

## Revisiting the Environmental Duties of Public Utility Commissions (2006)

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A common misconception is that public utility commissions are solely economic regulators, and have neither the authority nor the obligations to evaluate the environmental impacts of the entities they supervise or to make decisions on the basis of environmental considerations. Under this view, environmental protection agencies have the sole authority to address the environmental and public health implications of electric utility service.

Five years ago, a review of state statutes and decisions showed that this view was simplistic and ignores statutes in many states that “explicitly recognize the link between economic and environmental issues.”<sup>1</sup> A return to the question and a new review of relevant law demonstrates again that utility commissions in many states have the explicit authority to consider such diverse and environmentally significant issues as facility siting, resource planning and acquisition, energy conservation programs, renewable energy development, and emissions disclosure. It also demonstrates the utility commissions’ implicit authority to consider environmental issues through their general charge that regulation of public utilities furthers the public interest.

This document reviews the statutory authority of state commissions. We present numerous examples showing that most public utility commissions have authority to make decisions with the good of the environment in mind.<sup>2</sup> The various types of authority found have been organized below in the following sections:

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1. Dworkin, et al., *The Environmental Duties of Public Utility Commissions*, 18 PACE ENVTL. L. REV. 325, 327 (2001).

2. This work primarily reviews the relevant statutes, thus readers should consult the latest legislative enactments, commission regulations, and judicial decisions in each jurisdiction for a more complete picture of any individual commission's authority.

1. General Authority and Obligations;
2. Certification, Siting, and Compliance;
3. State “NEPA” Statutes;<sup>3</sup>
4. Resource Planning, Conservation Programs, and Environmental Externalities; and
5. Restructuring Provisions.

### 1. GENERAL AUTHORITY AND OBLIGATIONS

Fifteen state commissions have statutes explicitly setting out a general authority or obligation to consider environmental matters.<sup>4</sup> For example, in defining the Maryland Public Service Commission’s supervisory and regulatory power, Maryland law provides, in part, that the Maryland Public Service Commission shall, in its role supervising and regulating public service companies, “consider the public safety, the economy of the State, the conservation of natural resources, and the preservation of environmental quality.”<sup>5</sup> Furthermore, Vermont law defines the goal of utility policy as “meeting the public’s need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including *environmental* and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.”<sup>6</sup>

Environmental protection may also be explicitly specified as one of the many general policies that a commission is expected to consider in reaching its decisions. For example, one of the general policies of the Commission in North Carolina is “[t]o encourage and promote harmony between public utilities, their users and the environment.”<sup>7</sup>

### 2. CERTIFICATION, SITING, AND COMPLIANCE

The primary instrument used by a commission for ensuring adherence with its rules and regulations is the certification process. Applications by new entrants to a state's market are typically reviewed and a certification granted when a commission determines that the applicant has met criteria

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3. See National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321–4370 (2000).

4. Alaska, Connecticut, Florida, Illinois, Iowa, Maine, Maryland, Mississippi, New Jersey, New York, North Carolina, Rhode Island, Utah, West Virginia, and Wisconsin. See Appendix *infra*.

5. MD. CODE ANN., PUBLIC UTIL. COS. § 2-113 (LexisNexis 2000).

6. VT. STAT. ANN. tit. 30, § 218c(a)(1) (2000) (emphasis added).

7. N.C. GEN. STAT. § 62-2(5) (2005).

concerning, e.g., consumer protection, financial and managerial resources, and the public good or necessity. Existing utility companies also seek certification for the siting of discrete projects or for entry into contracts defining major power supply commitments.<sup>8</sup>

In thirty states, certification and siting review includes consideration of environmental protection.<sup>9</sup> For example, the Arkansas Code provides that state's Commission with authority to grant "Certificates of environmental compatibility and public need."<sup>10</sup> Thus, pursuant to this statute and in addition to the other economic issues that commissions typically consider, Arkansas' Commission must take environmental issues into consideration when it reviews applications for siting of such projects as generation stations, jurisdictional power lines, and pipelines.

Commissions may also have environmental review authority in the compliance phase of a project. For example, the Indiana Code requires regulated electric and water utilities to file Environmental Compliance Plans with that state's commission.<sup>11</sup> These filings, reviewed by the state commission, are designed to help the commission ensure ongoing compliance with environmental standards.

Alternatively, a commission may conduct a limited environmental review in the context of certification. This may occur by simply validating the participation and appropriate review by other state (environmental) agencies in the commission's overall certification process. State commissions may also simply have a role in reviewing compliance with federal environmental standards. Under Michigan law, for example, the Michigan Commission must "ensure that all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions."<sup>12</sup>

Other environmental programs developed by the federal government delegate duties to state commissions. The Acid Rain Program developed under the 1990 Clean Air Act amendments is one such program.<sup>13</sup> The Acid Rain Program employs a market-based system of flexible compliance and allows utilities to choose least-cost strategies, including the use of

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8. In most states, the siting of projects, e.g., transmission lines or generating stations, requires certificates of public good or public necessity. *See Appendix infra.*

9. Arizona, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin. *See Appendix infra.*

10. ARK. CODE ANN. § 23-18-510 (LexisNexis 1987).

11. IND. CODE ANN. § 8-1-27 to -28 (LexisNexis 1998).

12. MICH. COMP. LAWS SERV. § 460.10d(9) (LexisNexis 2001).

13. Clean Air Act §§ 401-416, 42 U.S.C. §§ 7651(a)-7651(o) (2000).

conservation programs.<sup>14</sup> In 1993, the EPA promulgated regulations specifically listing energy conservation measures and renewable energy sources which may qualify for purposes of allocating sulfur dioxide (SO<sub>2</sub>) allowances.<sup>15</sup> State commissions are delegated the authority to certify whether eligible utility companies have conducted energy conservation programs in a manner that meets the program guidelines.<sup>16</sup>

There are other examples of federal programs that delegate authority to state commissions. For instance, the Kansas Commission is responsible for certifying compliance with federal energy conservation programs in the state.<sup>17</sup>

### 3. STATE NEPA STATUTES

As most readers know, the National Environmental Policy Act of 1969 (NEPA), requires federal agencies engaged in major government actions to conduct various levels of environmental review of those actions; NEPA also imposes the requirement to conduct analyses of alternatives.<sup>18</sup> Many states commit their state agencies (including utility commissions) to environmental reviews through what are frequently called “mini NEPAs” or “state NEPAs.” These statutes also provide for public participation from the early stages of government decision-making. Thus, state NEPAs can provide a procedural device for early and significant public involvement in a utility commission's decision-making about matters that could affect the environment and the health of the public.

Nearly twenty jurisdictions have their own NEPA statutes.<sup>19</sup> Twelve commissions are subject to their state NEPA statutes.<sup>20</sup> For example, in New York, where the commission is the lead agency in a project, it must find “that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental

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14. *Id.* § 404(f), (g).

15. 40 C.F.R. § 73.81 (2005) (developed pursuant to section 404(f) of the Clean Air Act).

16. For example, the Illinois Commission keeps track of emission allowances granted, bought, or sold from each electric generating utility, pursuant to the 1990 amendments to the Federal Clean Air Act. *See* 220 Ill. Comp. Stat. Ann. 5/4-305 (West 2000).

17. KAN. STAT. ANN. § 74-616(d) (2002).

18. NEPA § 102(2)(c), 42 U.S.C. § 4332(2)(c) (2000).

19. *See, e.g.*, California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21050–21169 (West 1996); Montana Environmental Policy Act (MEPA), MONT. CODE ANN. §§ 75-1-101 to 324 (2005); WASH. REV. CODE ANN. § 43.21C.010 to .910 (West 2000); *see also* Appendix *infra*.

20. California, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Minnesota, New York, North Carolina, South Dakota, and Washington. *See* Appendix *infra*. While the State of Montana has a mini-NEPA, the Montana Commission's “exercise of regulatory authority over rates and charges” is specifically exempted from the statute's provisions. MONT. CODE ANN. § 75-1-201 (2005).

effects revealed in the environmental impact statement process will be minimized or avoided.”<sup>21</sup>

#### 4. RESOURCE PLANNING, CONSERVATION PROGRAMS, AND ENVIRONMENTAL EXTERNALITIES

Resource planning is the process whereby a utility company develops its overall approach for meeting its market for energy services. Resource planning is conducted through a strategy of combined investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs. Thirty-six state commissions have authority to review utility resource planning, conservation programs, or externalities.<sup>22</sup> For instance, in setting rates, the Florida “Commission is authorized to give consideration . . . to the efficiency, sufficiency and adequacy of the facilities provided and the services rendered; . . . and energy conservation and the efficient use of alternative energy resources.”<sup>23</sup>

#### 5. RESTRUCTURING PROVISIONS

The electric industry nationwide has changed considerably over the last several years. Generation of electricity, traditionally part of integrated utility service, is now, in many places, being treated as a competitive industry. As a result, individual customers in many states are now able to shop for their power. In 2003, twenty-three states and the District of Columbia had restructured or were in the process of restructuring their electric industries to allow for retail choice.<sup>24</sup> Since then, however, a

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21. Environmental Quality Review Act, N.Y. ENVTL. CONSERV. LAW § 8-0109(8) (McKinney 1989 & Supp. 1999–2000) (acting as lead agency for environmental impact review, the commission makes findings pursuant to the Act and N.Y. COMP. CODES R. & REGS. tit. 6, § 617.11 (2005) of its implementing regulations).

22. In this context, environmental issues are often referred to as “externalities,” i.e., costs not being captured by the explicit financial transactions noted in the utility regulatory process and costs external to the process. The states with resource planning and conservation programs are Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. *See Appendix infra*.

23. Fla. Stat. Ann. § 366.041 (West 2005).

24. Energy Information Agency, Department of Energy, Status of Electric Industry Restructuring Activity as of Feb. 2003 (2003), available at <http://digbig.com/4hpjp>. Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia. *Id.* Restructuring information is based on February 2003 Energy Information Agency data. *Id.* In addition to the legislative restructuring occurring in many states, the State of New York is restructuring its electric industry through regulatory means. *Id.* Legislation and

number of states have decided not to make this change in their markets.<sup>25</sup> In a restructured electric market, environmental matters can be addressed in numerous ways. Here we consider three mechanisms: renewable energy mandates, requirements for the disclosure of generation characteristics, and the use of ratemaking to support environmental and other programs.

In general terms, renewable energy resources are considered relatively benign or less damaging than alternative sources from an environmental standpoint. Fourteen states promote or mandate the purchase of certain amounts of “renewable” sources.<sup>26</sup> In Connecticut, for instance, on and after January 1, 2006, but before January 1, 2007, a company seeking to sell electricity in that market is required to “demonstrate that not less than two per cent [sic] of the total [electricity] output . . . [is] generated from Class I renewable energy sources and an additional three per cent [sic] of [its] total [electricity] output shall be from Class I or Class II renewable energy sources.”<sup>27</sup>

Another environmental protection mechanism is a requirement that electricity suppliers disclose information regarding the fuel sources of electric power. Disclosure is intended to ensure informed decision making about sources of electricity, and to enable customers to make choices based on criteria other than just price. Nine states require disclosure of a electricity retailers’ fuel mix characteristics.<sup>28</sup> For example, Illinois issued an order and disclosure rule in 1998:

Section 16-127 of the Public Utilities Act requires each electric utility and ARES [alternative retail electric supplier] to provide customers with information concerning the known sources of electricity supplied, broken out by percentages of biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power, and other

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orders are also pending in Alaska and South Carolina. Finally, in seventeen other states, commission or legislative investigations are ongoing. *Id.*

25. Eric Kelderman, *States Pull the Plug on Electricity Dereg.* STATELINE.ORG, July 21, 2005, <http://digbig.com/4hpiq>. “Arkansas, California, Montana, Nevada, New Mexico and Oklahoma have changed course and abandoned or indefinitely delayed deregulation.” *Id.*

26. Information on renewable requirements and other public benefit programs based upon the American Council for an Energy-Efficient Economy (ACEEE) data, updated in August 2000. The ACEEE public benefits information is not limited to statutory provisions as is most of the information in this paper. The following jurisdictions promote or mandate the use of renewable resources: Arizona, California, Connecticut, Delaware, Illinois, Massachusetts, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and Wisconsin.

27. CONN. GEN. STAT. ANN. § 16-245a (West 2005); CONN. AGENCIES REGS. § 16-245-5 (2005). *See also In re SCASCO, Inc.*, No. 99-10-02, 2000 WL 504274 (Conn. Dep’t of Pub. Util. Control Mar. 22, 2000).

28. Arkansas, California, Delaware, Illinois, Maryland, Massachusetts, Michigan, New Jersey, and New Mexico. *See Appendix infra.*

resources. Moreover, the Act requires each electric utility and ARES to provide customers with information on the amounts of carbon dioxide, nitrous oxides, and sulfur dioxide emissions, as well as nuclear waste, attributable to the known sources of electricity supplied.<sup>29</sup>

Finally, ratemaking is another method used in restructuring legislation to promote environmental goals. In much of the United States a portion of retail rates is identified and designated as a “system benefits charge” or “public benefits charge.” This mechanism is used to support the use of renewable resources, and to promote energy efficiency and conservation.<sup>30</sup> System benefits charges for various environmental programs are used in sixteen states and the District of Columbia.<sup>31</sup> In California, for instance, the Commission is required to order electric corporations to direct funds toward various public benefit programs, including research, environmental, and low-income energy programs to ensure their continued existence in a restructured environment.<sup>32</sup> In Delaware, the system benefits charge is targeted at programs for conservation and energy efficiency.<sup>33</sup>

## CONCLUSION

This brief review has highlighted the extensive environmental authority of utility commissions. In sum, many statutory provisions applicable to utility commissions address the obligation to make decisions with the good of the environment in mind.

