

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 110

By: Easley of the Senate

and

Glover and Cox of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to electric industry restructuring; amending 11 O.S. 1991, Section 24-105, which relates to the Oklahoma Municipal Power Authority; modifying definition; updating statutory reference; defining terms; amending 11 O.S. 1991, Section 24-107, which relates to the Municipal Power Authority; modifying certain powers, rights and duties of the authority; amending Section 4, Chapter 162, O.S.L. 1997, as amended by Section 4, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 1998, Section 190.4), which relates to electric restructuring study; stating generation services and certain assets shall not be regulated; requiring electric utilities to functionally separate generation services from transmission and distribution services by certain method; prohibiting the Corporation Commission from reducing revenue requirements, using credits or subsidizing certain rates; amending 17 O.S. 1991, Section 158.27, as amended by Section 1, Chapter 231, O.S.L. 1993 (17 O.S. Supp. 1998, Section 158.27), which relates to electrical cooperatives; modifying exemption of certain electrical cooperatives from Commission regulation; prohibiting slamming and cramming by electric service providers by requiring informed written consent of consumers; prohibiting certain telephone solicitations to consumers after certain notice of objection; requiring Commission to establish data base compiling names and telephone numbers of consumers objecting to telephone solicitations by certain date; providing for Commission to contract for certain service; providing for costs of operating data base to be included in certain assessment; requiring Commission to promulgate certain rules governing data base; providing that signing of certain contest entry forms shall not constitute informed written consent; authorizing residential consumers to have three business days to rescind written acceptance for certain services; requiring the Commission to promulgate rules by certain date to determine minimum terms and provisions of residential electric service contracts; stating penalty for violations; amending 18 O.S. 1991, Section 437, which relates to electric cooperatives; modifying short title; amending 18 O.S. 1991, Section 437.1, which relates to authorization

of electric cooperatives; removing certain territorial restriction; amending 18 O.S. 1991, Section 437.2, which relates to powers of electric cooperatives; removing certain territorial restriction; amending 18 O.S. 1991, Section 437.28, which relates to definitions; removing definition of rural area; directing the Department of Public Safety Lake Patrol to distribute certain funds using certain formula; amending 82 O.S. 1991, Section 862, as amended by Section 13, Chapter 391, O.S.L. 1998 (82 O.S. Supp. 1998, Section 862), which relates to the powers, rights and privileges of the Grand River Dam Authority; providing exemptions from the Oklahoma Open Records Act and the Oklahoma Open Meetings Act for certain purposes; amending 82 O.S. 1991, Section 864, as last amended by Section 15, Chapter 391, O.S.L. 1998 (82 O.S. Supp. 1998, Section 864), which relates to officers of the Grand River Dam Authority; requiring the Board of Directors to select a General Counsel, Internal Auditor and Director of the Lake Patrol; providing that the General Manager serve at the pleasure of the Board; prohibiting certain long-term contracts after certain date; stating qualifications for the General Manager after certain date; removing certain prohibitions relating to the Board and certain employees; amending 82 O.S. 1991, Section 868, which relates to the Board of Directors of the Grand River Dam Authority; requiring the Board to establish rates and charges which are not unduly discriminatory; providing for codification; providing effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 1991, Section 24-105, is amended to read as follows:

Section 24-105.

~~Definitions.~~ As used in this act ~~the following words shall have the following meanings unless the context clearly indicates otherwise:~~

(a) "Authority" shall mean the Oklahoma Municipal Power Authority hereby created and any successor or successors thereto. Any change in name or composition of the Authority shall in no way affect the vested rights of any person under the provisions of this act or impair the obligations of any contracts existing under this act.

(b) "Board of Directors" shall mean the Board of Directors elected by the election committee as set forth in Section 4 24-104 of this ~~act~~ title which shall exercise all the powers and manage and control all the affairs and property of the Authority unless otherwise specifically provided herein or in the bylaws of the Authority as in effect from time to time.

(c) "Bonds" shall mean any revenue bonds, notes or other evidences of obligations of the Authority issued by the Authority under the provisions of this act, including, without limitation, bond anticipation notes and refunding bonds.

(d) "Eligible public agency" shall mean any municipality, authority or other public body which owns, maintains or operates an electrical energy generation, transmission or distribution system within the State of Oklahoma on the date on which this act becomes law.

(e) "Person" shall mean (i) any natural person; (ii) any eligible public agency as defined herein; (iii) any public trust as defined herein; (iv) the United States, any state, any municipality, political subdivision, municipal corporation, unit of local government, governmental unit or public corporation created by or pursuant to the laws of the United States or any state, or any board, corporation or other entity or body declared by the laws of the United States or any state to be a department, agency or instrumentality thereof; (v) any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or (vi) any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and

existing under the laws of any foreign country or of any political subdivision or governmental entity thereof.

(f) "Project" shall mean any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the State of Oklahoma, used or useful in the generation, production, transmission, purchase, sale, exchange or interchange of electrical energy and in the acquisition, extraction, processing, transportation or storage ~~or~~ of fuel of any kind for any such purposes or any interest in, or right to the use, services, output or capacity, of any such plant, works, system or facilities; ~~provided, however, a .~~ A project shall not include ~~(i) any interest in any plant for the generation of electrical energy which is to be owned jointly with any investor-owned utility if such plant is not existing on May 10, 1981, or (ii) any interest in any nuclear powered generating plant. For purposes of this definition, a plant shall be considered to be existing if construction shall have been commenced at the plant site, if orders have been placed for major components of equipment or if the plant is to consist of an additional unit at the site of an already existing unit which will use in common any of the existing facilities at such site.~~

(g) "Public trust" shall mean any public trust created and existing under the provisions of the Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as provided by Sections 175 et seq. of Title 60 of the Oklahoma Statutes, which has as its beneficiary a municipality and which owns, maintains or operates an electrical energy generation, transmission or distribution system serving the residents and consumers of such municipality and existing on the date on which this act becomes law or created hereafter with an eligible public agency as the beneficiary.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-105.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Authority" shall mean the Oklahoma Municipal Power Authority hereby created and any successor or successors thereto. Any change in name or composition of the Authority shall in no way affect the vested rights of any person under the provisions of this act or impair the obligations of any contracts existing under this act;

