing by letter of Sept. 11, 1979) (accepted for filing by letter of Jan. 19, 1983); In the matter of an application by Dow Chemical Canada Inc. to vary Licence No. EL-121, National Energy Board of Canada, Order No. A0-1-EL-121 (Mar. 4, 1982) (amendment to export license); Direct Testimony of Thomas F. Klumpp on Behalf of Dow Chemical Company Before the Michigan Public Service Commission, at 5 (Mich. Pub. Serv. Comm. Case Nos. U-10143 and U-10176) (Oct. 29, 1992) (describing the wheeling arrangement).

-- Under an interconnection agreement between the City of San Francisco and Pacific Gas & Electric Company (PG&E), PG&E wheels power from certain city-operated hydro-electric facilities to the city as an end-user.

See Agreement between Pacific Gas & Electric Company and City and County of San Francisco, dated Dec. 21, 1987 (accepted by unpublished letter order on Mar. 31, 1988) (FERC Rate Schedule No. 114); Pacific Gas and Electric Company, 55 FERC ¶ 61,046 at 61,127 (Docket No. E-7777-000) (Apr. 5, 1991); City and County of San Francisco v. Pacific Gas and Electric Company, 53 FERC ¶ 61,220 (Docket No. EL90-5-000) (Nov. 21, 1990).

-- The Capital District Energy Center, a qualifying cogeneration facility in Hartford, Connecticut, sells 11 MW of electricity to Aetna Life and Casualty Insurance Company under a 20-year agreement. The power is wheeled from the Capital District QF by Connecticut Light & Power.

See Northeast Utilities Service Company, 51 FERC ¶ 61,101 (Docket No. ER88-463-000) (Apr. 25, 1990) (order accepting settlement agreement); Connecticut Light & Power Company, 45 FERC ¶ 61,457 (Docket No. ER88-463-000) (Dec. 20, 1988) (initial order).

-- The U.S. Army and the U.S. Air Force have notified El Paso Electric Company of their intention to solicit "full and open competition" for the provision of retail electric power service to the White Sands Missile Range and the Holloman Air Force Base in New Mexico. El Paso has requested a declaratory order from the New Mexico PSC that El Paso has exclusive right and authority to provide retail service to the two facilities and that no other New Mexico utility has a right to compel El Paso to wheel power to the two facilities.

See Petition of El Paso Electric Company for a Declaratory Order, New Mex. Pub. Serv. Comm. Case No. 2505 (filed Apr. 1, 1993).

B. States Adopting/Considering Retail Wheeling or Similar Arrangements

-- On June 23, 1993, Nevada became the first state to enact a retail wheeling statute (copy attached as Exhibit B). Nevada S.B. No. 231 is designed to spur industrial investment in the state, and it provides that the Nevada Public Service Commission may authorize retail wheeling for "a new industrial load." The Nevada PSC may not issue a retail wheeling order unless it first ensures that "the rates or charges assessed to other customers of the public utility do not subsidize the cost of providing service to the business." The statute also provides that the Nevada

Commission on Economic Development must make certain findings regarding a business before it can qualify for a retail wheeling order.

See Nevada Senate Bill No. 231 (1993) (to be codified at Nev. Rev. Stat. chapters 231, 361 and 704).

-- The New Mexico legislature recently established a joint interim committee to study and report back to the legislature on whether and how retail wheeling should be implemented in New Mexico.

See S. Memorial 54, as amended (41st Leg., 1st Sess., 1993) (appointing joint interim committee); Retail Wheeling Act, S.B. 501 (41st Leg., 1st Sess., 1993).

-- The Division of Strategic Planning of the California Public Utilities Commission has set forth several possible strategies for restructuring the state's electric utility industry. Two of the proposed strategies involve distinguishing between "core" and "non-core" utility customers; non-core customers could elect or be required to contract with entities other than their local utility for generation services, though the utility would still offer transmission and distribution services to these non-core customers.

See "California's Electric Services Industry: Perspectives on the Past, Strategies for the Future," 180-93 (Report by the Division of Strategic Planning, California Public Utilities Commission, Feb., 1993).

-- The Michigan Public Service Commission is considering a proposal by the Association of Businesses Advocating Tariff Equity for an experimental retail wheeling tariff for Consumers Power Company (Case No. U-10143). In addition, the Commission is considering on its own motion an experimental retail wheeling tariff for The Detroit Edison Company (Case No. U-10176).

See In the matter of the Association of Businesses Advocating Tariff Equity and In the matter of the Detroit Edison Company, Mich. Pub. Serv. Comm. Case Nos. U-10143 and U-10176 (Sept. 11, 1992) (order and notice of hearing).

