MODEL STATE LEGISLATION

Electric Utility

Restructuring

AARP

2132

DOE003-0776

Obtained and made public by the Natural Resources Defense Council, March/April 2002
AARP is the nation’s leading organization for people age 50 and over. It serves their needs and interests through legislative advocacy, research, informative programs, and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special membership benefits, including Modern Maturity magazine and the monthly Bulletin.

The AARP State Legislation Department provides assistance and resources to the Association’s volunteers and staff to expand their capacities for influencing state policy-making. The department’s goal is the adoption of state public policy that addresses the broad needs of older persons within an intergenerational context that promotes the well-being of all.

The Utility Issues Team of the State Legislation Department seeks, through legislative and regulatory advocacy, to protect the rights of residential utility consumers to reliable utility services, fair rates, privacy, fair marketing of services by utilities, adequate information on available services, and proper representation before state utility commissions.

by
National Consumer Law Center

for
AARP
State Legislation Department
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AARP Model State Legislation on Electric Utility Restructuring

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
An Act to
Restructure the State's Electric Industry
and Provide for Consumer Protection

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
Be it enacted by the people of the State of [Name of State] as follows:

SEC. 1. FINDINGS.

The Legislature finds that:

A. [Name of State] has unreasonably high electricity rates. On average, rates in [Name of State] are significantly above the regional average. The Legislature also finds that there is a wide disparity in electric rates both within [Name of State] and as compared to the region. The Legislature finds that this combination of facts has a particularly adverse impact on [Name of State] citizens.

B. [Name of State]'s extraordinarily high electric rates disadvantage all classes of customers: industries, small businesses, and captive residential and institutional ratepayers and do not reflect an efficient industry structure. The Legislature further finds that these high rates are causing businesses to consider relocating or expanding out of state and are a significant impediment to economic growth and new job creation in this state.

C. Restructuring of electric utilities to provide greater competition and more efficient regulation is a nationwide phenomenon.

D. Monopoly utility regulation has historically substituted as a proxy for competition in the supply of electricity but recent changes in economic, market and technological forces and national energy policy have increased competition in the electric generation industry. With the introduction of retail customer choice of electricity suppliers as provided by this chapter, market forces may now be able to play an important role in organizing electricity supply for all customers instead of monopoly regulation.

1 Sources: Unless otherwise noted, statute language is drawn from the Maine restructuring statute, 1997 Maine Laws Ch. 316. This statute not only has good specific provisions, it is laid out in a logical manner. The model statute has rearranged the sections to an extent, but has largely maintained the division of subject matter from the Maine statute. Brackets indicate areas of choice for the drafters (typically placeholders where certain dates must be inserted, cross-references to other statutes of the state, etc.).
E. It is in the best interests of all the citizens of [Name of State] that the Legislature, the executive branch, and the public utilities commission work together to establish a competitive market for retail access to electric power in those aspects of the electricity industry where competition can produce the benefits of the market without undermining the benefits of the historic organization of the electricity industry.
SEC. 2. [TITLE AND CHAPTER OF CODE] IS ENACTED TO READ:

CHAPTER ###

ELECTRIC INDUSTRY RESTRUCTURING AND CONSUMER PROTECTION

SEC. XXX-1. PURPOSE

A. The most compelling reason to restructure the [Name of State] electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure 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. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and divestiture of competitive centralized generation services from transmission and distribution services.

B. Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.

C. The following interdependent policy principles are intended to guide the [Name of State] Public Utilities Commission in implementing a statewide electric utility industry restructuring plan, in establishing any interim stranded cost recovery charges, in approving each utility’s compliance filing, and in regulating a restructured electric utility industry. In addition, these interdependent principles are intended to guide the [Name of State] Legislature and the [Name of State Environmental Protection Agency] and other state agencies in regulating a restructured electric utility industry.
SEC. XXX-2. STATEMENT OF PRINCIPLES

A. Affordable and universal electricity service. Electricity service is essential to the health and well-being of all residents of the state, and it is the policy of the state of [Name of State] that electric service must be affordable. The restructuring of the existing electricity system should not undermine the policy of the state that electricity bills for all residents must be affordable, and that low-income persons must not be required to bear more than twice the burden of median income households in order to secure necessary electricity supplies. To this end, the state should ensure that universal service and energy conservation policies, activities and services are funded sufficiently to meet the need, and available throughout the state. It is the policy of the state to ensure adequate provision of financial assistance to needy customers with incomes at or below 175 percent of the federal poverty guidelines, and to meet increases in need caused by economic exigencies.