2. "Board of Directors" shall mean the Board of Directors elected by the election committee as set forth in Section 24-104 of this title which shall exercise all the powers and manage and control all the affairs and property of the Authority unless otherwise specifically provided herein or in the bylaws of the Authority as in effect from time to time;

3. "Bonds" shall mean any revenue bonds, notes or other evidences of obligations of the Authority issued by the Authority under the provisions of this act, including, without limitation, bond anticipation notes and refunding bonds;

4. "Eligible public agency" shall mean any municipality, authority or other public body;

5. "Person" shall mean:

- a. any natural person,
- b. any eligible public agency as defined herein,
- c. any public trust as defined herein,
- d. the United States, any state, any municipality, political subdivision, municipal corporation, unit of local government, governmental unit or public corporation created by or pursuant to the laws of the United States or any state, or any board, corporation or other entity or body declared by the laws of the

United States or any state to be a department, agency or instrumentality thereof,

- e. any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of the United States or any state, or
- f. any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental entity thereof;

6. "Project" shall mean any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the State of Oklahoma, used or useful in the generation, production, transmission, purchase, sale, exchange or interchange of electrical energy and in the acquisition, extraction, processing, transportation or storage of fuel of any kind for any such purposes or any interest in, or right to the use, services, output or capacity, of any such plant, works, system or facilities. A project shall not include any interest in any nuclear powered generating plant; and

7. "Public trust" shall mean any public trust created and existing under the provisions of the Trusts for Furtherance of Public Functions, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as provided by Sections 175 et seq. of Title 60 of the Oklahoma Statutes, which has as its beneficiary a municipality and which owns, maintains or

operates an electrical energy generation, transmission or distribution system serving the residents and consumers of such municipality and existing on the date on which this act becomes law or created hereafter with an eligible public agency as the beneficiary.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 24-107, is amended to read as follows:

Section 24-107. Powers, Rights and Privileges of Authority.

(a) The Authority shall have and is hereby authorized to exercise all powers, rights and privileges enumerated in this section. Such powers, rights and privileges shall be exercised by its Board of Directors unless otherwise specifically provided herein or by the bylaws of the Authority as in effect from time to time.

(b) The Authority may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate, individually or jointly with other persons, in one or more projects, proposed, existing or under construction, and may act as agent, or designate one or more persons, whether or not participating in a project, to act as its agent, in connection with the planning, financing, acquisition, construction, reconstruction, ownership, lease, operation, maintenance, repair, extension or improvement of the project.

(c) The Authority may investigate the desirability of and necessity for additional sources and supplies of electrical energy and fuel and other supplies of any kind for such purpose, and make studies, surveys and estimates as may be necessary to determine the feasibility and cost thereof.

(d) The Authority may cooperate with other persons in the development of sources and supplies of electrical energy and fuel and other supplies of any kind for such purposes, and give assistance with personnel and equipment in any project.

(e) The Authority may apply to any person for consents, authorizations or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.

(f) The Authority may perform any act authorized by this act through, or by means of, its officers, agents or employees or by contract with any person, including, without limitation, the employment of engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the Board of Directors, and fix and pay their compensation from funds available to the Authority therefor.

(g) The Authority may acquire, hold, use and dispose of income, revenues, funds and money.

(h) The Authority may, individually or jointly with other persons, acquire, own, hire, use, operate and dispose of personal property and any interest therein.

(i) The Authority may, individually or jointly with other persons, acquire, own, use, lease as lessor or lessee, operate and dispose of real property and interests in real property, including projects existing, proposed or under construction, and make improvements thereon.

(j) The Authority may grant the use by franchise, lease or otherwise and make charges for the use of any property or facility owned or controlled by it.

(k) The Authority may borrow money and issue negotiable bonds, secured or unsecured, in accordance with this act.

(l) The Authority may invest money of the Authority not required for immediate use, including proceeds from the sale of any bonds.

(m) The Authority may exercise the power of eminent domain in accordance with the provisions of Section 10.

(n) The Authority may determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate or control.

(o) The Authority may contract with any person for the planning, development, construction, operation, sale or lease as lessor or lessee of any project or for any interest therein, on such terms and for such period of time as its Board of Directors shall determine.

(p) The Authority may contract with any eligible public agency, any public trust, or any other person for the sale of power and energy, transmission services, power supply development services or other services within or without the State of Oklahoma on such terms and conditions as the Board of Directors shall approve. Any such contract may be for the sale of output and services of a particular project or may be for output and services generally without regard to a specific project and may be for the supply of a specific quantity of output or a percentage of the output of a specific project or other specific facility or may be based on the requirements of the purchaser or may be on such other terms and conditions as the Board of Directors deems appropriate.

(q) The Authority may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this act, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or storage of electric power and energy, and fuel and other supplies of any kind for any such purposes, within and without the State of Oklahoma, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, on such terms and for such period of time as the Board of Directors determines.

(r) In any case in which the Authority participates in a project as a joint owner with one or more persons, the Authority may enter into an agreement or agreements with respect to such project with the other person or persons participating therein, and any such agreement may contain such terms, conditions and provisions consistent with the provisions of the act as the parties thereto shall deem to be in their best interest. Any such agreement may include, but need not be limited to, provisions defining what constitutes a default thereunder and providing for the rights and remedies of the parties thereto upon the occurrence of such a default deemed appropriate by the Board of Directors including, to the extent deemed appropriate, the acquisition by nondefaulting parties of all or any part of the defaulting party's interest; provisions setting forth such restraints on alienation of the interests of the parties in the project as the Board of Directors deems appropriate; provisions for the construction, operation and maintenance of such electric generation or transmission facility by any one or more of the parties to such agreement which party or parties shall be designated in or pursuant to such agreement as agent or parties thereto or by such other means as may be determined by the parties thereto; and provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project. In exercising its power to participate in a project as a joint owner with one or more persons, the Authority may not loan its credit to any person which is a joint owner of such project; provided, however, the appropriate allocations of the costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project between the Authority and such persons shall not be a loan of credit by the Authority to such persons. In carrying out its functions and activities as such agent

with respect to construction, operation and maintenance of a project, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the Authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to the person acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be made binding upon the Authority without further action or approval by the Authority.

(s) The Authority may procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable, or may self-insure against such losses.

(t) The Authority may contract for and accept any gifts, grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to the provisions of this act, with the terms and conditions thereof.