-- In February of 1992, the Texas Public Utility Commission set forth for comment proposed rule changes which would have required utilities, in certain circumstances, to wheel power between non-utility suppliers and consumers of the power. In August of 1992 the PUC determined that for the time being it would not adopt these rule changes, stating that "retail wheeling is an issue that should be decided as part of the broader rulemaking effort that [the PUC] is undertaking."

See Proposed Amendments to PUC Subs. R. 23.66, 17 Tex. Reg. 998 (Feb. 7, 1992); Proposed Amendments to PUC Sub. R. 23.31, 17 Tex. Reg. 993, 998 (Feb. 7, 1992) (discussing proposed amendments, Project No. 10780); Adoption of Amendments to PUC Subs. R. 23.31, 17 Tex. Reg. 5683, 5687 (Aug. 14, 1992) (determination not to adopt provisions regarding retail wheeling); Questions Concerning Integrated Resource Planning, 18 Tex. Reg. 1107 (Feb. 19, 1993) (request for comments on staff's proposed rule, Project No. 11365).

-- The Public Service Commission of South Carolina issued an order in which it encouraged Carolina Power & Light Company to

evaluate and consider retail wheeling as part of its overall integrated resource planning.

See In re Integrated Resource Plan Filed by Carolina Power & Light Company, Pub. Serv. Comm. of S.C. Order No. 93-261, at 20 (Docket No. 92-209-E) (Apr. 8, 1993) (order and ruling on integrated resource plan).

-- A bill recently filed in the Massachusetts legislature by the Massachusetts Division of Energy Resources would permit non-utility generators to make limited direct power sales to commercial and industrial end-users in designated areas of economic hardship. A study by the Division of Energy Resources indicated that enactment of the proposed bill -- together with a bill regarding the development of cogeneration systems on state property -- would have a modest net positive impact on residential electric bills.

See An Act Promoting Economic Development By Providing For An Exemption Of Certain Cogenerators and Small Power Producers From Certain Department Of Public Utilities Regulation, House No. 80 (1993); Letter of Stephen J. Remen, Commissioner of Energy Resources, to Albert Herren and Mark Montigny, Chairmen, Joint Legislative Committee on Energy, (Apr. 8, 1993) (reporting findings of study of impact of House Nos. 79 and 80).

-- The Rhode Island Public Utility Commission recently reviewed a proposal by Hydro-Quebec for the delivery of 250 MW of firm power at the Canadian border to the Commission, which would arrange for wheeling the power to Rhode Island. Under the proposal, the power would be distributed by Rhode Island utilities to industrial consumers within the state. The



Commission has determined that Hydro-Quebec's offer does not meet Rhode Island's needs at this time; however, negotiators have agreed to continue discussing the feasibility of other types of sales by Hydro-Quebec.

See Statement Regarding Hydro-Quebec and Rhode Island Negotiations for Electric Power Sales (press release by the Rhode Island PUC) (May 20, 1993); Electric Utility Week, May 17, 1993, at 3.

Sara D. Schotland  
Robert W. Cook



## WESTERN'S END-USER CUSTOMERS

## CONTRACTS ADMINISTERED BY THE SACRAMENTO AREA OFFICE (SAO)

<u>Customer</u>	<u>Transmission Agent(s)</u>
Army Camp Parks, (US Army)	Pacific Gas & Electric (PG&E)
Arvin-Edison Water District (WD)	PG&E
Banta-Carbona Irr. District (ID)	PG&E
Beale Air Force Base (AFB)	PG&E
Lawrence Berkeley Lab, (DOE)	PG&E
Broadview WD	PG&E
Byron-Bethany ID	PG&E
Calaveras Public Power Agency	PG&E
Castle AFB	PG&E
CA. Univer. @ Nimbus	Western
Delano-Earlimart ID	PG&E
Lindsay-Strathmore ID	
Terra-Bella ID	
Deuel Vocational Institute, (Calif)	PG&E
East Bay Municipal Utility Dist.	PG&E
East Contra Costa ID	PG&E
San Luis WD, Fittje/Booster	PG&E
San Luis WD, Kaljian/Telles	PG&E
California State Prison - Folsom	PG&E
Glenn-Colusa ID	PG&E
Hayfork Public Power Dist. (PUD)	PG&E
James ID	PG&E
Kern-Tulare WD	PG&E
Rag Gulch ID	
Lawrence Livermore Lab, (DOE)	Western
Lower Tule River ID	PG&E
Mare Island Navy Shipyard	PG&E
McClellan AFB	Sacramento Municipal Utility District (SMUD)
Northern CA. Youth Center	PG&E
NASA Ames Research Center	PG&E
Naval Air Station, Lemoore	PG&E
Naval Air Station, Moffett	PG&E
Naval Support, Treasure Island	PG&E
Naval Comm. Station, Stockton	PG&E
Naval Radio Station, Dixon	PG&E
Naval Security, Skaggs Island	PG&E
Naval Weapons Station, Concord	PG&E
Patterson WD	PG&E
Plumas-Sierra Recreation	PG&E
Provident ID	PG&E
Reclamation Dist. #2035 Booster	PG&E
Reclamation Dist. #2035 Main	PG&E
San Juan Suburban WD	Western
Santa Clara Valley WD	PG&E
Sharpe Army Depot	PG&E
Sierra Conservation Center, CA	PG&E

