

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 500

By: Easley of the Senate

and

Glover of the House

COMMITTEE SUBSTITUTE

An Act relating to electric utilities; creating the Electric Restructuring Act of 1997; stating purpose of the act; stating goals of a restructured electric utility industry; providing definitions; directing the Corporation Commission to undertake a study of and develop a framework for electric utility industry restructuring; requiring prior legislative authorization; listing principles and directives for the Commission to follow in developing a restructuring framework; requiring rules ensuring reliability and safety; encouraging competition; providing for establishment of process for retail consumer choice; providing for development of unbundled services and rates; providing for monitoring to ensure open access; providing for obligation to service and establishment of firm service boundaries by a certain date; providing for the evaluation of implementing an independent system planning

committee; ensuring certain consumer safeguards; providing for the establishment of a transition period; limiting levels of electric rates for transition period; directing the Commission to consider a distribution access fee; stating purpose of fee; providing for submission of a plan by certain entities for recovery of stranded costs; providing for a transition charge; providing for recovery of transition costs; providing dates for studies and final reports of issues to be studied; stating issues for each study; directing the Oklahoma Tax Commission to study and assess the impact of restructuring on tax revenues; requiring authorization prior to issuing rules or orders; providing for a report by a certain date; providing for extension of implementation in certain circumstance; creating the Joint Electric Utility Task Force; providing for membership; providing for chair, meetings and absences; providing for a quorum; allowing Task Force to appoint advisory councils; providing for travel reimbursement; providing for staff support; stating duties of the Task Force; providing for study of an Independent System Operator and a Power Exchange; stating date and principles of the study; providing for termination of the Task Force; prohibiting customer switching by certain providers; prohibiting certain municipalities from extending electric distribution service outside certain limits; providing certain exceptions; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Electric Restructuring Act of 1997".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.2 of Title 17, unless there is created a duplication in numbering, reads as follows:

The purpose of this act is provide for the orderly restructuring of the electric utility industry in the State of Oklahoma in order to allow direct access by retail consumers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system in this state.

A competitive and diverse retail electric market should result in lower electricity prices for consumers, create business opportunities, and encourage the development of increased and enhanced services.

Monopoly utility regulation has been used as a substitute for competition in the supply of electricity, but recent changes in the energy marketplace and technology as well as the passage of the National Energy Policy Act of 1992 and implementation of Order No. 888 by the Federal Energy Regulatory Commission have resulted in increased competition in the electric generation industry. The introduction of consumer choice in retail electric energy suppliers will result in market forces rather than regulation determining the cost and quality of electricity for all consumers.

Restructuring of the electric utility industry to provide greater competition and more efficient regulation is a national trend and the State of Oklahoma must aggressively pursue

restructuring and increased consumer choice in order to provide electric generation service at the lowest and most competitive rates.

The primary goals of a restructured electric utility industry are as follows:

1. To reduce the cost of electricity for as many consumers as possible, helping industry to be more competitive, to create more jobs in this state and help lower the cost of government by reducing the amount and type of regulation now paid for by taxpayers;

2. To encourage the development of a competitive electricity industry through the unbundling of prices and services and separation of generation services from transmission and distribution services;

3. To enable retail electric energy suppliers to engage in fair and equitable competition through open, equal and comparable access to transmission and distribution systems and to avoid wasteful duplication of facilities;

4. To ensure that direct access by retail consumers to the competitive market for generation be implemented in the State of Oklahoma by July 1, 2002; and

5. To ensure that proper standards of safety, reliability and service are maintained in a restructured electric service industry.

It is in the best interest of the citizens of this state to efficiently and expeditiously move forward to increased competition in the generation and sale of electric energy. To ensure a successful transition to a competitive marketplace, a thorough assessment of issues and consequences associated with restructuring shall be undertaken as provided by this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.3 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Electric Restructuring Act of 1997:

1. "Commission" means the Corporation Commission;
2. "Consumer" means a person or entity purchasing or seeking to purchase electric energy for other than resale;
3. "Direct access consumer" means a consumer who chooses to procure retail electric energy supply and related services directly from the competitive market rather than through a retail electric service provider;
4. "Electric distribution system" means the physical system of wires, poles, and other equipment designed to deliver electricity to the ultimate consumer for consumption, excluding generation and transmission facilities;
5. "Independent system operator" means an independent entity, not owned or controlled in any manner by an entity which owns generation, transmission, or distribution facilities. The purpose of which is to coordinate the physical security and stability of the Oklahoma bulk power system;
6. "Public benefit programs" means all social, economic and environmental programs currently funded through rates charged to consumers receiving electric service in the State of Oklahoma;
7. "Retail electric energy supplier" means any entity which sells retail electric energy to consumers;
8. "Retail electric service distributor" means any firm, corporation, company, individual or their trustees, lessees or receivers, or cooperative corporation or agency, engaged in the furnishing of retail electric services in this state, exclusive of municipal corporations, or beneficial trusts thereof and the Grand River Dam Authority. Any municipal corporation or beneficial trust thereof or the Grand River Dam Authority may, through its own nonrevocable election, voluntarily become subject to the provisions of this act and thus come within the definition of a "retail electric service provider" by submitting to the Commission a