(u) The Authority may adopt a corporate seal and may sue or be sued.

(v) The Authority may exercise all other powers not inconsistent with the Constitution of the State of Oklahoma or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to effectuate its authorized purposes or to the exercise of any of the powers enumerated in this act.

(w) Notwithstanding any other provision herein seemingly to the contrary, the Authority may not sell output ~~(i)~~ at retail to the ultimate consumers thereof, ~~(ii) to any municipality which does not qualify as an eligible public agency under the definition set forth~~

~~in Section 5(d) of this act, or (iii) to any trust created and existing under the provisions of the Local Industrial Development Act, as provided by Sections 651 et seq. of Title 62 of the Oklahoma Statutes, or the Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, which does not qualify as a public trust under the definition set forth in Section 5(g) of this act.~~

SECTION 4. AMENDATORY Section 4, Chapter 162, O.S.L. 1997, as amended by Section 4, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 1998, Section 190.4), is amended to read as follows:

Section 190.4 A. To ensure an orderly and equitable restructuring of the electric utility industry in this state and achieve the goals outlined in Section 190.2 of this title, the Legislature hereby directs the Joint Electric Utility Task Force 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. The Joint Electric Utility Task Force 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 task force shall deem necessary and appropriate to expedite the transition to full consumer choice. The Corporation Commission shall assist the task force in achieving the goals outlined in the Electric Restructuring Act of 1997; provided, however, during the transition period to full consumer choice, the Corporation 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.

B. It is the intent of the Legislature that the following principles and directives be adhered to 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 Corporation 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, including the assets to provide those services, may shall not be subject to ~~minimal~~ regulation and shall be functionally separated from transmission and distribution services, which services shall remain regulated. Each electric utility shall accomplish the

functional separation of generation services from transmission and distribution services through the use of separate divisions or departments or through the use of separate affiliated companies. Functionally separated facilities used for transmission and distribution services shall remain at the amounts shown on the electric utility's financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) immediately prior to the separation. After the Commission has completed the process of functionally unbundling generation from transmission and distribution, the Commission shall not reduce revenue requirements, use credits or subsidize in any manner the transmission or distribution rates through the use of the functionally separated generation assets and services. 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 Corporation 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 Corporation 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 task force 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 Corporation 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 April 25, 1997, 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; and

14. Transition costs. 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.

C. 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. All studies created pursuant to this section shall be conducted under the direction of the Joint Electric Utility Task Force. The task force shall direct the Corporation Commission, the Oklahoma Tax Commission, any other state agency or consultant as necessary to assist the task force in the completion of such studies.

1. 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.

2. No later than July 1, 1998, the Joint Electric Utility Task Force 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:

- a. reliability and safety,
- b. unbundling of generation, transmission and distribution services,
- c. market power,
- d. open access to transmission and distribution,

- e. transition issues, and
- f. any other technical issues the task force deems appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

3. No later than July 1, 1998, the Joint Electric Utility Task Force 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:

- a. rates and charges,
- b. access and transition costs and fees,
- c. stranded costs and their recovery,
- d. stranded benefits and their funding,
- e. municipal financing,
- f. cooperative financing,
- g. investor-owned utility financing, and
- h. any other financial issues the task force deems appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

4. No later than September 1, 1998, the Joint Electric Utility Task Force 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:

- a. service territories,
- b. the obligation to serve,
- c. the obligation to connect,
- d. consumer safeguards,
- e. rates for regulated services,
- f. consumer choices,
- g. competition,
- h. licensing of retail electric energy suppliers, and

- i. any other consumer issues the task force finds appropriate.

A final report shall be completed by the Joint Electric Utility Task Force no later than October 1, 1999.

D. The Joint Electric Utility Task Force may, if it deems necessary, by a majority vote of the members combine or modify any of the studies required by this act. Provided, however, the task force shall not eliminate any of the issues required to be studied herein.

SECTION 5. AMENDATORY 17 O.S. 1991, Section 158.27, as amended by Section 1, Chapter 231, O.S.L. 1993 (17 O.S. Supp. 1998, Section 158.27), is amended to read as follows:

Section 158.27 A. The Commission shall have general supervision over all associations or cooperative corporations as defined herein with power to fix and establish rates and to prescribe rules affecting their services, operation, and the management and conduct of their business. It shall have full visitorial and inquisitorial power to examine such associations or cooperative corporations and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of the Retail Electric Supplier Certified Territory Act, and with the Constitution and laws of this state, and with the orders of the Commission. The provisions of this section shall not be applicable to generation and transmission associations or cooperative corporations, or transmission associations or cooperative corporations.

B. 1. An association or cooperative corporation shall be subject to rate investigations by the Commission pursuant to

subsection A of this section unless a proposed increase in rates and charges does not exceed three percent (3%) based on the previous twelve (12) months revenue generated by the existing rates; provided however, that such association or cooperative corporation shall be subject to subsection A of this section if:

- a. the association or cooperative corporation elects, by action of its board of trustees, to be subject to rate investigation by the Commission,
- b. the percentage of members, that according to bylaws constitute a quorum not to exceed five percent (5%) of the membership for that particular association or cooperative have signed a petition requesting rate investigation pursuant to paragraphs 3 or 4 of this subsection, or
- c. the Commission declares that the association or cooperative corporation shall be subject to rate investigations by the Commission pursuant to paragraph 6 of this subsection.

2. Each such association or cooperative corporation not subject to rate investigation, at least ninety (90) days before the effective date of any proposed rate increase, shall notify the Commission and each of its member-consumers of the proposed rate increase. Notice to the Commission shall include a verified statement showing the then total number of member-consumers of the association or cooperative corporation.

Notice by the association or cooperative corporation to its member-consumers shall:

- a. be in a form prescribed by this section,
- b. be by regular mail and may be included in regular member-consumer billings, and
- c. include a schedule of the proposed rate schedules, the effective date of the proposed rate increase and the

procedure necessary for the member-consumers to petition the Commission to examine and determine the reasonableness of the proposed rate increase.

3. The member-consumers of an association or a cooperative corporation may petition the Commission to examine and determine the reasonableness of the rates and charges proposed by the association or cooperative corporation pursuant to subparagraph b of paragraph 1 of this subsection. The form of such a petition shall be substantially in compliance with subsection C of this section. A petition substantially in compliance with such form shall not be deemed invalid due to minor errors in its form.