Site 300, (DOE)	PG&E
Stanford Linear Accelerator, (DOE)	PG&E
Sonoma County Water Association	PG&E
CA State Parks, Folsom	SMUD
Tracy Defense Depot	PG&E
Travis AFB	PG&E
Travis Wherry Housing AFB	PG&E
Trinity County PUD	PG&E
Tuolumne Public Power Agency	PG&E
Dixon Relay Station,	
U.S. Info. Agency	PG&E
Univer. CA @ Davis	PG&E
Vacaville Medical Fac. CA	PG&E
West Stanislaus ID	PG&E
Westlands Pumping Plant #6-1	PG&E
Westlands Pumping Plant #7-1	PG&E
Westlands WD	PG&E
Westside ID	PG&E

**CONTRACTS ADMINISTERED BY THE PHOENIX AREA OFFICE (PAO)**

<u>Customer</u>	<u>Transmission Agent(s)</u>
Colorado River Agency,	Western
Bureau of Indian Affairs	Ariz Elec. Power Coop. (AEPC)
San Carlos Irr. Project	Southern Calif. Edison (SCE)
Edwards AFB	Arizona Public Service (APS)
Electrical District 1	APS
Marine Corps Air Station, Yuma	Nevada Power Company (NPC)
Nellis AFB	NPC, AEPC, APS
Fort Mojave Indian Tribe	SCE
George AFB	APS
Gila Bend AFB	APS
Luke AFB	APS
Nevada Test Site, (DOE)	NPC
Norton Air Force Site	SCE
Tohono O'dham Tribal Authority	APS
Wellton-Mohawk ID	Western
Yuma ID	APS
Yuma Proving Ground, (Army)	Western
Ak-Chin Indian Community	APS
Chandler Heights Citrus ID	Salt River Project (SRP)
Electrical District #3 Pinal	APS
Electrical District #4 Pinal	SRP
Electrical District #5 Maricopa	SRP
Electrical District #5 Pinal	SRP
Electrical District #6	APS, SRP
Electrical District #7 Maricopa	APS
Maricopa Water Cons. District	APS
Ocotillo Water Cons. District	SRP
Queen Creek ID	SRP

Roosevelt ID  
Roosevelt Water Cons. District  
San Tan ID  
Williams AFB

APS, SRP  
SRP  
SRP  
SRP

CONTRACTS ADMINISTERED BY THE BILLINGS AREA OFFICE (BAO)

Customer

Transmission Agent(s)

Fort Peck Indian Reservation	Western
Turtle Mountain & Fort Totten	Otter Tail Power
Fort Belknap (3-Mile Plant)	Montana Power Company
Ellsworth AFB	
Strategic Air Command	Western
Beatrice State Development Center, NE	Nebraska Pub. Pow. Dis. (NPPD)
Fergus Falls State Hospital, MN	Otter Tail Power
Grafton State School, ND	Otter Tail Power
Hastings Regional Center, NE	NPPD
Hysham Pumping Project	Mid-Yellowstone Electric
Kinsey ID	Montana-Dakota Utilities (MDU)
Nebraska State Penitentiary	Lincoln Electric Sys.
Norfolk Regional Center, NE	NPPD
North Dakota Mill & Elevator	Minnkota Power
North Dakota School for the Deaf	Otter Tail Power
North Dakota School of Science	Otter Tail Power
North Dakota State School Forestry	Otter Tail Power
North Dakota State Hospital	Western
Peru State College, NE	NPPD, Omaha Public Power District (OPPD)
School District #21, MT	Western
Sidney Pumping Plant, NE	Yellowstone Valley
Southwest State University, MN	East River
State of South Dakota	
Northern State Univ.-Aberdeen	Northwestren Public Power District (NWPS)
Redfield State Hospital	NWPS
Human Service Center-Yankton	NWPS
Cement Plant	Black Hills Power & Light
School of Mines & Technology	Black Hills Power & Light
State Penitentiary	Northern States Power (NSP)
State Univ.-Brookings	City of Brookings, MN
Springfield Correction Facility	NWPS
State School-Plankinton	East River
Univ. of South Dakota-Vermillion	East River
University of Nebraska @ Lincoln	Lincoln Electric System
University of Nebraska @ Omaha	NPPD, OPPD
University of North Dakota @ Grand Forks	NSP
Wayne State College, NE	NPPD
Willmar State Hospital, MN	United Power Association (UPA), Kandiyohi
McLean-Sheridan Water Board, ND	Capital Electric
ND State Water Commission	Oliver-Mercer
Cheyenne River Sioux Tribe	Cam WAL Electric