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29. Order Regarding Implementation of Section 16-127 of the Public Utilities Act, 187 Pub. Util. Rep. (PUR 4th) 506 (Ill. Commerce Comm’n July 22, 1998), *available at* 1998 WL 698377 (issuing proposed rules concerning environmental disclosures to be made to customers and the Commission by electric utilities and ARESs).

30. Non-environmental goals, such as low income assistance and affordability programs, can also be supported by system benefit charges.

31. Arizona, California, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, and Rhode Island. *See Appendix infra.*

32. *See* CAL. PUB. UTIL. CODE § 381 (West 2004).

33. *See* DEL. CODE ANN. tit. 26, § 1014(a) (Supp. 2004).

## APPENDIX

The following pages contain the results of a state-by-state survey of statutory authority to include environmental considerations in state public utility commission regulatory practice. The various types of environmental authority have been organized into the following categories:

1. *General Authority and Obligations;*
2. *Certification, Siting, and Compliance;*
3. *State NEPA Statutes;*
4. *Resource Planning, Conservation Programs, and Environmental Externalities; and*
5. *Restructuring Provisions.*

## ALABAMA

2. *Certification, Siting, and Compliance*

The Alabama Public Service Commission (“Commission”) has oversight of the size and placement of natural gas and oil drilling units. When assuring the placement of drilling production units larger than statutorily allowed, the Commission must consider whether granting a license, “is justified because of technical, economic, environmental or safety consideration.”<sup>34</sup>

The Commission is under an obligation to cooperate with political subdivisions, agencies, and other instrumentalities of the state to do all things necessary “to control, abate or prevent water air or general environmental pollution.”<sup>35</sup>

4. *Resource Planning, Conservation Programs, and Environmental Externalities*

The legislature of Alabama has declared that “effective, economical and orderly supply of [electricity],” must be established without duplication of facilities that “would result in waste or degradation of the environment.”<sup>36</sup> The Alabama Energy Management and Conservation Act

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34. ALA. CODE § 9-17-12 (LexisNexis 2001).

35. *Id.* § 9-6-13 (3).

36. *Id.* § 37-14-30.

of 1980 created the Alabama Department of Energy (ADE). The Act enumerates among its objectives, the conservation of energy resources, as well as the objective of ensuring “an energy supply adequate to protect the economic, social and environmental values the state's citizens now enjoy.”<sup>37</sup> The ADE also monitors, “existing programs relating to curtailment, allocation, conservation, planning, regulation and management of all forms of energy and energy sources.”<sup>38</sup>

## ALASKA

### 1. General Authority and Obligations

The general powers and duties of the Alaska Public Utilities Commission (“Commission”), in establishing electric service rates, include the promotion of “the conservation of resources used in the generation of electric energy.”<sup>39</sup>

The state of Alaska has declared in general that “[a] person may not pollute or add to the pollution of the air, land, subsurface land or water of the state.”<sup>40</sup>

### 2. Certification, Siting, and Compliance

The Commission, when overseeing a grant or lease of public lands worth one million dollars or more for the siting of natural gas and oil pipelines, must consider “any significant adverse environmental impact, including but not limited to the erosion of surface of the land, and damage to fish and wildlife and their habitat.”<sup>41</sup>

The Commission has the power to adopt a regulatory program for hydro generation projects.<sup>42</sup> The program must include provisions to protect the public interest in the environment to the same extent required by the Federal Power Act, the Endangered Species Act and the Fish and Wildlife Coordination Act.<sup>43</sup> The statute further requires the Commission to consider energy conservation, protection of fish and wildlife and “the preservation of other aspects of environmental quality.”<sup>44</sup>

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37. *Id.* § 41-6A-2(6).

38. *Id.* § 41-6A-4(6).

39. Public Utilities Commissions Act, ALASKA STAT. § 42.05.141(7)(c) (2004).

40. *Id.* § 46.03.710.

41. *Id.* § 38.35.120(b)(3).

42. *Id.* § 42.45.350(a).

43. *Id.* § 42.45.350(b)(1).

44. *Id.* § 42.45.350(b)(2)(A)–(D).

Through the Superior Court, the Commission has jurisdiction over oil companies operating within the state to ensure monies for proper clean-up of an oil discharge.<sup>45</sup>

When granting a Certificate of Public Convenience for natural gas or oil pipelines in the North Slope area, the Commission may attach conditions for the protection of the environment.<sup>46</sup>

### *5. Restructuring Provisions*

The Alaska legislature has created the “Power Project Fund” which authorizes the Commission to issue unsecured loans for constructing, equipping, modifying, improving, and expanding small scale power production of less than ten megawatts that depend on fossil fuel, wind or tidal power, geothermal, biomass, hydroelectric, solar or other non-nuclear energy sources.<sup>47</sup>

## ARIZONA

### *2. Certification, Siting, and Compliance*

The Arizona Corporation Commission (“Corporation”) established an eleven-person power plant and transmission line siting committee, which has the power to issue or deny the required certificates of environmental compatibility.<sup>48</sup> The evaluation process includes broad consideration of environmental factors including “the total environment of the area.”<sup>49</sup> The siting Committee must also give special consideration to areas that have “biological wealth” or that are “habitats for rare and endangered species.”<sup>50</sup>

The Arizona Department of Commerce Energy Office must document certification of manufacturers in the state that a number of products including low voltage dry type distribution transformers, and single voltage external AC to DC power supplies meet energy efficiency standards prescribed by law.<sup>51</sup>

The Arizona legislature has established a Climate Change Advisory Group “charged with the development of recommendations to the Governor

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45. *Id.* §§ 46.04.010, .04.080, .08.070.

46. *Id.* § 42.06.240(d).

47. *Id.* § 42.45.010(b)–(e).

48. ARIZ. REV. STAT. ANN. § 40-360.01 (2005).

49. *Id.* § 40-360.06A(6).

50. *Id.* § 40-360.06(B).

51. *Id.* § 44-1375.02.

to reduce greenhouse gas emissions.”<sup>52</sup> Among this advisory group should be seated a representative from the Electric Power Generation sector of Arizona.<sup>53</sup>

### *3. Resource Planning, Conservation Programs, and Environmental Externalities*

All executive branch agencies of Arizona are to implement standards for all new state-funded buildings to derive at least ten percent of their energy from renewable energy resources and meet energy efficiency standards found in Arizona Revised Statutes § 34-451 and Executive Order 2003-14.<sup>54</sup> Furthermore all state-funded buildings must meet the “silver” Leadership in Energy & Environmental Design (LEED) standard.<sup>55</sup>

### *5. Restructuring Provisions*

Arizona has restructured its electricity industry.<sup>56</sup> The state legislature has decreed that “[t]he delivery of electricity over distribution systems should continue to ‘ensure’ environmental protection and fair access for all market participants.”<sup>57</sup>

## ARKANSAS

### *1. General Authority and Obligations*

The Arkansas Legislature has declared that, in the siting of new generation facilities, it is “in the public interest to minimize [the] effect upon the environment,” and “to minimize the costs to the [public] of obtaining reliable, clean, safe and adequate energy supply.”<sup>58</sup>

The Arkansas Environmental Regulatory Flexibility Act encourages “facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water and land.”<sup>59</sup> The statute further calls for rewards for reductions in pollution levels below those required by

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52. Exec. Order 2005-02, 2005 Ariz. Legis. Serv. 2005-02 (West), available at <http://digbig.com/4hpkb>.

53. *Id.*

54. *Id.*

55. *Id.*

56. ARIZ. REV. STAT. ANN. § 40-202(B).

57. *Id.* § 30-801.

58. ARK. CODE ANN. § 23-28-502 (LexisNexis 1987).

59. *Id.* § 8-11-102(c)(2).

applicable laws.<sup>60</sup> The Arkansas Public Utility Commission (“Commission”) may consider such reduction in rate making decisions.<sup>61</sup>

## *2. Certification, Siting, and Compliance*

The Utility Facility Environmental and Economic Protection Act provides the Commission with the authority to consider the environment in regulating the siting and construction of new facilities.<sup>62</sup> Certificates of environmental compatibility and public need are required for the construction of major utility facilities.<sup>63</sup>

The Commission may not issue the certificate unless it finds that: “the facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, the various alternatives, if any, and other pertinent considerations.”<sup>64</sup> Before issuing a certificate of environmental compatibility and public need, the Commission must be shown proof that the applicant has submitted copies of the application to the Arkansas Department of Environmental Quality, Department of Health, Department of Economic Development, Arkansas State Highway and Transportation Department, Arkansas State Game and Fish Commission, and Arkansas Natural Heritage Commission.<sup>65</sup>

## *3. State NEPA Statute*

Although Arkansas does not have a mini-NEPA statute, the Commission is required to invite comments from other state agencies as to the adequacy of an applicant's statements on the its application for a certificate of environmental compatibility and public need.<sup>66</sup>

## *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Arkansas Energy Conservation Endorsement Act specifies that: “it shall be considered a proper and essential function of [the] public utilities to engage in energy conservation programs, projects and practices which

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60. *Id.* § 8-11-102(c)(3).

61. *Id.*

62. *Id.* § 23-18-501 to -529.

63. *Id.* § 23-18-510(a).

64. *Id.* § 23-18-519(b)(4) (LexisNexis 1987 & Supp. 2005).

65. *Id.* § 23-28-513(a)(4) to (a)(7)(J).

66. *Id.* § 23-18-514 (LexisNexis 1987).

conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels.”<sup>67</sup>

The Commission has the power to “propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which cause the companies to incur costs of service and investments which conserve, as well as distribute, electrical energy and existing supplies of natural gas, oil, and other fuels.”<sup>68</sup>

### 5. Restructuring Provisions

The Arkansas Commission has the authority to adopt rules and regulations to require public utilities operating within the state to engage in “comprehensive resource planning” and utilize “alternative methods” to meet the need of customers.<sup>69</sup>

The Arkansas Electric Consumer Choice Act of 1999 requires the Commission to establish standards for the “disclosure of the environmental effects of the generation being supplied, where such disclosure would be practical and accurate.”<sup>70</sup>

The Arkansas Renewable Energy Development Act encourages the use of renewable energy resources and renewable energy technologies by reducing interconnection and administrative costs for small consumers. The statute also encourages net metering.<sup>71</sup> The statute requires the Commission to “establish appropriate rates, terms and conditions for net-metering contracts.”<sup>72</sup>

The Commission must adopt rules to “evaluate the impact of competition on renewable energy development and on low income and energy efficiency programs.”<sup>73</sup>

## California

### 2. Certification, Siting, and Compliance

The California Public Utilities Commission (“Commission”) is required to consider, as a factor in granting a certificate of public

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67. *Id.* § 23-3-404.

68. *Id.* § 23-3-405(a)(1) (LexisNexis 1987 & Supp. 2005).

69. *Id.* § 23-18-106(a).

70. *Id.* § 23-19-401(7).

71. *Id.* § 23-18-602(a).

72. *Id.* § 23-18-604(b)(1).

73. *Id.* § 23-19-401(9).

convenience and necessity, the “influence [of that facility] on the environment” if the Commission concludes that “any emissions or discharges there from would have a significant influence on the environment of this state.”<sup>74</sup>

### 3. *State NEPA Statute*

The California Environmental Quality Act (CEQA) applies to the Commission.<sup>75</sup>

### 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

The California legislature found and declared that, “a principal goal of electric and natural gas utilities’ resource planning and investment shall be to . . . improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, biomass, and geothermal energy.”<sup>76</sup>

“In calculating the cost effectiveness of energy resources, including conservation and load management options,” the Commission must also consider “a value for any costs and benefits to the environment, including air quality.”<sup>77</sup>

### 5. *Restructuring Provisions*

California has restructured its electricity and natural gas industries.<sup>78</sup> The Commission has a duty to order electric corporations to direct funds toward various research, environmental, and low-income energy programs, to ensure their continued existence.<sup>79</sup> Retail suppliers of electricity are required to disclose their sources of electricity pursuant to California Energy Resources Conservation and Development Commission guidelines.<sup>80</sup>

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74. CAL. PUB. UTIL. CODE §§ 1001–1002(a)(4) (West 1994).

75. CAL. PUB. RES. CODE § 21000(g) (1996).

76. CAL. PUB. UTIL. CODE § 701.1(a) (West 2004).

77. *Id.* § 701.1(c).

78. *Id.* §§ 328–398.5.

79. *Id.* § 381(c).

80. *Id.* § 398.4.

## COLORADO

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

In evaluating the rates charged by utilities, the Colorado Public Utilities Commission (“Commission”) has authority to consider “any factors which influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development.”<sup>81</sup>

In its consideration of the utilities acquisitions the Commission is to give consideration to implementing new, cost-effective, clean energy and energy efficiency technology.<sup>82</sup>

When issuing a ruling, the Commission must consider the legislative declaration which states, in part, that the “assembly hereby finds, determines and declares that providing a funding mechanism to encourage Colorado’s public utilities to reduce emissions or air pollutants is a matter of statewide concern.”<sup>83</sup>

Colorado requires electric utilities serving over 40,000 customers to meet a renewable portfolios standard that requires 3% of sales be generated from renewables between 2007 and 2010, 6% from 2011 through 2014, and 10% from 2015 thereafter.<sup>84</sup>

*5. Restructuring Provisions*

Colorado has restructured the natural gas industry. Monies received through the public benefits charge are to be used for energy conservation programs.<sup>85</sup>

## CONNECTICUT

*1. General Authority and Obligations*

The Public Utility Environmental Standards Act provides the Connecticut Department of Public Utility Control Department (“Department”) with the authority to consider environmental issues as part

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81. COLO. REV. STAT. 40-3-111(1) (2005).