4. If, by the effective date of this proposed increase in rates and charges, the Commission has received petitions from less than the number of member-consumers as set out in subparagraph b of paragraph 1 of this subsection, requesting that the Commission examine the proposed increase in rates and charges, the Commission shall immediately certify such fact to the association or cooperative corporation. If, on or before the effective date of the proposed increase in rates and charges, the Commission has received petitions from the number of member-consumers as set out in subparagraph b of paragraph 1 of this subsection or more, the Commission shall notify the association or cooperative corporation that it will examine and determine the reasonableness of the proposed increase in rates and charges. Rates and charges established by the Commission or by an association or a cooperative corporation pursuant to this section shall be in force for not less than one (1) year and no further increases in rates and charges shall be permitted during said one-year period.

5. No cooperative corporation or association shall have the right to receive more than one rate increase per year for any reason or under any procedures.

6. In addition to the procedure for petition prior to any proposed increase in rates and charges pursuant to paragraphs 1 through 4 of this subsection, the member-consumers of an association or cooperative corporation may at any time petition the Commission to declare the association or cooperative corporation be subject to full scale rate investigation. If the Commission determines that a majority of the member-consumers of an association or a cooperative corporation have properly petitioned that the association or cooperative corporation be subject to full scale rate regulations, the Commission shall certify such fact to the association or cooperative corporation and thereafter the association or cooperative corporation shall be subject to full scale rate investigation by the Commission until at least a majority of the member-consumers of the association or cooperative corporation properly petition that the association or cooperative corporation shall no longer be subject to such full scale rate investigations by the Commission. The form of such a petition shall substantially comply with subsection C of this section.

A petition substantially in compliance with the form pursuant to subsection C of this section shall not be deemed invalid due to minor errors in its form.

7. Paragraphs 1 through 6 of this subsection apply only to the rates and charges and shall have no effect on the Commission's jurisdiction over the associations or cooperative corporations or the rules and regulations governing the operations of electric utilities.

8. Each association or cooperative corporation, when determining how rates and charges, established under paragraph 2 of this subsection, are to be allocated to the different rate classes, shall apportion such rates and charges in a manner which reflects, as closely as practicable, the costs of providing service to that class.

9. In no event, and under no circumstances, shall the procedures herein provided be utilized for the purpose of establishing special competitive rates in any area in which a cooperative corporation is in direct competition with another regulated retail electric supplier.

C. 1. A petition requesting the Commission to examine and determine the reasonableness of a proposed increase in rates and charges shall be in substantially the following form:

a. Form:

The petition shall be headed by a caption, which shall contain (1) the heading, "Before the Corporation Commission of the State of Oklahoma"; (2) the name of the association or cooperative corporation seeking an increase in rates and charges; (3) the relief sought.

b. Body:

The body of the petition shall consist of four numbered paragraphs, if applicable, as follows:

(1) Allegations of Facts: The allegations of facts stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity,

(2) Legal Authority: Retail Electric Supplier Certified Territory Act,

(3) Relief Sought: A brief statement of the amount of the increase in rates and charges that is objected to or other relief sought, and

(4) Petitioners: The name, address, telephone number and signature of each member-consumer.

2. A petition requesting rate regulation of an association or cooperative corporation shall be in substantially the following form:

a. Form:

The petition shall be headed by a caption, which shall contain (1) the heading, "Before the Corporation Commission of the State of Oklahoma"; (2) the name of the association or cooperative corporation seeking an increase in rates and charges; (3) the relief sought.

b. Body:

The body of the petition shall consist of four numbered paragraphs, if applicable, as follows:

(1) Allegations of Facts: The allegations of facts stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity,

(2) Legal Authority: Retail Electric Supplier Certified Territory Act, Sections 158.21 through 158.32 of Title 17 of the Oklahoma Statutes,

(3) Relief Sought: A brief statement of the reason the petitioners seek the Commission to regulate the rates and charges of the association or cooperative corporation or other relief sought, and

(4) Petitioners: The name, address, telephone number and signature of each member-consumer.

3. Petitions may only be signed by the member-consumer of the association or cooperative corporation.

D. Upon proceedings brought by an interested person or by action of the Commission, the Commission shall have the jurisdiction to enforce compliance with the Retail Electric Supplier Certified Territory Act, and shall have jurisdiction to prohibit furnishing retail electric service by any retail electric supplier except in its certified territory or territories, or where lawfully serving,

and in connection with such enforcement and prohibition to exercise all powers herein or otherwise granted to the Commission.

E. 1. Rural electric cooperatives, which are owned by the member-consumers they serve, are regulated by the member-consumers themselves acting through an elected governing board. It is declared that the regulation by the Commission under this section may be duplicative of the self-regulation by the rural electric cooperative and may be neither necessary nor cost-effective. It is therefore the purpose of this subsection to determine the necessity of regulation ~~of rates and charges~~ by the Commission by allowing the member-consumers of a rural electric cooperative to exempt themselves from regulation by the Commission except as provided herein.

2. Except as otherwise provided in paragraphs 4, 5, 6 and 7 of this subsection, ~~the provisions of this section~~ regulation by the Commission shall not apply to rural electric cooperatives with less than seventeen thousand (17,000) meters which comply with paragraph 3 of this subsection.

3. To be exempt under paragraph 2 of this subsection from all Commission regulation, except as provided for in Section 7 hereof, a cooperative shall poll its members as follows:

- a. an election under this subsection may be called by the Board of Trustees or shall be called not less than one hundred eighty (180) days after receipt of a valid petition signed by not less than five percent (5%) of the members of the cooperative,
- b. the proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than twenty-

one (21) nor more than forty-five (45) days before the date of the meeting,

- c. if the cooperative mails information to its members regarding the proposition for deregulation other than notice of the election and the ballot, the cooperative shall also include in such mailing any information in opposition to the proposition that is submitted by petition signed by not less than one percent (1%) of the cooperative's members,
- d. if the proposition for deregulation is approved by the affirmative vote of not less than a majority of the members voting on the proposition, the cooperative shall notify the state Corporation Commission in writing of the results within ten (10) days after the date of the election, and
- e. voting on the proposition for deregulation shall be by mail ballot, provided, members attending the meeting provided for in subparagraph b of paragraph 3 of this subsection may execute and deliver their ballot to the cooperative during or at the conclusion of said meeting.