Crow Creek Sioux Tribe  
Lower Brule Sioux Tribe  
Omaha Tribe of Nebraska  
Standing Rock Sioux Tribe

East River  
Rushmore  
Northern Iowa Power Coop.  
Mor-Gran-Sou, MDU

CONTRACTS ADMINISTERED BY THE LOVELAND AREA OFFICE (LAO)

<u>Customer</u>	<u>Transmission Agent(s)</u>
Denver Water Board	Mountain Parks Electric Assoc. Rocky Flats, (DOE) Public Service of Colorado Colorado (PSCO)
Peterson AFB	PSCO
U.S. Air Force Academy	PSCO
Arapahoe & Roosevelt Nat'l Forest	Western
Superintendent-Nat'l Park Service	Western
Commander-Pueblo Army Depot	PSCO, WestPlains
Warren AFB	Western
Anita Thompson	Western
William Thompson	Western
Mr. David Mahoffer	Western
Mr. Jack McElroy	Western
Mr. John R. Taussig	Western
Mr. Grady Culbreath	Western
Highland Hanover ID	PacifiCorp (PC)
Owl Creek ID Lucerne, Relift	PC
Up. Bluff ID Bluff #1, 1A,2	PC
Goshen ID	Wyrulec Company
Midvale ID	Riverton Valley E.A.
Willwood Light & Power Co	Wyoming Municipal Power Agency

CONTRACTS ADMINISTERED BY THE SALT LAKE CITY AREA OFFICE (SLCAO)

<u>Customer</u>	<u>Transmission Agent(s)</u>
Albuquerque Operations Office, (DOE)	Public Service Company of New Mexico (PNM)
Cannon AFB, NM	PNM, Southwestern Public Service
Central Utah Water Conser. Dis.	PC
Defense Depot Ogden	PC
Dolores Water Conser. District	Tri-State G&T Assoc. Inc., Empire Electric Assoc.
Hill AFB	PC
Holloman AFB	PNM, El Paso Electric Company
Kirtland AFB	PNM
Navajo Agri. Products Industry	Western
Silt Water Conser. District	PSCO
Tooele Army Depot	PC
Uintah Water Conser. District	Western
University of Utah	PC
Utah State University	PC, City of Logan, UT
Weber Basin Water Conser. Dis.	PC

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S.B. 231

SENATE BILL NO. 231—COMMITTEE ON NATURAL RESOURCES

FEBRUARY 24, 1993

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to encouragement of new industry in Nevada.  
(BDR 58-1103)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the encouragement of new industry in Nevada; authorizing the public service commission of Nevada to allow retail transmission of additional electricity for certain new recycling businesses; authorizing the commission on economic development to participate in certain proceedings before the public service commission of Nevada; exempting a percentage of the personal property of certain new recycling businesses from property taxes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE  
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Chapter 704 of NRS is hereby amended by adding thereto the  
2 provisions set forth as sections 2 and 3 of this act.
- 3 Sec. 2. 1. *If a business with a new industrial load has been certified by*  
4 *the commission on economic development pursuant to section 4 of this act, the*  
5 *public service commission of Nevada may authorize a public utility that*  
6 *furnishes electricity for the business to purchase or transmit a portion of the*  
7 *electricity provided to the business to reduce the overall cost of the electricity*  
8 *to the business. The purchases of electricity may be made by the business with*  
9 *the new industrial load, by agreement between the public utility and the*  
10 *business or by the public utility on behalf of the business, and must be made*  
11 *in accordance with such rates, terms and conditions as are established by the*  
12 *public service commission of Nevada.*
- 13 2. *If additional facilities are determined by the affected utility to be*  
14 *required as the result of authorization granted pursuant to subsection 1, the*  
15 *facilities must be constructed, owned and operated by the affected utility. The*  
16 *business must agree as a condition to the authorization granted pursuant to*  
17 *subsection 1 to continue its business in operation in Nevada for 30 years. The*  
18 *agreement must require appropriate security for the reimbursement of the*  
19 *utility for the remaining portion of the value of the facilities which has not*  
20 *been depreciated by the utility and will not be mitigated by use of the facilities*  
21 *for other customers in the event that the business, or its successor in interest,*  
22 *does not remain in operation for 30 years.*

1 3. Nothing in this section authorizes the Federal Energy Regulatory Com-  
2 mission to order the purchase or transmittal of electricity in the manner  
3 described in subsection 1.