82. *Id.* § 40-2-123.

83. *Id.* § 40-3.2-101.

84. *Id.* § 40-2-124(1)(c)(I)(A).

85. *Id.* § 40-2-122(3)(c)(VIII).

of its regulatory mandate.<sup>86</sup> Enumerated within the legislative findings and purpose of the act is the purpose:

To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state.<sup>87</sup>

The Connecticut Siting Council (“Siting Council”) located within the Department is required to:

prescribe and establish such reasonable regulations and standards in accordance with the provisions of [the Uniform Administrative Procedure Act] as it deems necessary and in the public interest with respect to application fees, siting of facilities and environmental standards applicable to facilities, including, but not limited to, regulations or standards relating to: (1) Reliability, effluents, thermal effects, air and water emissions, protection of fish and wildlife and other environmental factors.<sup>88</sup>

When the Public Utility Standards Act conflicts with other provisions, it shall take precedence.<sup>89</sup>

The Commission must implement rate making and other procedures and practices to encourage conservation of load management in accordance with the state’s energy policy.<sup>90</sup>

When a public utility wishes to conduct a sale or merger it must notify the Department which must consult with the Commissioner of Public Health if the merger or sale involves a watershed or water supply.<sup>91</sup>

Whenever a water company intends to sell, lease, or dispose of land they must notify the Commissioner who may require the water company to

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86. Public Utility Environmental Standards Act, CONN. GEN. STAT. ANN. §§ 16-50g to 16-50aa (West 1998).

87. *Id.* § 16-50g.

88. *Id.* § 16-50t(a).

89. *Id.* § 16-50w.

90. *Id.* § 16-19kk(b).

91. *Id.* § 16-43.

consult with any other governmental or non-governmental entity it deems necessary to contact, including, but not limited to, the Nature Conservancy, Trust for Public Lands, and the Land Trust Service Bureau.<sup>92</sup>

The Legislature has created a Low-Income Energy Advisory Board composed in part of representatives of each electric and gas public service company, and the chairperson or a commissioner of the Department.<sup>93</sup> The Board advises and assists in the planning, development, implementation, and coordination of energy assistance.<sup>94</sup>

## *2. Certification, Siting, and Compliance*

The Siting Council is authorized to issue a Certificate of Environmental Compatibility and Public Need for utility facility siting.<sup>95</sup> The application procedure for a certificate requires disclosure of effects on the environment.<sup>96</sup> Siting Council membership includes the chairman or designee of the Department.<sup>97</sup>

## *3. State NEPA Statute*

The Connecticut Environmental Policy Act requires each state department to review its policies and practices to ensure that they are consistent with the state's environmental policy plan.<sup>98</sup> Each state department, institution or agency must include an alternatives analysis in its written environmental impact evaluations.<sup>99</sup>

## *4. Resource Planning, Conservation Programs, and Environmental Externalities*

Connecticut has a nine member Energy Advisory Board ("Board") and the Chairperson of the Department is one of the members.<sup>100</sup> One of the Board's duties is to recommend energy conservation methods in accordance with the state's comprehensive energy plan.<sup>101</sup> The Board requires each

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92. *Id.* § 16-50c(a)–(b).

93. *Id.* § 16-41b.

94. *Id.*

95. *Id.* §§ 16-50k(d), 16-50l.

96. *Id.* § 16-50l.

97. *Id.* § 16-50j(b).

98. *Id.* § 22a-1b(a) (1995).

99. *Id.* § 22a-1b(b)(4).

100. *Id.* § 16a-3, 16a-35k, 16a-35(m) (1998).

101. *Id.*

electric generator to provide an annual report containing a twenty-year forecast of loads and resources.<sup>102</sup>

Beginning in 1994, and thereafter every five years, the Department is to establish proceedings to investigate overhead and underground transmission lines and their potential effects on the environment.<sup>103</sup>

The Department appoints and convenes a ten member Energy Conservation Management Board “to advise...electric distribution companies in the development and implementation of a comprehensive plan...to implement cost-effective energy conservation programs and market transformation initiatives.”<sup>104</sup> In evaluating a utility’s resource planning, the Department must consider “the external costs and benefits of all proposed resources, consistent with the state’s energy and other polic[ies],” including integrated resource planning principles.<sup>105</sup> The Department may approve rate amendments in order to promote a utility’s conservation or load management programs.<sup>106</sup>

The Department of Public Utility Control may assess, as part of any ratemaking proceeding for a water company, the price of educational materials on water conservation.<sup>107</sup>

### *5. Restructuring Provisions*

Connecticut has restructured its electric industry.<sup>108</sup> The State has adopted a portfolio standard for renewable energy resources.<sup>109</sup> Connecticut has enacted a systems benefit charge which, under certain circumstances, may be used to fund the legal, appraisal and purchase costs incurred by municipalities “to ensure the environmental, recreational and scenic preservation of any reservoir located within this state created by a pump storage hydroelectric generating facility.”<sup>110</sup>

The Department is responsible for energy assistance programs conservation loan grants and renewable resource loans for residential buildings.<sup>111</sup> Under this program the Department must assess a charge of not

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102. *Id.* § 16-50(r).

103. *Id.*

104. *Id.* § 16-245m(c)-(d).

105. *Id.* § 16-19mm.

106. *Id.* § 16-19oo.

107. *Id.* § 16-19k.

108. *Id.* § 16-244.

109. *Id.* § 16-245(a).

110. *Id.* § 16-245(a).

111. *Id.* § 16a-41(d).

less than one mill per kilowatt hour to each end use customer which is deposited into a Renewable Energy Investment Fund.<sup>112</sup>

The Department has the power to “require each gas and electric public [utility] to implement [a] cost effective conservation and load management program.”<sup>113</sup>

## DELAWARE

### *5. Restructuring Provisions*

Delaware has restructured its electric utility industry.<sup>114</sup> The Delaware Public Services Commission (“Commission”) must:

promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to . . . changing suppliers and standards for suppliers who offer environmentally-advantageous “Green Power” options, such as electricity generated from renewable sources, biomass, hydroelectric and other such generating sources.<sup>115</sup>

The Commission “shall also require each electric supplier to provide disclosure, on a quarterly basis, of a uniform set of information about the fuel mix of electricity purchased by its customers . . . or disclosure of a regional average.”<sup>116</sup>

The State has mandated that the Commission establish a working group to “design and implement a consumer education program, including ‘Green Power’ options, to prepare the citizens of Delaware for retail competition.”<sup>117</sup>

The state has mandated that the Commission “promulgate rules and regulations that provide for net energy metering for residential and small commercial customers who own and operate an electric generation facility. . . .”<sup>118</sup>

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112. *Id.* § 16-245n(b).

113. *Id.* § 16a-49(d).

114. DEL. CODE ANN. tit. 26, §§ 1001–1019 (2004).

115. *Id.* § 1012(b).

116. *Id.*

117. *Id.* § 1014(c).

118. *Id.* § 1014(d).

## FLORIDA

*1. General Authority and Obligations*

The Florida Public Service Commission (“Commission”) has the authority to require that electric utilities undertake “electric power conservation” measures.<sup>119</sup>

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission is also authorized “to require each utility to develop plans and implement programs for increasing energy efficiency,” and to encourage the use of renewable energy sources.<sup>120</sup> In establishing such a program “the [Commission may] . . . give consideration to the efficiency, sufficiency and adequacy of the facilities provided and the services rendered; . . . and energy conservation and the efficient use of alternative energy resources.”<sup>121</sup>

*5. Restructuring Provisions*

The Commission sets standards and guidelines for the purchase and sale of power from small power producers or co-generators by a public utility.<sup>122</sup>

## GEORGIA

*2. Certification, Siting, and Compliance*

Georgia requires utilities to obtain certificates of public convenience and necessity for the construction or sale of power plants.<sup>123</sup> The application to the Georgia Public Service Commission (“Commission”) for the certificate must include both an integrated resource plan, and a “cost-benefit

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119. FLA. STAT. ANN. § 366.04(2) (1999).

120. *Id.* § 366.81.

121. *Id.* § 366.041.

122. *Id.* § 366.051.

123. GA. CODE ANN. § 46-3A-3(a) (2004).

analysis covering the estimated useful life of all capacity resource options considered in developing its resource plan.”<sup>124</sup>

### 3. *State NEPA Statute*

Georgia's Environmental Policy Act imposes responsibilities upon the Commission to “conduct their affairs with an awareness that they are stewards of the air, land, water, plants, animals, and environmental, historical, and cultural resources.”<sup>125</sup>

### 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

Utilities are required to file an Integrated Resource Plan (IRP) with the Commission. An IRP should contain both demand-side and supply-side capacity options, alternatives analysis for the fuel type and method proposed, and environmental impact estimates including means to avoid potential adverse impacts.<sup>126</sup>

## HAWAII

### 1. *General Authority and Obligations*

The Hawaii Public Utilities Commission (“Commission”) either through rule or order must set performance, safety, and reliability requirements and establish qualifications for exemption from a requirement to install additional controls for renewable energy systems of ten kilowatts or less owned by customer generators.<sup>127</sup>

The Hawaii Legislature has capped the total capacity at fifty kilowatts for all eligible customer-generators operating a net metering system from solar, wind turbine, or hydroelectric facility.<sup>128</sup> However the Commission has the authority to increase the maximum allowable capacity.<sup>129</sup>

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124. *Id.* § 46-3A-4(b), (c).

125. Environmental Policy Act, *Id.* § 12-16-21(a)(1)(2001) (Environmental Policy Act).

126. *Id.* §§ 46-3A-1, 46-3A-2 (2004).

127. HAW. REV. STAT. § 269-111 (1993).

128. *Id.* § 269-101.

129. *Id.* § 269-16.

## 2. *Certification, Siting, and Compliance*

When making a determination regarding the siting of power lines of 138kV or greater, the Commission must evaluate the electromagnetic exposure and the impact of the line on conservation, and on other natural resource and public recreation areas.<sup>130</sup>

## 3. *State NEPA Statute*

Hawaii has enacted a mini-NEPA provision for the purpose of “establish[ing] a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.”<sup>131</sup> As a body of state government, the Commission is subject to the requirements of the provision which include environmental assessments and environmental impact statements for certain actions.<sup>132</sup>

## 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

The policy of the state of Hawaii, as provided for in the State Planning Act, is to promote renewable energy sources, to conserve energy, and to consider environmental concerns in the development or expansion of power systems.<sup>133</sup> Utilities are required to conduct net energy metering.<sup>134</sup> The Commission has the power to review and amend net metering contracts and rate structures.<sup>135</sup>

The Commission may direct any publicly-owned electric utility company to acquire electricity generated from non-fossil fuel resources.<sup>136</sup>

## 5. *Restructuring Provisions*

The Commission is to oversee the implementation of the state renewable portfolio standard for electric utility companies’ renewable portfolios.<sup>137</sup>

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130. *Id.* § 269-27.6(b) (2004).

131. *Id.* § 343-1 (1993).

132. *Id.* § 343-5(b).

133. *Id.* § 226-18.

134. *Id.* § 269-102(a).

135. *Id.* § 269-102(c).

136. *Id.* § 269-27.2(b).

137. *Id.* § 269-92.

## IDAHO

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Idaho Public Utilities Commission (“Commission”) has the power to authorize rate adjustments to pay for energy conservation measures.<sup>138</sup>

As of July 2004 electric utilities that serve more than one thousand customers may, at the customers’ request, provide information regarding what percentage of the cost of energy “is utilized for fish and wildlife mitigation purposes on the electric utility’s system.”<sup>139</sup>

## ILLINOIS

*1. General Authority and Obligations*

The Illinois Public Utility Act provides for:

the protection of the environment from the adverse external costs of public utility service so that (i) environmental costs of proposed actions having a significant impact on the environment and the environmental impact of the alternatives are identified, documented, and considered in the regulatory process; (ii) the prudently and reasonably incurred costs of environmental controls are recovered.<sup>140</sup>

The Illinois Commerce Commission (“Commission”) is responsible for the collection, from the public utilities, of information regarding the acquisition or sale of emission allowances as defined by Title IV of the Clean Air Act.<sup>141</sup> The Commission is also authorized to adjust rates to reflect costs associated with Title VI compliance:

“The Commission may authorize the increase or decrease of rates and charges based upon changes in the cost of fuel used in the generation or production of electric power . . . or expenditures . . . resulting from the purchase or sale of emission allowances created under the [Clean Air

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138. IDAHO CODE ANN. § 61-336 (2002).

139. *Id.* § 61-337 (Supp. 2004).

140. 220 ILL. COMP. STAT. ANN. 5/1-102(b) (West 1997).

141. *Id.* § 5/4-305.