4. In the event the member-consumers have voted, pursuant to paragraph 3 of this subsection, to exempt themselves from regulation by the Commission, any such cooperative may vote no more than once every twelve (12) months to place said cooperative under the regulation of the Commission, as provided in this section. Said question shall be submitted to the member-consumers of the rural electric cooperative if at least five percent (5%) of the members of the cooperative sign a petition requesting such an election. Such petition shall be submitted to the membership in the same manner as provided for in paragraph 3 of this subsection.

5. Each rural electric cooperative which has voted to exempt itself from Commission regulation ~~under this section~~, when determining how rates and charges established after such exemption are to be allocated to the different rate classes, shall apportion such rates and charges in a manner which reflects, as closely as practicable, the costs of providing service to that class. Each cooperative which has exempted itself from Commission regulation ~~under this section~~ shall file and maintain a copy of all current rates and charges with the Oklahoma Corporation Commission.

6. In no event, and under no circumstances, shall rates and charges established hereunder be utilized for the purpose of establishing special competitive rates in any area in which a cooperative is in direct competition with another regulated retail utility supplier.

7. Notwithstanding the provisions of this section, the Commission shall retain jurisdiction over all cooperatives who have voted to exempt themselves from Commission regulation ~~under this section~~:

- a. for all purposes relating to certified territories established under the Retail Electric Supplier Certified Territory Act, and
- b. for proceedings brought by a regulated utility relating to alleged discriminatory or anti-competitive rates established by an exempt cooperative, or relating to actions to acquire existing customers of a regulated utility using such rates.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.10 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. To protect the residential electric consumers of this state and prevent unauthorized switching of electric service providers, commonly known as "slamming" and unauthorized charges for electric

or other services, commonly known as "cramming", no person, firm or corporation shall change or switch a residential electric consumer's electricity supplier without the informed written consent of such consumer or place unauthorized charges on a residential, commercial or industrial consumer's electric bill for services or products that were never received or ordered by such consumer, or were sold through or obtained by deceptive marketing practices.

B. 1. At no time shall any person, firm, entity or corporation contact any residential electric consumer by telephone for the purpose of marketing or offering any electric service or other related services if such consumer has given notice to the Corporation Commission of such consumer's objection to receiving telephone solicitations. Marketing or offering any electric service or related services by telephone may be allowed if the telephone conversation is initiated by a call from the consumer; provided, however any change in electric service or related services shall only be completed with the informed written consent of the consumer.

2. The Corporation Commission shall establish and provide for the operation of a data base to compile a list of names and telephone numbers of residential consumers who object to receiving telephone solicitations related to electric service or other related services. It shall be the duty of the Commission to have such data base in operation no later than January 1, 2002, or at least six months prior to the effective date of electric utility restructuring pursuant to Section 190.1 et seq. of Title 17 of the Oklahoma Statutes, whichever occurs later. Such data base may be operated by the Commission or by another entity under contract with the Commission. The cost of funding the operation of such data base shall be included in the amounts assessed under Section 180.11 of Title 17 of the Oklahoma Statutes.

3. No later than January 1, 2001, the Commission shall promulgate rules which:

- a. require each retail electric energy supplier to inform its residential consumers of their ability to notify the Commission, or its agent, that the consumer objects to receiving telephone solicitations. Such information shall be prominently displayed and included in each residential consumer's electric service bill at least two times per calendar year,
- b. specify the methods by which residential consumers may give notice of their objection to receiving telephone solicitations and how consumers may rescind such objection to solicitation if they choose,
- c. specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice,
- d. specify the methods by which such objections to solicitation and subsequent recessions shall be collected and added to the data base,
- e. specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the data base to avoid solicitations to the consumers listed in the data base, and
- f. specify such other matters relating to the data base that the Commission deems necessary.

C. The signing of any type of contest entry form shall not constitute informed written consent as required by this section.

D. Residential electric consumers shall have three (3) business days to rescind their written acceptance of any offer for electric service or other related services.

E. The Corporation Commission shall promulgate rules to determine the minimum terms and provisions which shall be included in all residential electric service contracts. Such rules shall be

promulgated at least six months prior to the implementation of consumer choice.

F. Any person, firm or corporation who intentionally violates the provisions of this act shall be subject to a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) per violation to be determined by the Corporation Commission.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 437, is amended to read as follows:

Section 437. This act shall be known and may be cited as the "~~Rural~~ Electric Cooperative Act".

SECTION 8. AMENDATORY 18 O.S. 1991, Section 437.1, is amended to read as follows:

Section 437.1 A. Cooperative, nonprofit, membership corporations may be organized under this act for the purpose of supplying electric energy and promoting and extending the use thereof ~~in rural areas~~. Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperatives".

SECTION 9. AMENDATORY 18 O.S. 1991, Section 437.2, is amended to read as follows:

Section 437.2 A cooperative shall have power:

- (a) To sue and be sued, in its corporate name;
- (b) To have a perpetual existence unless a limited period of duration is stated in its charter;
- (c) To adopt a corporate seal and alter the same at pleasure;
- (d) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy ~~in rural areas~~ to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percent (10%) of the number of its members;

(e) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds of character, and to accept and otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(f) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in constructing, maintaining and operating electric refrigeration plants;

(g) To become a member in one or more other cooperatives or corporations or to own stock therein;

(h) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants, and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized; provided, that any and all such electrical construction and maintenance shall conform to the requirements and regulations of the National Electrical Safety Code;

(i) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and easements;

(j) To borrow money and otherwise contract indebtedness therefor and to secure the payment thereof by mortgage, pledge, deed or trust, or any other encumbrance upon any or all of its then owned or after acquired real or personal property, assets, franchises, revenues or income;