4 4. All of the rules, regulations and statutes pertaining to the public service  
5 commission of Nevada and public utilities apply to actions taken pursuant to  
6 this section.

7 5. Any authorization granted by the public service commission of Nevada  
8 pursuant to this section must include such terms and conditions as the com-  
9 mission determines are necessary to ensure that the rates or charges assessed  
10 to other customers of the public utility do not subsidize the cost of providing  
11 service to the business.

12 Sec. 3. The commission on economic development may participate in pro-  
13 ceedings before the public service commission of Nevada concerning a public  
14 utility in the business of supplying electricity or natural gas to advocate the  
15 accommodation of the state plan for industrial development and diversifica-  
16 tion. The commission on economic development may intervene as a matter of  
17 right in a proceeding pursuant to NRS 704.736 to 704.755, inclusive.

18 Sec. 4. Chapter 231 of NRS is hereby amended by adding thereto a new  
19 section to read as follows:

20 1. The commission on economic development shall certify a business for  
21 the benefits provided pursuant to sections 2 and 5 of this act if the commission  
22 finds that:

23 (a) The business is consistent with the state plan for industrial development  
24 and diversification and any guidelines adopted pursuant to the plan;

25 (b) The business is engaged in the primary trade of preparing, fabricating,  
26 manufacturing or otherwise processing raw material or an intermediate prod-  
27 uct through a process in which at least 50 percent of the material or product  
28 is recycled on site;

29 (c) Establishing the business will require the business to make a capital  
30 investment of \$50,000,000 in Nevada; and

31 (d) The economic benefit to the state of approving the certification exceeds  
32 the cost to the state.

33 2. The commission on economic development shall certify a business for  
34 the benefits provided pursuant to section 5 of this act if the commission finds  
35 that:

36 (a) The business is consistent with the state plan for industrial development  
37 and diversification and any guidelines adopted pursuant to the plan;

38 (b) The business is engaged in the primary trade of preparing, fabricating,  
39 manufacturing or otherwise processing raw material or an intermediate prod-  
40 uct through a process in which at least 50 percent of the material or product  
41 is recycled on site;

42 (c) Establishing the business will require the business to make a capital  
43 investment of \$15,000,000 in Nevada; and

44 (d) The economic benefit to the state of approving the certification exceeds  
45 the cost to the state.

46 3. The commission on economic development may:



1 (a) Request an allocation from the contingency fund pursuant to NRS  
2 353.266, 353.268 and 353.369 to cover the costs incurred by the commission  
3 pursuant to this section and section 3 of this act.

4 (b) Impose a reasonable fee for an application for certification pursuant to  
5 this section to cover the costs incurred by the commission in investigating and  
6 ruling on the application.

7 (c) Adopt such regulations as it deems necessary to carry out the provi-  
8 sions of this section.

9 Sec. 5. Chapter 361 of NRS is hereby amended by adding thereto a new  
10 section to read as follows:

11 1. Except as otherwise provided in this section, if a business obtains  
12 certification from the commission on economic development pursuant to sec-  
13 tion 4 of this act, 75 percent of the personal property of the business is exempt  
14 from taxation.

15 2. Before an exemption may be granted pursuant to subsection 1, the  
16 business must execute an agreement with the commission on economic devel-  
17 opment which states that the business will continue in operation in Nevada for  
18 30 or more years after the date on which the exemption is granted. The  
19 agreement must bind the successors in interest of the business. The exemption  
20 pursuant to this section continues until the expiration of the agreement or  
21 until the business discontinues in operation in Nevada, whichever occurs first.

22 3. The exemption provided in this section applies only to the business for  
23 which certification was granted pursuant to section 4 of this act and the  
24 property used in connection with that business. The exemption does not apply  
25 to property in Nevada that is not related to the business for which the  
26 certification was granted pursuant to section 4 of this act, or to property in  
27 existence and subject to taxation before the certification was granted.

28 Sec. 6. The commission on economic development shall report to the 68th  
29 and 69th sessions of the legislature concerning certification granted pursuant  
30 to this act and the effect of this act in attracting businesses to Nevada.

31 Sec. 7. This act becomes effective upon passage and approval.