Act].”<sup>142</sup>

## 2. Certification, Siting, and Compliance

The Commission shall issue certificates of public convenience and necessity only if the utility demonstrates that the “proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers.”<sup>143</sup>

## 4. Resource Planning, Conservation Programs, and Environmental Externalities

The Department of Natural Resources and the Commission work together on creating objectives for the state's Energy Policy and Planning Act, for which the General Assembly declared the following benchmarks: “Policies for the protection of the environment must be maintained . . . the growth of energy demand must be prudently restrained through conservation and improved efficiency of energy use . . . [and] energy prices should generally reflect the true replacement cost of energy.”<sup>144</sup>

## 5. Restructuring Provisions

Utilities are required to give a detailed quarterly “environmental disclosure” describing the sources of electricity supplied, as well as the amounts of certain pollutants attributable to each type of source.<sup>145</sup>

# INDIANA

## 1. General Authority and Obligations

The Indiana Utility Regulatory Commission (“Commission”) has jurisdiction over all alternative energy production facilities.<sup>146</sup>

The Commission is in charge of oversight for public water utilities that are subject to the provisions of the Safe Drinking Water Act and the Clean

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142. *Id.* § 5/9-220.

143. *Id.* § 5/8-406(b).

144. *Id.* § 1120/2.

145. *Id.* § 5/16-127.

146. IND. CODE ANN. § 8-1-2.4-1 (LexisNexis 1998).

Water Act.<sup>147</sup> This oversight includes review and approval of environmental compliance plans voluntarily submitted by the utility.<sup>148</sup>

## 2. Certification, Siting, and Compliance

New utility construction requires certificate of public convenience and necessity.<sup>149</sup> Indiana law provides that, “in acting upon any petition for the construction, purchase, or lease of any facility for the generation of electricity, the commission shall take into account . . . other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.”<sup>150</sup>

The Commission is responsible for determining whether scientific evidence necessitates rule making regarding the health effects of electromagnetic fields.<sup>151</sup>

The use of “clean coal technology” requires a certificate of public convenience and necessity.<sup>152</sup> The criteria for issuance of the certificate include an evaluation of the environmental impact of the use of this technology.<sup>153</sup>

A public utility within Indiana may voluntarily file with the Commission an Environmental compliance plan pursuant to the Clean Air Act standards.<sup>154</sup> If the measures in the proposed plan exceed the conservation measures recognized by the Clean Air Act, the Commission may apply such credits in ratemaking determinations.<sup>155</sup>

## 4. Resource Planning, Conservation Programs, and Environmental Externalities

The Commission may “inquire into or audit a utility’s powerplant efficiency and system reliability.”<sup>156</sup>

The Commission is responsible for the development of an analytical framework for the long range electric needs of the state.<sup>157</sup> The Commission

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147. *Id.* § 8-1-28-5.

148. *Id.*

149. *Id.* § 8-1-8.5-2.

150. *Id.* § 8-1-8.5-4.

151. *Id.* § 8-1-8.1-2.

152. *Id.* § 8-1-8.7-5.

153. *Id.* § 8-1-8.7-3.

154. *Id.* § 8-1-27-14.

155. *Id.*

156. *Id.* § 8-1-2-48(c).

is required to compare costs of meeting the various goals including conservation, load management, and cogeneration.<sup>158</sup>

The Commission has the authority to require all electric utilities to enter into long-term contracts with co-generators and alternative energy producers. The Commission may set the terms of the contract, and is required to find that such contracts are economically reasonable for the utility's ratepayers.<sup>159</sup>

Indiana utilities are required to file an environmental compliance plan ("plan"). While the Commission is not charged with the oversight of the plan it must receive the plan from the utility before issuing the utility a certificate of public convenience.<sup>160</sup> Once a certificate of public convenience is approved, the Commission is required to conduct an annual review of the cost of its implementation.<sup>161</sup>

The Commission must "encourage the participation of utilities in alternate energy production facilities, cogeneration facilities, and small hydro facilities."<sup>162</sup>

The Commission is also required to put in place a series of financial incentives to electric utilities, in order to promote the development of clean coal power and alternative energy sources.<sup>163</sup>

## IOWA

### *1. General Authority and Obligations*

"The Iowa Utilities Board ["Board"] has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electric current for light, heat, and power."<sup>164</sup> This also includes jurisdiction to "promote the use of energy efficiency strategies by rate or service-regulated gas and electric utilities."<sup>165</sup>

The state legislature has declared that "[i]t is the policy of this state to encourage the development of alternate energy production facilities and

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157. *Id.* § 8-1-8.5-3.

158. *Id.*

159. *Id.* § 8-1-2.4-4.

160. *Id.* § 8-1-28-9.

161. *Id.* § 8-1-28-16.

162. *Id.* § 8-1-2.4-3 (LexisNexis 1998).

163. *Id.* § 8-1-8.8-11 (LexisNexis Supp. 2005).

164. IOWA CODE ANN. § 474.9 (West 1999).

165. *Id.* § 476.1.

small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.”<sup>166</sup>

The Board reviews applications by a producer or purchaser of renewable energy for eligibility to receive renewable energy tax credit.<sup>167</sup>

## *2. Certification, Siting, and Compliance*

A Certificate of Public Convenience is required for the construction of an electric generating facility. The criteria for the issuance of the certificate include: “[that] the construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact [and that the applicant] has in effect a comprehensive energy management program designed to reduce peak loads and to increase energy efficiency.”<sup>168</sup>

## *4. Resource Planning, Conservation Programs, and Environmental Externalities*

Utilities are required to submit energy efficiency plans to the Board which may approve recovery of the costs to implement the conservation program based on the “reasonableness and prudence of the utility’s implementation of an approved energy efficiency plan and budget.”<sup>169</sup>

The Board has the duty to direct all gas and electric companies to remit funding for the Iowa energy center and the center for global and regional energy research.<sup>170</sup> Electric and gas providers are prohibited from discriminating against customers who use or intend to use renewable energy sources.<sup>171</sup>

The Board is to direct all gas and electric utilities to fund the Iowa Energy Center with a one-tenth of one percent total of gross operating revenue. The Iowa Energy Center is charged with, in part, energy efficiency research and the production of reports to be submitted to the Commission regarding the activities and accomplishments of the Energy Center.<sup>172</sup>

Utilities seeking approval for a project from the Board are to demonstrate that it has considered other sources of long term electric supply from alternative energy sources. A utility may demonstrate such

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166. *Id.* § 476.41.

167. *Id.* § 476C.3.

168. *Id.* § 476A.6(3)–(4) (2005).

169. *Id.* § 476.6(19)(e).

170. *Id.* § 476.10A.

171. *Id.* § 476.21.

172. *Id.* § 476.10A.

consideration through leases with alternative energy producers, cogeneration pilot projects, competitive bidding processes, energy sales agreements and lease agreements.<sup>173</sup>

The Board has the authority to require that electric utilities enter into long term contracts to purchase energy from facilities producing alternative energy production that operate within the utility's service area, or to own an alternative energy production facility, or small hydro facility, located within the state.<sup>174</sup>

## KANSAS

### *1. General Authority and Obligations*

All state public utilities are required to enter into contracts for parallel generation service with customers upon request for net metering.<sup>175</sup> The customer must supply the Commission with a copy of the request.<sup>176</sup>

### *2. Certification, Siting and Compliance*

The Commission has siting authority over the Kansas Electric Transmission Authority which was created with the authority to operate the integrated electrical transmission system of Kansas.<sup>177</sup>

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission is responsible for developing "a comprehensive state energy conservation plan and the procedures for implementing the plan according to federal requirements."<sup>178</sup>

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173. *Id.* § 476.53(2).

174. *Id.* § 476.43.

175. KAN. STAT. ANN. § 66-1 (2002).

176. *Id.* § 66-1,184(a).

177. *Id.* § 66-1,178(a).

178. KAN. STAT. ANN. § 74-616(b) (2000).

## KENTUCKY

*1. General Authority and Obligations*

The Kentucky Public Service Commission (“Commission”) is in charge of oversight for application of all net metering contracts between customers and all public utilities. The Commission must ensure that all rates received for net metering are equal.<sup>179</sup>

*2. Certification, Siting, and Compliance*

The Commission requires utilities to obtain certificates of public convenience and necessity before construction of a new facility.<sup>180</sup> Certificates of Environmental Compatibility are also required before construction of generating facilities.

In order for a nuclear facility to receive a certification of operation, the Commission must find that there is a plan for adequate storage and disposal for high-level nuclear waste. The Commission must also find that the plan for disposal of high level nuclear waste is approved by the proper federal government agency, and that the cost of disposal is known.<sup>181</sup>

Three members of the Commission are to be seated on the Kentucky State Board of Electric Generation and Transmission Siting (“Siting Board”). The chairman of the Commission also sits as chairman of the Electric Generation and Transmission Siting Board.<sup>182</sup>

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission has the authority to “determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction.”<sup>183</sup>

State policy allows a regulated utility producing energy from coal to apply for an Environmental Surcharge which provides for the current recovery of the costs of complying with the Clean Air Act of 1990 and those Federal, State or local environmental requirements which apply to

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179. KY. REV. STAT. ANN. § 278.466 (LexisNexis 2003 & Supp. 2005).

180. *Id.* § 278.020.

181. *Id.* § 278.605 and 278.610 (LexisNexis 2003).

182. *Id.* § 278.702 (LexisNexis 2003 & Supp. 2005).

183. *Id.* § 278.285 (LexisNexis 2003).

coal combustion wastes and by-products.<sup>184</sup> Regulated utilities in Kentucky can recover qualifying fuel costs through a Fuel Adjustment Clause mechanism. The costs for catalysts and allowances are generally addressed in Environmental Surcharge proceedings.<sup>185</sup>

## MAINE

### *1. General Authority and Obligations*

See Restructuring Provisions below.

### *2. Certification, Siting, and Compliance*

Prior to undertaking decommissioning, an operator of a nuclear facility must submit plans, including financial plans for facility decommissioning to the Maine Public Utilities Commission (“Commission”) in order to receive a Certificate of Public Convenience before decommissioning.<sup>186</sup>

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

Public utilities are prohibited from increasing rates due to customer solar energy generation.<sup>187</sup>

### *5. Restructuring Provisions*

The State and the Commission encourage generation from renewables and efficient, diversified sources “in order to ensure an adequate and reliable supply of electricity.”<sup>188</sup>

As a condition of licensing an electricity provider, the Commission must be satisfied that “no less than 30% of its portfolio of supply sources for retail electricity sales in this State is accounted for by eligible resources [either a renewable source or an efficient source].”<sup>189</sup>

Maine’s Electric Rate Reform Act states, “improvements in transmission and distribution utility rate design and related regulatory

184. *Id.* § 278.183.

185. *Id.*

186. ME. REV. STAT. ANN. tit. 35-A, § 4353 (1988 & Supp. 2005)

187. *Id.* § 702(2) (1988).

188. *Id.* § 3210(1) (1988 & Supp. 2005).

189. *Id.* § 3210.

programs have great potential for reducing the cost of electric utility services to consumers, for encouraging energy conservation and efficient use of existing facilities and for minimizing the need for expensive new electric transmission capacity.”<sup>190</sup>

The Commission has been granted the power to “order transmission and distribution utilities to develop . . . specific . . . proposals and related programs for implementing energy conservation and energy efficiency techniques and innovations.”<sup>191</sup>

When approving rates for transmission and distribution utilities the Commission must include the cost of conservation programs.<sup>192</sup>

The Commission has also been granted the authority to “[m]onitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or to any federal agency regarding . . . the effects or potential effects of market competition on Maine's air quality.”<sup>193</sup>

The Maine Legislature has declared “that it is in the best interest of the State to reduce the State’s dependence on fossil fuels.”<sup>194</sup> The State is encouraging the development of small energy production facilities using renewable resources and cogeneration facilities.<sup>195</sup>

## MARYLAND

### *1. General Authority and Obligations*

As part of its duties, the Maryland Public Service Commission (“Commission”) must “consider the public safety, the economy of the State, the conservation of natural resources, and the preservation of environmental quality.”<sup>196</sup>

The Commission is obligated to forward to the Secretary of Natural Resources a ten-year plan created by the electric utilities regarding the possible and proposed sites of transmission routes, electric plants, installation of energy conservation materials, renewable devices, public promotion of energy conservation programs, utilization of cogeneration, and waste and renewable energy devices.<sup>197</sup>

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190. *Id.* § 3152(1).

191. *Id.* § 3153-A(1).

192. *Id.* § 3211(7).

193. *Id.* § 3215 (1)(B)(2).

194. *Id.* § 3302.

195. *Id.*

196. MD. CODE ANN., PUB. UTIL. COS. § 2-113(2) (2005).

197. *Id.* § 7-201.

## 2. *Certification, Siting, and Compliance*

A certificate of public convenience and necessity is required for the construction of generating facilities and certain transmission lines.<sup>198</sup> The Commission is required to hold a public hearing, and is required to give due consideration to “the effect of the generating station or overhead transmission line on: . . . aesthetics; . . . when applicable, air and water pollution; and . . . the availability of means for the required timely disposal of wastes produced by any generating station.”<sup>199</sup>

Alternatives analysis is required for transmission line construction.<sup>200</sup>

## 3. *State NEPA Statute*

The Commission is required to identify, develop, and adopt methods and procedures that evaluate the environmental consequences of its decisions.<sup>201</sup>

## 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

Each public service company in Maryland is required to formulate and implement long-range plans to provide service.<sup>202</sup> It is the Commission’s role to “require each electric company in the State to include in the long-range plan adequate . . . provisions to promote energy conservation to decrease or moderate electric and, as appropriate, natural gas demand . . . from customers.”<sup>203</sup>

The Commission is also required to “(i) impose an environmental surcharge per kilowatt hour of electricity [generated] within the State; and (ii) authorize each electric company to add the full amount of the surcharge to its customers’ bills.”<sup>204</sup> The money is placed into the “Environmental Trust Fund,” and funds a power plant research program.<sup>205</sup>

The Commission must also adopt ratemaking policies and establish programs that create incentives for the “encourage[ment] and promo[tion]

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198. *Id.* § 7-207(b), (f).