(k) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys and bridges, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations, constructing or operating electric transmission and distribution lines or systems; provided that in case an area has been or shall be included, as a result of incorporation, annexation, population growth, or otherwise, within the boundaries of a city, town or village, a cooperative which was furnishing electric energy, or was constructing or operating electric facilities, in such area, prior to such inclusion, shall be entitled to construct, maintain and operate electric transmission and distribution lines and related facilities along, upon, under and across all existing and future public thoroughfares, and to continue and extend the furnishing of electric energy or the construction and operation of electric facilities in such area without obtaining the consent, franchise, license, permit or other authority of such city, town or village, subject, however, to compliance with the lawful safety requirements of such city, town or village as to the manner of constructing and maintaining facilities on such thoroughfares, and subject to payment of taxes of such city, town or village that may be levied and assessed as provided in Section 1201 of Title 68 of the Oklahoma Statutes; and provided further that if such city, town or village in which an area has been or shall be included, as aforesaid, owns and

operates a system for the furnishing of electric energy to its inhabitants, the cooperative furnishing electric energy in such area shall transfer to such city, town or village, upon its request, the cooperative's electric distribution facilities used in furnishing electric energy in said area, other than facilities used in furnishing electric energy for resale or to premises of the cooperative, subject, however, to the following requirement: The city, town or village shall pay to the cooperative an amount to compensate the cooperative for the fair value of the cooperative's facilities to be acquired by the city, town or village. If such cooperative and city, town or village cannot agree upon the amount to be paid to the cooperative, the city, town or village is authorized to file a proceeding in the district court of the county in which such city, town or village, or any part thereof, is located, for the acquisition of the cooperative's electric distribution facilities used in furnishing electric energy in said area, other than facilities used in furnishing electric energy for resale or to premises of the cooperative, and the procedure followed and the method of ascertaining just compensation to be paid the cooperative will be as provided in Article 2, Section 24, of the Oklahoma Constitution and Sections 53 to 58, inclusive, of Title 66 of the Oklahoma Statutes-;

(l) To conduct its business and exercise any or all of its powers within or without this state;

(m) To adopt, amend and repeal bylaws; ~~and~~

(n) To do and perform any and other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized; and

(o) To have and exercise the right of eminent domain in the same manner and by like proceedings as provided for railroad corporations under the laws of this state. No funds shall be lent

by any privately owned electric utility or person connected, either directly or indirectly, to such a cooperative. Any such loan when made shall be void and uncollectible in any court of the State of Oklahoma.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 437.28, is amended to read as follows:

Section 437.28 ~~In~~ As used in this act, ~~unless the context otherwise requires,;~~ :

~~(a) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town or village, having a population in excess of one thousand five hundred (1,500) persons, and any area included within the boundaries of any such city, town or village as a result of incorporation, annexation, population growth, or otherwise, in which area a cooperative commenced or commences the construction or operation of electric facilities or the furnishing of electric energy prior to such incorporation, annexation or population growth.~~

~~(b)~~ 1. "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic; and

~~(c)~~ 2. "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-105.6A of Title 47, unless there is created a duplication in numbering, reads as follows:

In addition to the powers, duties, responsibilities authorized by Section 2-105.6 of Title 47 of the Oklahoma Statutes, the Department of Public Safety Lake Patrol is hereby directed and authorized to distribute all federal funds, available to the Department for boat safety functions, using a formula based on the

number of permanently moored boats located on each of the eligible waters of the state, unless otherwise directed by federal law.

SECTION 12. AMENDATORY 82 O.S. 1991, Section 862, as amended by Section 13, Chapter 391, O.S.L. 1998 (82 O.S. Supp. 1998, Section 862), is amended to read as follows:

Section 862. The district shall have and is hereby authorized to exercise the following powers, rights and privileges:

(a) To control, store and preserve, within the boundaries of the district, the waters of Grand River and its tributaries, for any useful purpose, and to use, distribute and sell the same within the boundaries of the district; provided, however, that any municipal corporation within the area included within the jurisdiction of the said Grand River Dam Authority shall be entitled to take water from the Grand River and any of its tributaries in any quantities that may be needed by such municipal corporation;

(b) To develop and generate water power, electric power and electric energy, from whatever source, within the boundaries of the district; to acquire coal or other minerals to be used for the purposes of providing energy sources for electrical generating plants; to acquire or lease any and all railroad connections, equipment, rolling stock, trackage and otherwise, necessary to the transporting of coal and other minerals to generating plant sites within the district; and to buy, sell, resell, interchange and distribute electric power and energy in order to carry forward the business and functions of the district now or hereafter authorized by law and may enter into contracts for such purposes, such contracts to run for a period of not to exceed fifty (50) years except those contracts provided for in paragraphs (f) and (g) of this section. All contracts may contain such reasonable provisions, limitations, qualifications, protective clauses and rights and obligations of purchase and sale, and such provisions for the dedication of the use of facilities and the construction of

additional facilities to serve the load requirements of all the parties as may be deemed advisable by the district to safeguard the business and properties of all the parties to such contracts, all within the limits of sound business judgment and practice, good conscience, and not contrary to the public policy of the state;

(c) To prevent or aid in the prevention of damage to person or property from the waters of the Grand River and its tributaries;

(d) To forest and reforest and to aid in the foresting and reforesting of the watershed area of the Grand River and its tributaries and to prevent and to aid in the prevention of soil erosion and floods within said watershed area;

(e) To acquire by purchase, lease, gift, or in any other manner, and to maintain, use and operate or to contract for the maintenance, use and operation of any and all property of any kind, real, personal, or mixed, or any interest therein, and to own, construct, operate and maintain any project or works in conjunction or jointly with, as tenants in common, any public or private corporation duly authorized and qualified to do business within this state including, but not limited to, rural electric cooperatives of the State of Oklahoma or the United States of America, or any department, subdivision or agency of the State of Oklahoma or the United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, within or without the boundaries of the district, necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act;

(f) In addition to any other powers conferred, the district shall have power and authority to participate and enter into agreements with any public or private corporation duly authorized and qualified to do business within the State of Oklahoma including, but not limited to, rural electric cooperatives, the state or the

United States of America or any department, subdivision or agency of the state or the United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, for the purpose of planning, acquiring, financing, owning, operating and maintaining an undivided ownership of any steam, oil, gas, coal-fired, thermal, geothermal, solar, waste or refuse reclamation powered electric generating plant or plants or any facilities of every kind necessary, incidental or convenient for the production, generation and transmission of electric power and energy including, but not limited to, any and all related transmission facilities, which shall be used as common facilities. The agreements shall provide that the district and any participants therein shall have the incidents of tenant in common to any plant or facility. It shall also be provided in the agreements that the district and any participant in the project shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

Each participant shall defray its own interest payments and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall further provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