certificate from its governing board stating the utility has elected voluntarily to become subject to the provisions of this act; and

9. "Transmission line" means the physical system designed to transport bulk electricity between generators and electric distribution systems.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.4 of Title 17, unless there is created a duplication in numbering, reads as follows:

To ensure an orderly and equitable restructuring of the electric utility industry in this state and achieve the goals outlined in Section 2 of this act, the Legislature hereby directs the Corporation Commission to undertake a study of all relevant issues relating to restructuring the electric utility industry in this state including, but not limited to, those issues set forth in this section, and develop a proposed electric utility industry restructuring framework for the State of Oklahoma under the direction of the Joint Electric Utility Task Force herein created. The Commission shall address appropriate steps to achieve an orderly transition to a competitive market and may include in addition to the directives in this act other provisions as the Commission shall deem necessary and appropriate to expedite the transition to full consumer choice. Provided, however, the Commission is expressly prohibited from promulgating any rules or issuing any orders relating to the restructuring of Oklahoma's electric utility industry without prior express authorization by the Oklahoma State Legislature. It is the intent of the Legislature that the following principles and directives be adhered to by the Commission in developing a framework for a restructured industry:

1. Reliability and safety. Appropriate rules shall be promulgated, in accordance with the provisions of this act, ensuring that reliable and safe electric service is maintained.

2. Competition. Competitive markets are to be encouraged to the greatest extent possible. Regulation should serve as a substitute only in those circumstances where competition cannot provide results that serve the best interests of all consumers.

3. Consumer choice. Consumers shall be allowed to choose among retail electric energy suppliers to help ensure fully competitive and innovative markets. A process should be established whereby all retail consumers are permitted to choose their retail electric energy suppliers by July 1, 2002. Consumer choice means that retail electric consumers shall be allowed to purchase different levels and quality of electric supply from a variety of retail electric energy suppliers and that every seller of electric generation in the retail market shall have nondiscriminatory open access to the electric distribution system of every retail electric service distributor, subject to this act. The Commission should ensure that consumer confusion will be minimized and consumers will be well informed about changes resulting from restructuring and increased choice.

4. Regulation and unbundling of services. Entities which own both transmission and distribution, as well as generation facilities, shall not be allowed to use any monopoly position in these services as a barrier to competition. Generation services may be subject to minimal regulation and shall be functionally separated from transmission and distribution services, which services shall remain regulated. All retail electric energy suppliers shall be required to meet certain minimum standards designed to ensure reliability and financial integrity, and be registered with the Commission.

5. Unbundling of rates. When consumer choice is introduced, rates shall be unbundled to provide clear price information on the components of generation, transmission and distribution and any other ancillary charges. Electric bills for all classes shall be unbundled, utilizing line itemization to reveal the various

component cost of providing electrical services. Charges for public benefit programs currently authorized by statute or the Commission, or both, shall be unbundled and appear in line item format on electric bills for all classes of consumers.

6. Open access to transmission and distribution facilities. Consumer access to alternative suppliers of electricity requires open access to the transmission grid and the distribution system. Comparability shall be assured for retail electric energy suppliers competing with affiliates of entities supplying transmission and distribution services. The Commission shall monitor companies providing transmission and distribution services and take necessary measures to ensure that no supplier of such services has an unfair advantage in offering and pricing such services.

7. Obligation to connect and establishment of firm service territories. An entity providing distribution services shall be relieved of its traditional obligation to provide electric supply but shall have a continuing obligation to provide distribution service for all consumers in its service territory. As part of the restructuring process firm service territories shall be fixed by a date certain, if not currently established by law in order to avoid wasteful duplication of distribution facilities.

8. Independent system planning committee. The benefits associated with implementing an independent system planning committee composed of owners of electric distribution systems to develop and maintain planning and reliability criteria for distribution facilities shall be evaluated.