199. *Id.* § 7-207(d)–(e).

200. *Id.* §§ 7-207(f), 7-209.

201. MD. CODE ANN., NAT. RES. § 1-301 to 1-305 (2005).

202. MD. CODE ANN., PUB. UTIL. COS. § 2-118(b) (2005).

203. *Id.* §§ 2-118, 7-201.

204. *Id.* § 7-203.

205. *Id.*

of] the efficient use and conservation of energy by consumers, gas companies, and electric companies.”<sup>206</sup>

### 5. Restructuring Provisions

The Maryland legislature declared that one of the purposes of deregulating the electric industry was to “ensure compliance with federal and state environmental standards.”<sup>207</sup>

The Commission is also directed to implement standardized electricity supplier disclosure requirements.

[E]ach electric company and electricity supplier [must] provide adequate and accurate information to each customer on the available electric services of the electric company or electricity supplier, including disclosure, every 6 months, of a uniform common set of information about: 1. the fuel mix of the electricity purchased by customers, including categories of electricity from coal, natural gas, nuclear, oil, hydroelectric, solar, biomass, wind, and other resources, or disclosure of a regional fuel mix average; and 2. the emissions, on a pound per megawatt-hour basis, of pollutants identified by the Commission, or disclosure of a regional fuel mix average.<sup>208</sup>

For a utility to distribute electricity it must receive a license to do so from the Commission.<sup>209</sup> A license application to the Commission must contain "a certification of compliance with applicable federal and State environmental laws and regulations that relate to the generation of electricity."<sup>210</sup>

The electric utilities of Maryland are required to implement, with Commission oversight, a renewable energy portfolio standard (“RPS”).<sup>211</sup> The Commission is charged by the legislature with the oversight of the Maryland Renewable Energy Fund which was created to encourage the development of renewable energy in the state.<sup>212</sup>

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206. *Id.* § 7-211(a).

207. *Id.* § 7-504(5).

208. *Id.* § 7-505(b)(4)(i).

209. *Id.* § 7-507(a).

210. *Id.* § 7-507(b)(3)(iii).

211. *Id.* § 7-702(b)(2), 7-703(a).

212. *Id.* § 7-707.

To facilitate the implementation of a RPS, the Commission is to create “a market-based renewable electricity trading system to facilitate the . . . transfer of renewable energy credits.”<sup>213</sup>

## MASSACHUSETTS

### 2. *Certification, Siting, and Compliance*

The Energy Facilities Siting Board (“Board”) has the duty to implement energy policies “to provide a reliable energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost.”<sup>214</sup> Three of the seven members are commissioners of the Department of Telecommunications and Energy (“Department”).<sup>215</sup> The new construction of energy facilities must be approved by the Board and projects must apply for and receive a certificate approval by the Siting Board of a certificate of environmental impact and public need. The application must include an alternatives analysis, as well as “a description of the environmental impact of each proposed facility.”<sup>216</sup> The Board shall periodically “conduct a rulemaking to establish a technology performance standard” covering facility emissions and other environmental impacts, to be used in reviewing petitions to construct new generating facilities.<sup>217</sup>

### 3. *State NEPA Statute*

In Massachusetts:

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment.<sup>218</sup>

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213. *Id.* § 7-708(a).

214. MASS. GEN. LAWS ANN. ch. 164, § 69K (LexisNexis 2002).

215. *Id.* § 69H.

216. *Id.* § 69I.

217. *Id.* § 69J1/4.

218. *Id.* ch. 30, § 61; *Id.* ch. 164, § 69J (LexisNexis 2002 & Supp. 2005) (outlining “alternatives analysis” under “Certification and Siting”).

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities are required to submit to the Board long-range plans, which must include an alternatives analysis as well as “a description of the environmental impact of each proposed facility.”<sup>219</sup> In establishing conditions for the determination of sources that electric utilities must select when seeking generation of additional electric power in integrated resource management, the Massachusetts Commission exceeded its authority in requiring consideration of environmental externality values that may not reasonably be expected to have an effect on a utility's costs and on rates that its customers would have to pay.<sup>220</sup>

The Department is to adopt regulations establishing minimum energy efficiency standards for the types of new products such as single voltage external AC to DC power supplies, residential furnace air handlers and incandescent reflector lamps.<sup>221</sup> Under this same chapter the Commission must study the effectiveness of energy efficiency in the state and thus recommend new or increased efficiency standards.<sup>222</sup>

#### 5. Restructuring Provisions

Massachusetts has introduced competition into the electric industry.<sup>223</sup> All electric utility restructuring plans must include “proposed programs and recovery mechanisms to promote energy conservation and demand-side management.”<sup>224</sup> The Department is required to promulgate rules and regulations regarding the mandatory disclosure within customer billing statements for: “the fuel mix and emissions of the generation sources.”<sup>225</sup>

“The division of energy resources, [sic] shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth.”<sup>226</sup> The Division of Energy Resources is separate from the Department of Telecommunications and Energy.

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219. *Id.* ch. 164, § 69I(3) (LexisNexis 2002); *c.f.*, *Mass. Elec. Co. v. Dep't of Pub. Util.*, 419 Mass. 239 (1994).

220. *Mass. Elec. Co.*, 419 Mass. at 241.

221. MASS GEN LAWS ANN. ch. 25B, § 5 (LexisNexis 2003).

222. *Id.* § 10.

223. MASS. GEN. LAWS ANN. ch. 164, §§ 1A to 1H.

224. *Id.* § 1A(a).

225. *Id.* § 1F(5)(i).

226. *Id.* ch. 25A, § 11F(a).

The Division of Energy Resources also coordinates ratepayer-funded energy efficiency programs with the Department. The Division must submit an annual report to the Department for review and approval.<sup>227</sup>

## MICHIGAN

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Michigan Public Service Commission has the authority to “approve energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities.”<sup>228</sup>

The Commission has the power to collect funds from utilities, which are used to provide grants to certain parties for the “protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources.”<sup>229</sup>

### *5. Restructuring Provisions*

According to Michigan’s disclosure statute, the Commission must:

[R]equire that, starting January 1, 2002, all electric suppliers disclose in standardized, uniform format . . . information about the environmental characteristics of electricity products purchased by the customer, including all of the following: (a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. [Also], (b) the average emissions, in pounds per megawatt hour, sulfur dioxide, carbon dioxide, and oxides of nitrogen.<sup>230</sup>

The Commission has been charged with creating a renewable energy program. The program implemented by the Commission informs customers of the availability of renewable energy and its potential to reduce pollution.

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227. *Id.* § 11G.

228. MICH. COMP. LAWS SERV. § 460.6c(1) (LexisNexis 2001).

229. *Id.* § 460.6m(12).

230. *Id.* § 460.10r(3)(a), (b).

The program also promotes the use of renewable energy and encourages the development of new facilities.<sup>231</sup>

## MINNESOTA

### 2. Certification, Siting, and Compliance

“No proposed large energy facility shall be certified for construction unless the applicant can show (in its application before the Commission) that the demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.”<sup>232</sup>

The Minnesota Public Utilities Commission (“Commission”) can not issue a certificate of public convenience for a generating facility that generates by means of nonrenewable sources, “unless the applicant for the certificate has demonstrated to the commission’s satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source.”<sup>233</sup>

### 3. State NEPA Statute

Minnesota’s mini-NEPA provision does not apply to the PUC.<sup>234</sup> For each large electric generating plant or high voltage transmission line, it is the responsibility of the commissioner of the Department of Commerce to produce an environmental impact statement.<sup>235</sup> Furthermore, once a project has obtained a certificate of need, “no other state environmental review documents shall be required.”<sup>236</sup>

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231. *Id.* § 460.10r(6).

232. MINN. STAT. ANN. § 216B.243(3) (West 2005).

233. *Id.* § 216B.243(3)(a).

234. *Id.* § 116D.03.

235. *Id.* § 116C.57 Subd. 2c.

236. *Id.*

#### 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

Utilities must file with the Commission a resource plan.<sup>237</sup> As part of its resource plan, a utility must include “the least cost plan for meeting 50 and 75 percent of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.”<sup>238</sup>

The Commission must evaluate and compile the environmental costs of each type of generation. These values are used by the utilities. A utility must also evaluate socioeconomic costs when deciding to site new generation.<sup>239</sup>

The Commissioner of the Department of Public Service has an energy conservation mandate which includes undertaking a “continuing assessment of trends in the consumption of all forms of energy and analyze the social, economic, and environmental consequences of these trends.”<sup>240</sup> “The commission may order public utilities to develop and submit for commission approval incentive plans that describe the method of recovery and accounting for utility conservation expenditures and savings.”<sup>241</sup>

#### 5. *Restructuring Provisions*

The Commission requires nuclear powered generation facilities “to construct and operate, purchase, or contract to construct and operate” seventy-five megawatts from farm-grown, closed-loop biomass power.<sup>242</sup> Furthermore the Commission is required to approve contracts for power from a facility that uses short ratio, woody crops as its primary fuel.<sup>243</sup>

It is a goal of the state of Minnesota “to move to hydrogen as an increasing source of energy for its electrical power, heating, and transportation needs.”<sup>244</sup>

The Commissioner of Finance may grant approval and determine eligibility for Minnesota’s renewable energy production incentive which operates as a tax credit for qualified facilities of up to one hundred megawatts.<sup>245</sup>

237. *Id.* § 216B.2422(2).

238. *Id.*

239. *Id.* § 216B.2422(3).

240. *Id.* § 216C.09(a)(3).

241. *Id.* § 216B.16(6)(c).

242. *Id.* § 216B.2424(5).

243. *Id.*

244. *Id.* § 216B.013.

245. *Id.* § 216C.41(2)(b).

## MISSISSIPPI

*1. General Authority and Obligations*

The Mississippi State Legislature has declared that the Mississippi Public Service Commission ensure that public utilities “provide just and reasonable rates . . . consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy” as well as “encourage and promote harmony between public utilities, their users and the environment.”<sup>246</sup>

## MONTANA

*1. General Authority and Obligations*

Any conservation investment made by a public utility must be approved by the Montana Public Service Commission.<sup>247</sup>

*3. State NEPA Statute*

The Montana Environmental Policy Act requires most state agencies to take into account the environmental effects of their actions. However a narrow exemption has been granted to the “department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt.”<sup>248</sup>

*4. Resource Planning, Conservation Programs and Environmental Externalities.*

In assessing the rate of return for public utilities “the Commission shall include conservation purchases or investments.”<sup>249</sup>

*5. Restructuring Provisions*

The Montana Legislature declared that,

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246. MISS. CODE ANN. 77-3-2(1)(d)(e) (West 2005).

247. MONT. CODE ANN. 69-3-703 (2005).

248. Montana Environmental Policy Act, *id.* 75-1-201(2).

249. *Id.* § 69-3-712.

the public interest requires the continued protection of consumers through: . . . continued funding for public purpose programs for . . . cost-effective local energy conservation; . . . renewable resource projects and applications; . . . [and] research and development programs related to energy conservation and renewables.<sup>250</sup>

Under its restructuring provisions, Montana has enacted a Universal Systems Benefit Charge “to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications.”<sup>251</sup>

## NEBRASKA

### *1. General Authority and Obligations*

The Nebraska Public Service Commission does not regulate electric utilities. Electric utilities in Nebraska are publicly owned institutions.<sup>252</sup> The Commission has authority over siting certain transmission facilities.

### *3. State NEPA Statute*

The Nebraska state NEPA statute requires the state agencies to comply with the state policy of protection of the environment and conservation and protection of state resources.<sup>253</sup> State agencies are to promulgate rules and regulations in a manner that gives meaningful recognition to the protection of each element of the environment, air, water, and land and to “cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act.”<sup>254</sup>

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

Nebraska has adopted an integrated resource planning policy.<sup>255</sup> Public utilities are required to “practice integrated resource planning and include

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250. *Id.* § 69-3-102.

251. *Id.* § 69-8-402(1).

252. NEB. REV. STAT. §§ 70-1001 to -1003 (2003).

253. *Id.* § 81-1501.

254. *Id.*

255. *Id.* § 66-1060.

least cost options when evaluating alternatives for providing energy supply and managing energy demand in Nebraska.”<sup>256</sup>

The State Energy Office is in charge of oversight of public utility investment capital for the advancement of energy conservation and efficiency and the construction of new generation facilities.<sup>257</sup>

## NEVADA

### 2. Certification, Siting, and Compliance

The policy enumerated by the Utility Environmental Protection Act is to “provide a forum for the expeditious resolution of all matters concerning the location and construction of electric, gas and water transmission lines and associated facilities.”<sup>258</sup> Application for the required construction permit must include:

A summary of any studies which have been made of the environmental impact of the facility; and . . . [a] description of any reasonable alternative location or locations for the proposed facility, a description of the comparative merits or detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility.<sup>259</sup>

### 4. Resource Planning, Conservation Programs, and Environmental Externalities

“A utility which supplies electricity in [Nevada] may apply to the commission [Nevada Public Utilities Commission] for authority to charge, as part of a program of optional pricing, a higher rate for electricity that is generated from renewable energy.”<sup>260</sup>

The Commission requires certain electric utilities to allow customers to use net metering systems to generate electricity from certain types of renewable energy. The system may not be more than thirty kilowatts. The electricity generated from the net metering system is to be used to offset the customer’s demand. After the cumulative capacity of such systems equals

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256. *Id.*

257. *Id.* §§ 66-1001, -1011.