In carrying out the powers granted in this section, the district and each participant shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by the

district or any participant for the planning, financing, acquiring, constructing, operating or maintaining of any common plant or facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of the district or any participant therein be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon the district except as expressly authorized and provided for in the participation agreement;

(g) In addition to the powers conferred in paragraph (f) of this section, the district shall have power and authority to participate and enter into agreements with any public or private corporation duly authorized and qualified to do business within this state including, but not limited to, rural electric cooperatives, the State of Oklahoma or the United States of America or any department, subdivision or agency of the State of Oklahoma or the United States of America, or with any "public agency" as defined under the Interlocal Cooperation Act, Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, for the purpose of planning, acquiring, financing, owning, operating and maintaining undivided ownership interests in any steam, oil, gas, coal-fired, thermal, geothermal, solar, waste or refuse reclamation powered electric generating plant or plants or any other facilities of every kind necessary, incidental or convenient for the production, generation and transmission of electric power and energy including, but not limited to, any and all related transmission or other facilities which are to be used as common facilities and to cooperate with other state agencies and public trusts to promote economic development in the state and to assist in attracting industry to the state. Such undivided ownership interests may be created by an agreement entered into with respect to property to be acquired by

the district. Any such agreement may be a sale agreement, with the purchase price payable at one time or in installments at such time and over such period as shall be agreed to by the parties thereto, a lease agreement, with a nominal purchase option, or any other type of agreement. In addition to the purchase price, the district shall be fully indemnified as to operation, maintenance, administrative and other expenses incurred with respect to such undivided interest. Any payment received in respect to any such agreement shall be deemed revenues of the Authority. The district is hereby authorized to enter into any such agreement in order to sell, lease or otherwise convey undivided ownership interests in any such property. Any such agreement shall specify the undivided interest to be owned or acquired by each of the participants, provide for a waiver of partition, prescribe the time of vesting of such interest and the amount of electrical output to be owned and controlled by any participant.

Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

In carrying out the powers granted in this section, the district and each participant shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by the district or any participant for the planning, financing, acquiring, constructing, operating or maintaining of any common plant or facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of the

district or any participant therein be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon the district except as expressly authorized and provided for in the participation agreement;

(h) To acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein, within or without the boundaries of the district, necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act, in the manner provided by general law with respect to condemnation; provided that nothing in this act shall ever be construed to authorize the district to acquire by condemnation any privately, municipally or publicly owned electric public utility system or any part thereof outside of the high-water mark of a reservoir area or outside a properly located damsite, except the districts may require the relocation of transmission lines and substations so owned where such relocation is necessary for the construction and maintenance of dams, reservoirs, levees, spillways and floodways, and in such event just compensation shall be paid. Provided that the Grand River Dam Authority shall have the right to cross transmission lines of other electric utility companies under proper engineering standards of construction as approved by the Corporation Commission;

(i) Subject to the provisions of this act, from time to time sell, which shall include, but not be limited to, an installment sale agreement, lease with nominal purchase options, or otherwise dispose of any property of any kind, real, personal or mixed, or any interest therein, which shall not be necessary to the carrying on of the business of the district;

(j) To overflow and inundate any public lands and public property and to require the relocation of roads and highways in the

manner and to the extent necessary to carry out the purposes of this act; provided, that said district shall be liable in damages to the State of Oklahoma or any subdivision thereof for any injury occasioned or expense incurred by reason thereof;

(k) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate any and all facilities of any kind necessary, incidental or convenient to the exercise of such powers, rights, privileges and functions;

(l) To sue and be sued in its corporate name in contracts, reverse condemnation, tort, equity, mandamus and similar actions and in its own name plead and be impleaded, provided, however, that any and all actions of law or in an equity against the district shall be brought in the county in which the principal office of the district shall be located or in the county where the cause of action arose;

(m) To adopt, use and alter a corporate seal;

(n) To make bylaws for the management and regulation of its affairs;

(o) To appoint officers, agents and employees, to prescribe their duties and to fix their compensation; and enter into contracts with labor unions, provided, that contracts with labor unions shall not abrogate the rights of the district to cooperate and carry out Veterans on the Job Training;

(p) To make contracts and to execute instruments necessary, incidental or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this act;

(q) To borrow money for its corporate purposes and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with any such loan or grant, to enter into such agreements as the United States of America or such

corporation or agency may require; and to make and issue its negotiable bonds for money borrowed, in the manner provided in this act. Nothing in this act shall authorize the issuance of any bonds, notes or other evidences of indebtedness of the district, except as specifically provided in this act;

(r) To prescribe and enforce rules for the use for recreational and commercial purposes of the lakes created by the district by impounding the waters of said lakes, and the shorelands of the district bordering thereon, including the use of firearms, the inspection of all boats of every character proposing to operate or operating on said lakes, the issuance of permits for the operation of boats, surfboards, aquaplanes, sea-skis or similar devices on said lakes for hire; the charging and collection of fees for the inspection or operation of such boats, surfboards, aquaplanes, sea-skis or other similar devices on said lakes for hire; preventing the launching or operation of any commercial or for-hire boat, surfboard, aquaplane, sea-ski or similar device for hire, on the waters of said lakes, without a certificate of inspection and a permit for such use; prescribing the type, style, location and equipment of all wharves, docks and anchorages along the shores and upon the water of said lakes; the issuance of permits for wharfage, dock or anchorage privileges and charging fees for such commercial or private permits; and the establishment and maintenance of public wharves, docks or anchorages and the charging and collection of fees for the use thereof by the public; to appoint or employ such persons as the district may deem proper and suitable for the purpose of enforcing such rules and regulations as may be issued hereunder, or as may be issued pursuant to the provisions of Sections 4200 et seq. of Title 63 of the Oklahoma Statutes, and for the enforcing of the provisions of this act, and all violations of criminal laws occurring within the boundaries of the counties where real property owned or leased by the Grand River Dam Authority is located, which

employees shall have the power of peace officers during the performance of those duties, except in the serving or execution of civil process; ~~and~~

(s) To be exempt from the provisions of the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes exclusively limited to:

1. Electrical services contracts between GRDA and its customers unless the customer consents to disclosure;

2. Internal business plans that relate to competitive issues, and marketing plans; and

3. Customer proprietary information the GRDA is contractually obligated to keep confidential;

(t) To be exempt from the provisions of the Oklahoma Open Meetings Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, only for the purpose of allowing the Grand River Dam Authority Board of Directors to confer on matters pertaining to electrical services contracts, coal or gas supply contracts and rail or truck transportation contracts; and

(u) To do any and all other acts or things necessary, incidental or convenient to the exercise of the powers, rights, privileges or functions conferred upon it by this act or any other act or law. Provided said district shall be liable for damage caused by said district, its agents, servants and employees in creating, constructing, maintaining or operating said district to any corporation, partnership, person or individual whose property, either real or personal, within or without said district, has been damaged and said damages may be determined by appropriate action as provided by law. Nothing in this act shall be construed as rendering the district liable for damage where it is not liable on general principles of law or statute or Constitutional provision.