9. Consumer safeguards. Minimum residential consumer service safeguards and protections shall be ensured including programs and mechanisms that enable residential consumers with limited incomes to obtain affordable essential electric service, and the establishment of a default provider or providers for any distribution customer who has not chosen an alternative retail electric energy supplier.

10. Establishment of a transition period. A defined period for the transition to a restructured electric utility industry shall be established. The transition period shall reflect a suitable time frame for full compliance with the requirements of a restructured utility industry.

11. Rates for service. Electric rates for all consumer classes shall not rise above current levels throughout the transition period. If possible, electric rates for all consumers shall be lowered when feasible as markets become more efficient in a restructured industry.

12. Establishment of a distribution access fee. The Commission shall consider the establishment of a distribution access fee to be assessed to all consumers in the State of Oklahoma connected to electric distribution systems regulated by the Commission. This fee shall be charged to cover social costs, capital costs, operating costs, and other appropriate costs associated with the operation of electric distribution systems and the provision of electric service to the retail consumer.

13. Recovery of stranded costs. Electric utilities have traditionally had an obligation to provide service to consumers within their established service territories and have entered into contracts, long-term investments and federally mandated co-generation contracts to meet the needs of consumers. These investments and contracts have resulted in costs which may not be recoverable in a competitive restructured market and thus may be "stranded". Procedures shall be established for identifying and quantifying stranded investments and for allocating costs and mechanisms shall be proposed for recovery of an appropriate amount of prudently incurred, unmitigable and verifiable stranded costs and investments. As part of this process, each entity shall be required to propose a recovery plan which establishes its unmitigable and verifiable stranded costs and investments and a limited recovery

period designed to recover such costs expeditiously, provided that the recovery period and the amount of qualified transition costs shall yield a transition charge which shall not cause the total price for electric power, including transmission and distribution services, for any consumer to exceed the cost per kilowatt-hour paid on the effective date of this act during the transition period. The transition charge shall be applied to all consumers including direct access consumers, and shall not disadvantage one class of consumer or supplier over another, nor impede competition and shall be allocated over a period of not less than three (3) years nor more than seven (7) years.

14. Transition costs. It is the intent that all transition costs shall be recovered by virtue of the savings generated by the increased efficiency in markets brought about by restructuring of the electric utility industry. All classes of consumers shall share in the transition costs.

The study of all relevant issues related to electric industry restructuring shall be divided into four parts, as follows:
independent system operator issues, technical issues, financial issues and consumer issues.

- a. The Commission shall commence the study of independent system operator issues no later than July 1, 1997, and provide a final report to the Joint Electric Utility Task Force no later than February 1, 1998. Such report shall be in writing and shall make recommendations as the Commission deems necessary and appropriate regarding the establishment of an independent system operator in the State of Oklahoma or the appropriate region.
- b. No later than January 1, 1998, the Commission shall commence the study of technical issues related to the restructuring of the electric utility industry. Such

study shall include, but is not limited to, the examination of:

1. Reliability and safety;
2. Unbundling of generation, transmission and distribution services;
3. Market power;
4. Open access to transmission and distribution;
5. Transition issues; and
6. Any other technical issues the Commission deems appropriate.

A final report shall be provided to the Joint Electric Utility Task Force no later than December 31, 1998. Such report shall be in writing and shall include such recommendations as the Commission deems necessary and appropriate.

- c. No later than January 1, 1999, the Commission shall commence the study of financial issues related to restructuring of the electric utility industry. Such study shall include, but is not limited to, the examination of:

1. Rates and charges;
2. Access and transition costs and fees;
3. Stranded costs and their recovery;
4. Stranded benefits and their funding;
5. Municipal financing;
6. Cooperative financing;
7. Investor Owned Utility financing; and
8. Any other financial issues the Commission deems appropriate.

A final report shall be provided to the Joint Electric Utility Task Force no later than December 31, 1999. Such report shall be in writing and shall make recommendations as the Commission deems necessary and appropriate.

- d. No later than July 1, 1999, the Commission shall commence the study of consumer issues related to restructuring of the electric utility industry. Such study shall include, but is not limited to, the examination of:
1. Service territories;
 2. The obligation to serve;
 3. The obligation to connect;
 4. Consumer safeguards;
 5. Rates for regulated services;
 6. Consumer choices;
 7. Competition;
 8. Licensing of retail electric energy suppliers; and
 9. Any other consumer issues the Commission finds appropriate.