258. NEV. REV. STAT. ANN. § 704.825(2) (LexisNexis 2003).

259. *Id.* § 704.870(1)(b), (c) (LexisNexis 2003 & Supp. 2005).

260. *Id.* § 704.738 (LexisNexis 2003).

one percent of the utilities' peak capacity the utility is no longer required to allow additional customers to use net metering systems.<sup>261</sup>

### *5. Restructuring Provisions*

On June 8, 2004, Nevada Governor Kenny Guinn signed SB 372, the country's most aggressive renewable portfolio standard. The law greatly increased the prior one percent standard by requiring that by the year 2013, fifteen percent of all electricity generated in Nevada be derived from new renewables.

For each electric utility in under the jurisdiction of the commission, the commission must establish a portfolio standard that is not less then: 6% for 2005-2006; 9% for 2007-2008; 12% for 2009-2010; 15% for 2011-2012; 18% for 2013-2014; and 20% for 2015.<sup>262</sup>

## NEW HAMPSHIRE

### *2. Certification, Siting, and Compliance*

The State's Site Evaluation Committee evaluates energy facility proposals. This committee is separate from the Commission, however. The Chairperson of the New Hampshire Public Utilities Commission ("Commission") shall be the vice-chairperson of the committee. The application process includes an evaluation of the environmental impact of the facility.<sup>263</sup> Utilities are required to prepare annually long-range plans for supplying bulk power, and to submit them to the state Site Evaluation Committee. The plans must "[r]eflect and describe such utility's efforts to involve environmental protection and land-use planning agencies in their planning process so as to identify environmental problems at the earliest possible stage."<sup>264</sup>

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The New Hampshire Legislature declared that it was in the "public interest to encourage and support diversified electrical production that uses

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261. *Id.* § 704.766-704.775 (LexisNexis 2003 & Supp. 2005).

262. *Id.* § 704-7821(1)(a-f).

263. N.H. REV. STAT. ANN. §§ 162-H:3, 162-H:7(V)(c) (2002 & Supp. 2005).

264. *Id.* § 162-H:17(c) (2002).

indigenous and renewable fuels and has beneficial impacts on the environment and public health.”<sup>265</sup>

The Chair of the New Hampshire Public Utility Commission (“Commission”) is designated vice-chair of the New Hampshire site Evaluation Committee. Electric public utilities are obligated to buy back power from “limited electrical energy producers.”<sup>266</sup> Such producers include cogeneration facilities and other small power producers.<sup>267</sup> The Commission creates requirements respecting fuel use, efficiency and reliability for those producers who are eligible.<sup>268</sup>

New Hampshire also requires “least cost energy plans” to be filed with the Commission at least every two years which contain:

An assessment of demand-side management programs, including conservation, efficiency improvement, and load management programs; . . . [i]ntegration of demand-side and supply-side options; . . . [a]n assessment of plan integration and impact on state compliance with the Clean Air Act Amendments of 1990; . . . [a]n assessment of plan integration and impact on state compliance with the National Energy Policy Act of 1992; and . . . [a]n assessment of the plan’s long- and short-term environmental, economic and energy price and supply impact on the state.<sup>269</sup>

The Commission evaluates least cost energy plans. “In deciding whether or not the utility’s planning process is adequate the commission shall consider potential environmental, economic and health-related impacts of each proposed action.”<sup>270</sup>

The Commission oversees the contracts between public utilities and landowners who request from the utility an alternative to herbicide use on the right of way passing through the property owner’s land. The Commission may approve any extra charge levied for cut-back activities undertaken in lieu of herbicide use.<sup>271</sup>

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265. *Id.* § 362-A:1.

266. *Id.* § 362-A:3.

267. *Id.* § 362-A:4.

268. *Id.*

269. *Id.* § 378:38 (1995).

270. *Id.* § 378:39.

271. *Id.* § 374:2-a (1995 & Supp. 2005).

### 5. Restructuring Provisions

The State legislature declared that the “overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.”<sup>272</sup>

The following principles are enumerated in the New Hampshire restructuring legislation:

VIII. ENVIRONMENTAL IMPROVEMENT. Continued environmental protection and long term environmental sustainability should be encouraged.

IX. RENEWABLE ENERGY RESOURCES. Increased future commitments to renewable energy resources should be consistent with the New Hampshire energy policy.

X. ENERGY EFFICIENCY. Restructuring should be designed to reduce market barriers to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective customer conservation.<sup>273</sup>

## NEW JERSEY

### 1. General Authority and Obligations

The New Jersey Board of Public Utilities (“Board”) is authorized to “require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment, and prevent the pollution of the waters, land and air of this state,” including public water supply.<sup>274</sup>

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272. *Id.* § 374-F:1.

273. *Id.* § 374-F:3.

274. N.J. STAT. ANN. 48:2-23 (West 1998).

## 2. Certification, Siting, and Compliance

Companies generating hydroelectric power must return diverted water “as unpolluted as before it was used.”<sup>275</sup>

## 5. Restructuring Provisions

The Board is authorized to establish disclosure requirements and emission portfolio standards for electric power suppliers.<sup>276</sup> The Board is authorized to require electric power suppliers to disclose, in a uniform manner, information about the fuel mix and emissions of the energy sold on customer contracts, bills, and marketing materials,<sup>277</sup> and to develop emissions portfolio standards.<sup>278</sup> Moreover, the Board is required to adopt net metering standards.<sup>279</sup>

## NEW MEXICO

### 4. Resource Planning, Conservation Programs, and Environmental Externalities

There is a systems benefits charge to pay for certain state programs, including a program to encourage the use of renewable energy.<sup>280</sup>

The State has created plan for energy efficiency measures in state buildings and school district buildings. The plan includes bond funding and mandates that the measures created by the plan take effect no later than 2010.<sup>281</sup>

Under the Efficient Use of Energy Act the Commission shall consider public utility investments in cost effective energy efficiency and load management to be an acceptable use of ratepayer money. The utilities must include cost effective energy efficiency and load management investments in their energy resource portfolios.<sup>282</sup> Before the Commission approves a utility’s energy efficiency investment program it must find that the program

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275. *Id.* § 48:14-12.

276. *Id.* § 48:3-87(a), (c) (West Supp. 2005).

277. *Id.* § 48:3-87(a).

278. *Id.* § 48:3-87(c).

279. *Id.* § 48:3-87(e)(1).

280. Electric Utility Industry Restructuring Act of 1999, *Id.* §§ 62-3A-13, 62-3A-15(D)(4).

281. Energy Efficiency and Renewable Energy Bonding Act, 2005 New Mexico Laws ch. 176.

282. 2005 New Mexico Laws Ch. 341 (S.B. 644) Efficient Use of Energy Act (West 2006).

is cost effective and designed to provide every affected customer the opportunity to participate and benefit economically.<sup>283</sup>

### 5. *Restructuring Provisions*

New Mexico has restructured its electricity industry.<sup>284</sup> The Commission has promulgated rules governing competitive electric suppliers for the protection of customers, including required disclosure to a potential customer of unbundled prices, generation sources and fuel mix, and associated emissions.<sup>285</sup>

## NEW YORK

### 1. *General Authority and Obligations*

The New York State Public Service Commission (“Commission”) must encourage long-range programs for the performance of its public service responsibilities with regard to the development of energy efficiency, and “the preservation of environmental values and the conservation of natural resources.”<sup>286</sup>

### 2. *Certification, Siting, and Compliance*

The Commission shall require major new utility transmission facilities to obtain a “certificate of environmental compatibility and public need.”<sup>287</sup> Any application for the certificate shall include a summary of any studies made on the environmental impact of the project, and an evaluation of alternative locations.<sup>288</sup> The Commission may not grant the certificate, unless it finds that the facility causes the minimum adverse environmental impact.<sup>289</sup> Article X of the Public Service Law provides the New York State Board on Electric Generation Siting and the Environment with powers analogous to the State Environmental Quality Review Act.<sup>290</sup>

An applicant for a certificate of public good before the Commission must file with the Commission an application including a study of the

283. *N.M. Stat. Ann.* 1978, § 62-17-5.

284. See *N.M. Stat. Ann.* 62-3A-1 to 62-3A-23 (LexisNexis 1999).

285. *Id.* § 62-3A-9(F).

286. N.Y. PUB. SERV. LAW § 5(2) (McKinney 2000).

287. *Id.* § 126(1).

288. *Id.*

289. *Id.*

290. *Id.* §§ 160–172.

environmental impacts of the proposed project and reasonable alternatives.<sup>291</sup>

### *3. State NEPA Statute*

The Commission is subject to the State Environmental Quality Review Act, and may sometimes assume lead agency status.<sup>292</sup> An Environmental Impact Study required by this statute must include an analysis of alternatives to the proposed action.<sup>293</sup>

### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission shall encourage the formulation and implementation of long-range programs for the performance of utilities' public service responsibilities with regard to efficiency, and the "preservation of environmental values and conservation of natural resources."<sup>294</sup>

The Commission cannot grant a certificate for the construction or operation of a major utility transmission facility unless it finds and that the facility represents the minimum adverse environmental impact, considering but not limited to, "the effect on agricultural lands, wetlands, parklands, and river corridors traversed."<sup>295</sup>

The state has exempted from state sales taxes the sale and installation of residential solar energy systems.<sup>296</sup>

### *5. Restructuring Provisions*

The state legislature has codified its energy policy which is to encourage the development and use of renewable energy sources; conservation of energy in the construction and operation of new commercial, industrial and residential buildings; the use of indigenous energy sources such as small hydropower, solar, solid waste, biomass, fuel cells and cogeneration; encourage citizens to conserve fuels; and to protect through renewable energy use the state environmental values.<sup>297</sup>

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291. N.Y. STAT. ANN. § 8-0109.

292. N.Y. ENVTL. CONSERV. LAW § 8-0109 (McKinney 2005).

293. *Id.* § 8-0109(2).

294. N.Y. PUB. SERV. LAW § 5(2) (McKinney 2000).

295. *Id.* § 126(1)(c).

296. 2005 N.Y. Sess. Laws ch. 306 (McKinney).

297. N.Y. PUB. SERV. LAW § 3-101 (McKinney 2000).

## NORTH CAROLINA

*1. General Authority and Obligations*

An enumerated policy of the North Carolina Utilities Commission is to “encourage and promote harmony between public utilities, their users and the environment.”<sup>298</sup>

*2. Certification, Siting, and Compliance*

Certificates of Public Convenience and Necessity are required for construction of utility plants.<sup>299</sup> In performing its analysis and review of Certificate applications, the Commission has a duty to

develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities . . . to achieve maximum efficiencies for the benefit of the people of North Carolina.<sup>300</sup>

When an electric public utility proposes to construct a new transmission line the applicant must include in its application a report describing (1) “[t]he environmental impact of the proposed action”; (2) “any proposed measures to lessen the environmental impact”; and (3) “alternatives to the proposed action.”<sup>301</sup>

*3. State NEPA Statute*

The Commission is directed to comply with the North Carolina Environmental Policy Act of 1971.<sup>302</sup>

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298. N.C. GEN. STAT. § 62-2(5) (2000).

299. *Id.* § 62-110.1(a).

300. *Id.* § 62-110.1.

301. *Id.* § 62-102.

302. North Carolina Environmental Policy Act of 1971, *Id.* § 113A-4(2) (1999).

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

North Carolina has enacted legislation to promote energy conservation by giving the Commission power to

direct each elective public utility [company] to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day.<sup>303</sup>

### NORTH DAKOTA

#### 2. Certification, Siting, and Compliance

North Dakota requires Certificates of Public Convenience and Necessity for electric and other utilities.<sup>304</sup> The policy of the North Dakota Energy Conversion and Transmission Facility Siting Act is that

the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of the state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter [and] [t]he legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.<sup>305</sup>

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303. *Id.* § 62-155(b).

304. N.D. CENT. CODE §§ 49-03-01, 49-03-02 (1999).

305. *Id.* §. 49-22-02.

#### 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

“The [North Dakota Public Service] Commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service.”<sup>306</sup>

### OHIO

#### 1. *General Authority and Obligations*

The Public Utilities Commission of Ohio has the power to “[i]nvestigate any intrastate pipe-line transportation facility to determine if it is hazardous to life or property.”<sup>307</sup>

The Commission may adopt rules for registration and permitting for the transportation of hazardous material that travel within the state.<sup>308</sup>

#### 2. *Certification, Siting, and Compliance*

The Commission Chair presides over the Power Siting Board (“Board”) (within the PUC) whose members also include the state Director of Environmental Protection, the Director of Health, and the Director of Natural Resources.<sup>309</sup> Among the powers and duties of the Board is the responsibility to “[a]dopt rules establishing the criteria for evaluating the effects on environmental values of proposed and alternative sites, and projected needs for electric power.”<sup>310</sup> The Board controls the issuance of mandatory utility construction permits. Permit applications must contain “[a] summary of any studies which have been made by or for the applicant of the environmental impact of the facility,” as well as a “statement of how the facility fits into the applicant’s [long-range] forecast contained in the report submitted under section 4935.04.”<sup>311</sup>

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306. *Id.* § 49-02-23.