Provided, however, that in the course of exercising its powers as herein enumerated, the said district shall at all times consider

the rights and needs of the people living within and upon the land lying within the watershed of the rivers or streams developed by the district; provided, however, that nothing herein shall prevent the district from selling for irrigation purposes within the boundaries of the district any water impounded by it under authority of law, provided that nothing herein contained shall authorize the state to engage in agriculture except for educational and scientific purposes and for the support of its penal, charitable, and educational institutions.

SECTION 13. AMENDATORY 82 O.S. 1991, Section 864, as last amended by Section 15, Chapter 391, O.S.L. 1998 (82 O.S. Supp. 1998, Section 864), is amended to read as follows:

Section 864. A. 1. The Board of Directors of the Grand River Dam Authority shall select a secretary who shall keep true and complete records of all proceedings of the Board. The Board shall select a treasurer, who may also hold the office of secretary. Until the appointment of a secretary, or in the event of absence or inability to act, a secretary pro Tempore shall be selected by the Board.

2. The Board shall ~~also~~ select a ~~general manager~~ General Manager, who shall be the chief executive officer of the district, ~~and a treasurer, who may also hold the office of secretary.~~ In addition, the Board shall select a General Counsel, an Internal Auditor and a Director of the Lake Patrol, which shall be a separate position from the Chief of the Lake Patrol, all such employees shall be considered unclassified, but not officers of the district, all of whom shall report directly to the Board.

3. The General Manager shall serve at the pleasure of the Board provided, however, on and after the effective date of this act, the Board may not enter into any employment contract with the General Manager or any other employee for a term exceeding one year.

4. In selecting the General Manager on and after the effective date of this act the Board shall require the General Manager to possess a bachelor or graduate degree in one or more of the following areas: accounting, engineering, business administration, political science, public administration, a juris doctorate degree; or at least three years experience in municipal government administration.

5. All such officers shall have the powers and duties, and shall hold office for such term and be subject to removal in such manner as may be provided in the compensation of such officers. The Board may appoint such officers and employees, fix their compensation and term of office and the method by which they may be removed and delegate to them such other powers and duties as it may deem appropriate.

~~4. Except for the purpose of inquiry, the Board and its members shall deal with the operations of the district solely through the general manager. The Board and its members shall not:~~

- ~~a. direct or request the general manager or other authority to appoint or remove officers or employees except as herein provided,~~
- ~~b. participate in any manner in the appointment or removal of officers and employees of the district, except as provided by law, or~~
- ~~c. give orders or ordinary administrative matters to any subordinate of the general manager either publicly or privately.~~

B. The ~~general manager~~ General Manager may appoint such other officers, agents, and employees, fix their compensation pursuant to the provisions of this section, and term of office and the method by which they may be removed, and delegate to them such of its power and duties as the ~~general manager~~ he or she may deem proper.

C. Except as provided in subsection A of this section, the compensation of employees of the Grand River Dam Authority shall be computed as follows:

1. Beginning July 1, 1993, and biannually thereafter, the Office of Personnel Management shall conduct a comprehensive classification and compensation study of all positions in the Grand River Dam Authority. The study shall include, but not be limited to, an analysis of prevailing rates of pay for all positions in electrical generating utilities for jobs comparable to those performed by employees of the Grand River Dam Authority. A report shall be provided to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Board of Directors of the Grand River Dam Authority by January 1, 1994. The report shall include an analysis of all positions and classifications and recommend an average comparable pay scale developed through the study. The Grand River Dam Authority shall bear the cost of the study;

2. Beginning July 1, 1994, the Board of Directors of the Grand River Dam Authority shall implement the classification and compensation recommendations as appropriate if fiscal constraints and commitments to ratepayers permit. Such implementation shall be within existing guidelines of the Merit System as determined by the Office of Personnel Management; and

3. Beginning July 1, 1997, the Board of Directors of the Grand River Dam Authority may implement adjustments in compensation to correct internal inequities as determined by the Board of Directors. The total of these adjustments and those described in paragraph 2 of this subsection shall not increase the base payroll in excess of the recommendation in the Office of Personnel Management study.

SECTION 14. AMENDATORY 82 O.S. 1991, Section 868, is amended to read as follows:

Section 868. The ~~board~~ Board of Directors of the Grand River Dam Authority shall establish and collect rates and other charges for the sale or use of water, water connections, power, electric energy or other services sold, furnished, or supplied by the district which fees and charges shall be reasonable and ~~nondiscriminatory~~ not unduly discriminatory and sufficient to produce revenue adequate:

(a) To pay all expenses necessary to the operation and maintenance of the properties and facilities of the district;

(b) To pay the interest on and principal of all bonds issued under this act when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds, and payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf. Out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c) and (d) above, the board shall establish a reasonable depreciation and emergency fund, and retire (by purchase and cancellation or redemption) bonds issued under this act, or apply the same to any corporate purpose. It is the intention of this act that the rates and charges of the district shall not be in excess of what may be necessary to fulfill the obligations imposed upon it by this act.

Nothing herein shall be construed as depriving the State of Oklahoma of its power to regulate and control fees and/or charges to be collected for the use of water, water connections, power, electric energy, or other services, provided, that the State of Oklahoma does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the state will not limit or alter the power hereby vested in the district to establish and collect such fees and charges as will produce revenues

sufficient to pay the items specified in subparagraphs (a), (b), (c), and (d) of this Section 8, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the district in connection with such bonds are fully met and discharged.

SECTION 15. Section 2 of this act shall become effective July 1, 2002.

SECTION 16. 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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MJM

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