A final report shall be provided to the Joint Electric Utility Task Force no later than August 31, 2000. Such report shall be in writing and shall make recommendations as necessary and appropriate.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.5 of Title 17, unless there is created a duplication in numbering, reads as follows:

To ensure full evaluation and consideration of the impact of restructuring of the electric utility industry on state tax revenues the Legislature hereby directs the Oklahoma Tax Commission to study and fully assess the impact of restructuring on state tax revenues and all other facets of the current utility tax structure both on the state and all other political subdivisions of the state. The study shall include the feasibility of establishing a uniform consumption tax or other method of taxation which may be applied in a restructured industry. Provided, however, the Oklahoma Tax Commission is expressly prohibited from promulgating any rule or issuing any order relating to methods of taxation to be applied to a

restructured electric industry without prior express authorization by the Oklahoma State Legislature or the Joint Electric Utility Task Force. The Oklahoma Tax Commission shall report all findings and submit all proposals to the Joint Electric Utility Task Force no later than December 31, 1998. Notwithstanding any other provisions contained in this act, in the event a uniform tax policy which allows all competitors to be taxed on a fair and equal basis has not been established on or before July 1, 2002, the effective date for implementing customer choice shall be extended until such time as a uniform tax policy has been established.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.6 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Joint Electric Utility Task Force which shall be composed of fourteen (14) members of the Oklahoma Legislature, seven each to be selected by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The chair of the task force shall be the chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee and the vice-chair of the task force shall be the chair of the House Energy, Environment and Natural Resources Committee.

B. The chair or vice-chair shall record the members present at each meeting of the task force. If any member is absent from two consecutive meetings, the position of such member may be declared vacant and the position reappointed by the original appointing authority.

C. A majority of the members serving on the task force shall constitute a quorum. The task force shall meet at such times and places as it deems necessary to perform its duties as specified herein. Meetings shall be at the call of the chair.

D. The task force may appoint advisory councils made up of representatives of various utility companies, regulatory agencies,

industrial and residential consumers or any other persons as needed to advise the task force in any matter they deem to be appropriate and necessary.

E. Members of the task force shall be reimbursed by their appointing authorities for necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. Advisory council members appointed pursuant to this section shall not be authorized to claim travel expenses.

F. The Senate and the House of Representatives shall provide such staff support as is required by the task force and shall be authorized to employ any legal counsel, independent consultants, or other persons as necessary and approved by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

G. The duties of the task force shall be to direct and oversee the studies by the Corporation Commission and the Oklahoma Tax Commission as provided for in Sections 4 and 5 of this act and may include, but shall not be limited to, any duties previously authorized by Enrolled Senate Joint Resolution No. 29 of the 1st Session of the 45th Oklahoma Legislature and Senate Concurrent Resolution No. 37 of the 2nd Session of the 45th Oklahoma Legislature and any other duties required to carry out the provisions and directives of this act. The task force may make final recommendations to the Governor and the Legislature. The Legislature shall review any reports developed by the Corporation Commission or the Oklahoma Tax Commission, in conjunction with the Joint Electric Utility Task Force, during the 2nd Session of the 46th Oklahoma Legislature. Final authority relating to the implementation of any recommended statutory revisions shall reside with the Legislature.

H. The Joint Electric Utility Task Force is hereby authorized to retain such consultants and experts as may be necessary to study

the creation of an Independent System Operator (ISO) which would coordinate the physical supply of electricity throughout the state and maintain reliability security and stability of the bulk power system. In addition, such study shall assess the benefits of establishing a Power Exchange which would operate as a power pool allowing power producers to compete on common ground in the State of Oklahoma. All studies and recommendations relating to the creation of an independent system operator shall be submitted to the Joint Electric Utility Task Force on or before February 1, 1998, and shall conform to the principles set forth in Order No. 888 of the Federal Energy Regulatory Commission.

I. The task force shall remain in effect and operate as herein directed until its termination which shall be no later than January 1, 2003. The task force may elect, by majority vote, to terminate its operations at an earlier date if it deems such action appropriate.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.7 of Title 17, unless there is created a duplication in numbering, reads as follows:

As between electric distribution providers governed by the Retail Electric Supplier Certified Territory Act, Section 158.21 et seq. of Title 17 of the Oklahoma Statutes, there shall not be customer switching from the date of the enactment of this act until full implementation of retail choice, July 1, 2002, except by mutual consent of all affected parties.

Any municipal corporation or beneficial trust thereof offering retail electric distribution service from a municipally owned electric distribution system that decides not to participate in the provisions of this act as outlined in Section 3 of this act shall be prohibited from extending retail electric distribution service beyond its corporate limits with the exception that it may continue

to offer retail electric distribution service from lines it owned on the effective date of this act.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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