307. OHIO REV. CODE ANN. §4905.91 (LexisNexis 2000).

308. *Id.* § 4905.80(B)(1).

309. *Id.* § 4906.02(A).

310. *Id.* § 4906.03(C).

311. *Id.* §§ 4906.06(2), 4906.06(5).

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

The Commission is responsible for programs that promote and encourage “conservation . . . and reduction in the growth rate of energy consumption, promote economic efficiencies and take into account long-run incremental costs.”<sup>312</sup>

The Commission has the duty of estimating energy needs for ten year periods, which will balance the requirements of “state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources.”<sup>313</sup>

The Commission also has the duty to “[e]stimate statewide and regional demands within the state for energy for twenty years ahead, to be used in formulation of long-range policies and proposals for reduction of demand, conservation of energy, development of potential sources of energy, and action to affect the rate of growth in demand for energy.”<sup>314</sup>

To achieve these duties the Commission has the power to require utility owners to file long-range forecasts which supply the relevant information.<sup>315</sup>

#### 5. Restructuring Provisions

Ohio has restructured its electricity industry.<sup>316</sup> An Energy Efficiency Loan Program was established “to assist in the improvement of air, water or thermal pollution control facilities and solid waste disposal facilities.”<sup>317</sup>

The Commission has been mandated the responsibility to create and maintain a program to promote the use of biomass energy.<sup>318</sup>

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312. *Id.* § 4905.70.

313. *Id.* § 4935.01(A)(1).

314. *Id.* § 4935.01(A)(2).

315. *Id.* § 4935.04(C).

316. *Id.* §§ 4928.01–.67.

317. *Id.* § 4928.63.

318. *Id.* § 4905.87.

## OKLAHOMA

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

Under the Oklahoma Environmental Quality Act, the Oklahoma Corporation Commission (“Commission”) has exclusive jurisdiction and the duty to enforce rules and regulations concerning the conservation of oil and gas, activities associated with the exploration and extraction of oil and gas, as well as for underground and aboveground storage tank activities.<sup>319</sup>

Electric utilities are prohibited from placing a surcharge upon customers who install solar energy devices.<sup>320</sup>

*6. Delegation of Federal Environmental Authority*

The Commission has the authority to implement the federal “Residential Energy Conservation Program.”<sup>321</sup>

## OREGON

*2. Certification, Siting, and Compliance*

The Public Utilities Commission of Oregon reviews applications for certificates of Public Convenience and Necessity that are required for overhead transmission lines.<sup>322</sup>

The state legislature has codified policy that declares the desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceeding. The Commission currently has jurisdiction over such proceedings.<sup>323</sup>

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319. OKLA. STAT. ANN. tit. 27A, 1-3-101(E) (1997).

320. *Id.* tit. 17, § 156 (1999).

321. *Id.* § 34.1; *see also* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601–2645 (2000); Residential Energy Conservation Program, 42 U.S.C. 8211–8235i (2000).

322. OR. REV. STAT. § 758.015 (2005).

323. *Id.* §§ 758.210 to 758.270.

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

All public utilities must “establish energy conservation services and shall provide energy conservation information to customers and to the public.”<sup>324</sup> The Commission, “by rule, may adopt policies designed to encourage the acquisition of cost effective conservation resources and small-scale, renewable fuel electric generating resources.”<sup>325</sup> The Commission may also “allow a rate or rate schedule of a public utility to reflect amounts for small scale programs that enable the utility to gain experience with tree planting on under producing forestland, as . . . an offset to carbon dioxide emissions.”<sup>326</sup>

In Oregon up to a cumulative one half of one percent of a utility’s historic single-hour peak load may be served through custom generator net-metering systems. All public utilities must provide for the interconnection of net metering systems and cannot charge a fee for the interconnection.<sup>327</sup>

#### 5. Restructuring Provisions

Oregon has restructured its electricity industry.<sup>328</sup> The legislature has declared that it is the goal of the state to promote the development of sustainable energy.<sup>329</sup> The state has established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources, and new low-income weatherization.<sup>330</sup>

### PENNSYLVANIA

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

The Bureau of Conservation, Economics and Energy Planning within the Pennsylvania Public Utilities Commission (“Commission”), is required

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324. *Id.* § 757.056.

325. *Id.* § 757.262.

326. *Id.* § 757.266.

327. *Id.* § 757.300.

328. *Id.* §§ 757.600 to .691.

329. *Id.* § 758.515.

330. *Id.* § 757.612(1).

to conduct studies and research on conservation, conduct long-range forecasting of energy needs, conduct research into new means of efficient energy production, review current levels of efficiency for operating facilities, and develop a program for energy conservation.<sup>331</sup>

The Commission has the authority to order conservation and load management practices.<sup>332</sup>

In determining or prescribing “safe, adequate, and sufficient services and facilities of a public utility, the commission may order the utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective.”<sup>333</sup>

### *5. Restructuring Provisions*

Pennsylvania has restructured its electricity industry.<sup>334</sup> It is the duty of the Commission to:

[E]nsure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services.<sup>335</sup>

### *6. Delegation of Federal Environmental Authority*

Utilities in Pennsylvania have a duty to submit plans that comply with the Federal Clean Air Act to the Commission.<sup>336</sup> The Commission has a duty to evaluate those plans.<sup>337</sup> The Commission evaluates whether the cost of compliance are recoverable providing the costs incurred are reasonable and prudent.<sup>338</sup>

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331. 66 PA. CONS. STAT. ANN. § 308(c) (West 2000).

332. *Id.* § 523(b)(4).

333. *Id.* § 1505(b).

334. *Id.* § 501.

335. *Id.* § 2804; *See also* Residential Energy Conservation Program, 42 U.S.C. 8211–8235i (2000).

336. 66 PA. CONS. STAT. ANN. § 530(a) (West 2000).

337. *Id.* § 530.

338. *Id.*

## RHODE ISLAND

*1. General Authority and Obligations*

In creating the Rhode Island Public Utilities Commission (“PUC”) the Rhode Island legislature concluded that:

Preservation of the state’s resources, commerce, and industry requires the assurance of adequate public transportation and communication facilities, water supplies, and an abundance of energy, all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning.<sup>339</sup>

*2. Certification, Siting, and Compliance*

A license from the Siting Board is required to construct a major energy facility in Rhode Island.<sup>340</sup> The three-person Board is chaired by the PUC Commissioner, along with the director of the department of environmental management and the associate director of the administration of planning.<sup>341</sup>

An application for the siting license must include:

A detailed description and analysis of the impact of the proposed facility on its physical and social environment together with a detailed description of all environmental characteristics of the proposed site, and a summary of all studies prepared and relied upon in connection therewith . . . [as well as] [a] complete life-cycle management plan for the proposed facility, including measures for protecting the public health and safety and the environment during the facility’s operations, including plans for the handling and disposal of wastes from the facility, and plans for the decommissioning of the facility at the end of its useful life.<sup>342</sup>

In addition, it must also include, “[a] study of the alternatives to the proposed facility, including alternatives as to energy sources, methods of

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339. R.I. GEN. LAWS § 39-1-1(a)(3), (c) (1997).

340. *Id.* § 42-98-7(a)(1).

341. *Id.* § 42-98-5, 42-98-7.

342. *Id.* § 42-98-8(a)(3), (6).

energy production, and sites for the facility, together with reasons for the applicant's rejection of these alternatives. The study shall include estimates of facility cost and unit energy costs of alternatives considered."<sup>343</sup>

The state legislature has declared that EMF health risks are inconclusive, however, utilities are to practice prudent avoidance in dealing with electromagnetic fields and public health.<sup>344</sup>

#### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

Rhode Island has imposed a charge of "2.0 mills per kilowatt-hour delivered to fund demand side management programs and .03 mills per kilowatt-hour delivered to fund renewable energy programs."<sup>345</sup>

#### *5. Restructuring Provisions*

Rhode Island has restructured its electricity industry. However, power plants in Rhode Island do not have to include plans to reduce air emissions in their proposals for restructuring.

Although reducing air emissions from power plants is a goal of electricity industry restructuring, power plants in Rhode Island already have low emissions relative to their counterparts in other states. For this reason it is unnecessary for the restructuring plans required by this section to address in-state air emission reductions.<sup>346</sup>

As part of the valuation process of utilities that have restructured, certain capital expenditures which "were reasonably necessary to (i) enable the electrical generating facilities to operate safely and in compliance with applicable laws and regulations, [and] (ii) improve environmental performance or to increase fuel diversity or flexibility" may be taken into consideration as an adjustment to contract termination fees.<sup>347</sup>

The Commission is to require public utilities to purchase additional power from small production facilities and qualifying cogeneration facilities "with a capacity of 10 MW or less that are located in the state."<sup>348</sup>

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343. *Id.* § 42-98-8(a)(7).

344. *Id.* § 39-25-2.

345. *Id.* § 39-2-1.2(b).

346. *Id.* § 39-1-27(f).

347. *Id.* § 39-1-27.4.

348. *Id.* § 39-3-39.

## SOUTH CAROLINA

*1. General Authority and Obligations*

“It is the policy of this State to have a comprehensive state energy plan that maximizes, to the extent practical, environmental quality and energy conservation and efficiency, and minimizes the cost of energy throughout the State.”<sup>349</sup>

*2. Certification, Siting, and Compliance*

Certificates are required for construction of major utility facilities. The application to the South Carolina Public Service Commission (“Commission”) must contain “[a] summary of any studies which have been made by or for applicant of the environmental impact of the facility.”<sup>350</sup>

*4. Resource Planning, Conservation Programs, and Environmental Externalities.*

The Commission “may adopt procedures that encourage electrical utilities and public utilities providing gas services to invest in cost-effective energy efficient technologies and energy conservation programs.”<sup>351</sup> Appropriate investments include those focusing upon transmission and distribution efficiency, customer conservation and efficiency, load management, cogeneration and renewable energy technologies. The Commission must also provide incentives for the utilities to follow the adopted procedures.<sup>352</sup>

## SOUTH DAKOTA

*2. Certification, Siting, and Compliance*

The South Dakota legislature declared that:

it is necessary to ensure that the location, construction and operation of facilities will produce minimal adverse effects on the

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349. S.C. CODE ANN. § 48-52-210 (Supp. 2005).

350. *Id.* § 58-33-120(1)(b) (1977).

351. S.C. CODE ANN. § 58-37-20.

352. *Id.* § 58-37-20 (1977 & Supp. 2005).

environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission.<sup>353</sup>

### *3. State NEPA Statute*

In reviewing an application for a permit to conduct or operate an energy generation facility, the South Dakota Public Utilities Commission (“Commission”) must comply with the “provisions of Chapter 34A-9 relating to an environmental impact statement.”<sup>354</sup>

#### *4. Resource Planning, Conservation Programs, and Environmental Externalities.*

“[T]he Commission may approve incentive rates to encourage improvement[s] in the performance and efficiency of public utilities.”<sup>355</sup>

## TENNESSEE

#### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

The duty of the Tennessee Regulatory Authority (“Authority”) is to ensure that public utilities do not discriminate against customers who also use alternative energy.<sup>356</sup> The Authority “shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy.”<sup>357</sup>

## TEXAS

### *2. Certification, Siting, and Compliance*

Certificates of Public Convenience and Necessity are required in order for an electric utility to provide service to the public. “The commission [Public Utilities Commission of Texas] shall grant each certificate on a

353. S.D. CODIFIED LAWS 49-41B-1 (2004 & Supp. 2005).

354. *Id.* § 49-41B-21; *see also* South Dakota Environmental Policy Act, *id.* §§ 34A-9-1 to -13 (2004).

355. *Id.* §§ 49-34A-8.2.

356. TENN. CODE ANN. § 7-83-104 (2005).

357. *Id.* § 65-4-105(d). (2004).

nondiscriminatory basis after considering factors, such as: (A) community values; (B) recreational and park areas; (C) historical and aesthetic values; [and] (D) environmental integrity . . . .”<sup>358</sup>

#### *4. Resource Planning, Conservation Programs, and Environmental Externalities*

“In establishing rates for an electric utility, the commission may: (1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power . . . ; and (2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.”<sup>359</sup>

“The commission may serve as a resource center to assist school districts in developing energy efficient facilities.”<sup>360</sup>

#### *5. Restructuring Provisions*

The legislature has decreed that a “provider of generation, including an electric utility affiliate, exempt wholesale generator, and qualifying facility, may compete for the business of selling power.”<sup>361</sup> Through the System Benefit Fund, the Commission shall fund regulatory programs for “targeted energy efficiency programs.”<sup>362</sup> The Commission has the duty to provide oversight and adopt rules to meet the state legislature’s goals that:

electric utilities will administer energy savings incentive programs, [that] all customers, in all customer classes, have a choice of and access to energy efficiency alternatives and other choices from the market that allow each customer to reduce energy consumption, peak demand, or energy costs, [and that] each electric utility will provide . . . incentives sufficient for retail electric providers . . . to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility’s annual growth in demand.<sup>363</sup>

The state legislature declared a goal for the addition of renewable energy generating facilities in the state. The Commission is charged with establishing a renewable energy credits training program along with the

358. TEX. UTIL. CODE ANN. § 37.056. (Vernon 1998 & Supp. 2005).

359. *Id.* § 36.204.

360. *Id.* § 31.004 (Vernon 1998).

361. *Id.* § 35.002 (Vernon 1988).

362. *Id.* § 39.903(e)(3) (Vernon 1998 & Supp. 2005).

363. *Id.* § 39.905(a).

rules and standards necessary to administer and enforce their renewable energy mandate.<sup>364</sup>

UTAH

1. *General Authority and Obligations*

It is the duty of the Utah Public Service Commission (“Commission”) to balance the interests of the consumers and the public utilities. In doing so it may consider “encouraging conservation of resources and energy.”<sup>365</sup>

2. *Certification, Siting, and Compliance*

The Legislature has codified policy that encourages “convert[ing] existing overhead electric and communication facilities to underground locations.”<sup>366</sup>

4. *Resource Planning, Conservation Programs, and Environmental Externalities*

It is the duty of the Commission to:

[e]ngage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources. The commission shall make and submit to the governor and the Legislature an annual report containing a full and complete account of the transactions of its office, together with any facts, suggestions and recommendations it may deem necessary.<sup>367</sup>

5. *Restructuring Provisions*

It is the policy of the state to encourage the development of small power production and cogeneration facilities, and promote a diverse array of sustainable energy resources in an environmentally acceptable manner.<sup>368</sup>

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364. *Id.* § 39.904(a), (b).  
365. UTAH CODE ANN. 54-1-1(3)(b)(ix) (2000).  
366. *Id.* § 54-8-2.  
367. *Id.* § 54-1-10.  
368. *Id.* § 54-12-1(2).

## VERMONT

*2. Certification, Siting, and Compliance*

Before the [Vermont Public Service Board (“Board”)] issues a certificate of public good . . . it shall find that the purchase, investment or construction . . . is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures [as well as] . . . with respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. . . .<sup>369</sup>

*4. Resource Planning, Conservation Programs, and Environmental Externalities*

Resource planning is conducted through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.

A “least cost integrated plan” for a regulated electric or gas utility is a plan for meeting the public’s need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.<sup>370</sup>

The state’s public advocate and energy planning office, the Vermont Department of Public Service, and all gas and electric utility companies “are encouraged to propose, develop, solicit and monitor energy efficiency and conservation programs and measures.”<sup>371</sup> Such programs and measures may be approved by the board if it determines they will be beneficial to the

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369. VT. STAT. ANN. tit. 30, § 248(b)(2), (5) (2000).

370. *Id.* § 218c(a)(1).

371. *Id.* § 209(d)(1).

ratepayers of the companies after such notice and hearing as the board may require by order or by rule.<sup>372</sup>

Section 254 of Title 30 was amended in 2005 and requires Vermont's Public Service Board and Agency of Natural Resources to "establish a carbon cap and trade program that will limit and then reduce the total carbon emissions released by major electric generating stations that provide electric power to Vermont utilities and end-use customers."<sup>373</sup> The rules are to be designed in order to permit the holders of carbon credits to trade them in a regional market proposed to be established through the Regional Greenhouse Gas Initiative.

Under this program, among other things, the Board, by rule or order, is required to establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits and the proceeds from the sale of those credits through allocation to one or more trustees acting on behalf of consumers in accordance with the following principles: minimizing windfall financial gains to power generators, employing an administrative structure that will enable program managers to perform any combination of holding, banking, and selling carbon credits in regional, national, and international carbon credit markets, optimizing the revenues received from the management and sale of carbon credits for the benefit of Vermont electric customers and the Vermont economy; minimizing any incentives from operation of the cap and trade program for Vermont utilities to increase the overall carbon emissions associated with serving their customers; building upon existing regulatory and administrative structures and programs that lower power costs, improve efficiency, and lower the carbon profile of the state's power supply; and ensuring that carbon credits allocated under this program and revenues associated with their sale remain power system assets managed for the benefit of electric consumers.

### *5. Restructuring Provisions*

Vermont has not restructured its electric industry, but has developed a net metering program<sup>374</sup> and an Energy Efficiency Utility.<sup>375</sup> Electric utilities are to provide net metering programs to its customers and allow such customers to interconnect to the electric utility's electric system.<sup>376</sup>

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372. *Id.* § 209(d).

373. 30 V.S.A. § 254.

374. *Id.* § 219a.

375. *Id.* § 209d(3).

376. *Id.* § 219(h)(1)(A), (B).

The Public Service Board is to create regulations that promote a renewable energy program that protects air and water quality, cost effective end-use energy efficiency measures, and develop renewable and energy efficiency industries and infrastructure that balance program benefits costs and rates.<sup>377</sup>

## VIRGINIA

### 2. Certification, Siting, and Compliance

The Virginia State Corporation Commission (“Commission”) reviews applications for certificates of Convenience and Necessity that are required for a utility to construct, enlarge, or acquire any facilities for use in public service.<sup>378</sup>

In its review the Commission must “give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact.”<sup>379</sup>

### 3. State NEPA Statute

The Virginia mini-NEPA was repealed. However, the State Corporation Commission must continue to take into consideration the effects of their actions on farmlands.<sup>380</sup>

### 4. Resource Planning, Conservation Programs, and Environmental Externalities

According to Virginia law, it is the duty of the Commission to:

investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service.<sup>381</sup>

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377. *Id.* § 209(d)(3).

378. VA. CODE ANN. 56-265.2 (2003).

379. *Id.* § 56-46.1(A).

380. *Id.* § 3.1-18.8 (2003 & Supp. 2005).

381. *Id.* § 56-235.1.

The Commission also has the authority to order the public utilities to adopt substitute practices, and to educate the public in order to promote the effective conservation of resources.<sup>382</sup>

### 5. *Restructuring Provisions*

Virginia has restructured its electricity industry.<sup>383</sup> The requirements for construction and operating certificates for generating facilities have been reaffirmed.<sup>384</sup> The Virginia restructuring provisions also provide for net metering.<sup>385</sup>

## WASHINGTON

### 2. *Certification, Siting, and Compliance*

The Washington State legislature declared a state policy that “the location and operation of such [energy generating] facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.”<sup>386</sup> The Washington State legislature also declared that:

[I]t is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises . . . [t]o preserve and protect the quality of the environment; to enhance the public’s opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.<sup>387</sup>

### 3. *State NEPA Statute*

The Washington State Environmental Policy Act imposes a duty to protect the environment upon the Washington Utilities and Transportation Commission (“Commission”).<sup>388</sup>

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382. *Id.*

383. *Id.* § 56-576-595 (2003).

384. *Id.* § 56-580 (2003 & Supp. 2005).

385. *Id.* § 56-594.

386. WASH. REV. CODE ANN. § 80.50.010 (West 2001 & Supp. 2006).

387. *Id.* § 80.50.010(2).

388. *Id.* §§ 43.21C.010 to 43.21C.914 (West 1998).

#### 4. Resource Planning, Conservation Programs, and Environmental Externalities

“In establishing rates for each gas and electric company . . . the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration . . . measures which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable sources. . . .”<sup>389</sup>

The Commission shall adopt policies allowing utilities an incentive rate of return for certain energy efficiency programs.<sup>390</sup>

#### 5. Restructuring Provisions

Washington’s electric utilities are required to make net metering available to “customer-generators on a first-come, first-serve basis until the cumulative generating capacity of net metering systems equals 0.1 percent of the utility’s peak demand during 1996.”<sup>391</sup>

### WEST VIRGINIA

#### 1. General Authority and Obligations

The West Virginia legislature declared that they “confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to: . . . [e]ncourage energy conservation and the effective and efficient management of regulated utility enterprises.”<sup>392</sup>

Further, the Commission is required to “identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation.”<sup>393</sup>

The Commission also has jurisdiction to enforce, prescribe and establish rates and fees charged by commercial solid waste facilities.<sup>394</sup> The Commission when establishing said rates shall consider the environmental

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389. *Id.* § 80.28.025(1) (West 2001).

390. *Id.* § 80.28.260.

391. *Id.* § 80.60.020(1).

392. W. VA. CODE ANN. § 24-1-1(a), (a)(5) (LexisNexis 2004).

393. *Id.* § 24-1-1(c).

394. *Id.* § 24-2-1(f).

impact of controlling the flow of solid waste, efficient disposal, financial feasibility and necessity.<sup>395</sup>

## 2. *Certification, Siting, and Compliance*

Utilities are required to obtain from the Commission a “certificate of public convenience and necessity authorizing such construction, franchise, license or permit.”<sup>396</sup> Applications for a certificate of public convenience and necessity for the construction of high voltage transmission lines must contain a “statement of the environmental impact of such line facilities.”<sup>397</sup> The Commission may approve the application if it finds that the proposed line “[w]ill result in an acceptable balance between reasonable power needs and reasonable environmental factors.”<sup>398</sup>

## 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission may authorize ratemaking allowances for electric utility investment in clean coal and clean air technology facilities or electric utility purchases of power from clean coal technology facilities located in West Virginia which shall provide an incentive to encourage investment in such technology.<sup>399</sup>

The “commission shall authorize ratemaking allowances for public utilities to encourage the use of alternative fuel in new demonstration technologies, including alternative fuel vehicles, which provide incentives to encourage investments in such technologies.”<sup>400</sup>

When establishing rates for an electric utility using coal power, the Commission is to encourage the use of clean coal technology.<sup>401</sup>

The Commission is required to develop and implement programs designed to encourage the use of state alternative fuels as vehicle fuels and in other new demonstration technologies.<sup>402</sup>

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395. *Id.* § 24-2-1h(b).

396. *Id.* § 24-2-11(a).

397. *Id.* § 24-2-11(a)(3).

398. *Id.* §§ 24-2-11a(b)(3), 24-2-11a(d)(2).

399. *Id.* § 24-2-1g(b).

400. *Id.* § 24-2D-2(b).

401. *Id.* § 24-2-1g.

402. *Id.* § 24-2D-1.

## WISCONSIN

*1. General Authority and Obligations*

“To the extent cost-effective, technically feasible and environmentally sound, the [Wisconsin Public Service] commission shall implement the priorities under [section] 1.12(4) [the state energy policy] in making all energy related decisions and orders, including advance plan, rate setting and rule-making orders.”<sup>403</sup>

State energy resources are prioritized in the following manner:

- (a) Energy conservation and efficiency;
- (b) Noncombustible renewable energy resources;
- (c) Combustible renewable energy resources;
- (d) Nonrenewable combustible energy resources, in the order listed: 1. Natural gas 2. Oil or coal with a sulphur content of less than 1% [and then] 3. All other carbon-based fuels.<sup>404</sup>

*2. Certification, Siting, and Compliance*

According to the state energy policy: “it is the goal of the state, to the extent that is cost-effective and technically feasible, [that] all new installed capacity for electric generation in the state be based on renewable energy resources.”<sup>405</sup> A certificate of public convenience and necessity, which is required for the commencement of construction of a utility facility, is issued only if the Commission determines that “[t]he design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors.”<sup>406</sup>

The certification process also requires that the Commission determine that, “[t]he proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.”<sup>407</sup>

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403. WIS. STAT. ANN. § 196.025(1) (West 2004).

404. *Id.* § 1.12(4) (West 2002).

405. *Id.* § 1.12(3)(b).

406. *Id.* § 196.491(3)(d)(3) (West 2004 & Supp. 2005).

407. *Id.* § 196.491(3)(d)(4).

If the facility meets the state air regulations, the effect on air quality cannot be the reason for finding an adverse environmental impact, or for denial of a certificate.<sup>408</sup>

### 3. *State NEPA Statute*

The Commission is directed to take into consideration the impact of its actions on the environment.<sup>409</sup> The state energy policy also requires state agencies to “investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.”<sup>410</sup>

### 4. *Resource Planning, Conservation Programs, and Environmental Externalities*

The Commission is required to encourage public utilities to develop and employ electric generating technologies that utilize renewable sources of energy, including new, innovative or experimental technologies. “The commission may ensure that a public utility fully recovers the cost of developing, constructing and operating such demonstrations through rates charged to customers of the utility.”<sup>411</sup>

Further, each “Eastern Wisconsin Utility” is mandated to “construct or procure, on a competitive basis, the construction of an aggregate total of 50 megawatts of new electric capacity in this state that is, to the satisfaction of the commission, generated from renewable sources.”<sup>412</sup> The Commission has the duty to prepare a “biennial strategic energy assessment” that “consider[s] the public interest in economic development, public health and safety, protection of the environment and diversification of sources of energy supplies,” as well as “assess the extent to which effective competition is contributing to a reliable, low-cost and environmentally sound source of electricity for the public.”<sup>413</sup>

The Commission is responsible for authorization of funds from the Environmental Trust for utilities seeking funding from the trust. An application to the Commission must be accompanied by a description of

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408. *Id.* § 196.491(3)(d)(4).

409. *Id.* § 1.11 (West 2002).

410. *Id.* § 1.12(2).

411. *Id.* § 196.377(1) (West 2004).

412. *Id.* § 196.377(4)(b).

413. *Id.* § 196.491(2)(a)(10), (12) (West 2004 & Supp. 2005).

environmental control activities, and an estimate of the environmental costs of the activity.<sup>414</sup>

### *5. Restructuring Provisions*

The Commission it to promulgate rules establishing standards for connection of distributed generation facilities (no more than 15 MW) to electric utilities distribution facilities.<sup>415</sup>

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414. *Id.* § 196.027 (West 2004).

415. *Id.* § 196.496.