B. Consumer protection. A restructured electric utility industry must provide adequate consumer protection safeguards to prevent unfair terms and conditions of service, and protect consumers from loss of service when such loss of service would pose a threat to health or safety. Consumer protection should not be diminished by the introduction of competition, but rather should be strengthened. Consumers require access to inexpensive, timely and effective dispute-resolution procedures.

C. Lower rates and true competition. The framework for competition in parts of the electricity industry must produce lower rates for all customers. Competition is not introduced in order to provide benefits for competitive providers, but rather to provide benefits for consumers. Government must supervise the market to ensure that true competition emerges quickly, and to prevent any market participant from exercising market power that defeats the purpose of deregulation. Government must police the boundaries between a firm’s monopoly activities and its entrepreneurial

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3 Derived from 1997 Maine Laws Ch. 316, § 3214, codified at Maine Revised Statutes, Title 35-A, § 3214.

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activities, to ensure that no cross-subsidization can take place, that
captive customers do not subsidize competitive ventures, and that
competitors are not disadvantaged by unfair reliance of the
competitive arm of a firm by its monopoly affiliate.

D. Reliable and high quality service. The introduction of
competition must not in any way degrade the reliability of service
or the quality of service, including customer service. Some
customers may benefit from a deregulated and competitive
marketplace and be able to secure improved reliability or customer
service in such a market, but small customers and other vulnerable
customers must be protected to ensure that they continue to enjoy
high standards of reliability and customer service.

E. Conditions for competition. Regulation of prices is necessary
where competitive forces will not adequately discipline a market,
where competition will jeopardize the safe and reliable operation of
the integrated electricity network, and where segmentation of the
market by providers will result in unfair discrimination in prices to
different classes of customers. Accordingly, the commission shall
determine that an electric service is a potentially competitive service
only if it finds, after a public hearing, that provision of the service
by alternative sellers:

(1) will not harm any class of customers;
(2) will decrease the cost of providing the service to residential and
small commercial customers in this state and also increase the
quality or innovation of the service to customers in this state;
(3) is a service for which effective competition in the market is
certain to develop;
(4) will advance the competitive position of this state relative to
surrounding states; and
(5) will not otherwise jeopardize the safety and reliability of the
electric service in this state.

SEC. XXX-3. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the
following terms have the following meanings.

A. Affiliated interest. "Affiliated interest" means:
(1) any person who owns—directly, indirectly or through a chain of successive ownership—10 percent or more of the voting securities of the purchasing entity;
(2) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph A;
(3) any person 10 percent or more of whose voting securities are owned, directly or indirectly, by a purchasing entity;
(4) any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a purchasing entity, provided that the person or group of persons beneficially owns more than 3 percent of the purchasing entity's voting securities; or
(5) any purchasing entity of which any person defined in subparagraphs (1) to (4) is an affiliated interest.

B. Aggregate. “Aggregate” means to organize individual electricity consumers with common characteristics (such as geography, affiliation, or some other characteristics in common) into an entity for the purpose of purchasing electricity on a group basis.

C. Aggregator. “Aggregator” means an entity that aggregates individual customers for the purpose of purchasing electricity.

D. Broker. “Broker” means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.

E. Competitive electricity provider. “Competitive electricity provider” means a marketer, broker, aggregator and any other entity selling electricity to the public at retail, including a distribution utility selling standard-offer, default or low-income service.

F. Consumer-owned transmission and distribution utility. “Consumer-owned transmission and distribution utility” means any transmission and distribution utility wholly owned by its consumers, including, but not limited to:

(1) the transmission and distribution portions of a rural electrification cooperative organized under chapter [cross-reference statute on REC organization, or REC statute at federal level]
(2) the transmission and distribution portions of an electrification cooperative organized on a cooperative plan under the laws of the state;
(3) municipal or quasi-municipal transmission and distribution utilities;
(4) the transmission and distribution portions of a municipal or quasi-municipal entity providing generation and other services; and
(5) transmission and distribution utilities wholly owned by a municipality.

G. Distribution plant. "Distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the distribution or delivery of electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the distribution of electricity for light, heat or power for public use.

H. Distribution utility. "Distribution utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a distribution plant for compensation within the state.

I. Divest. "Divest" means to legally transfer ownership and control to an entity that is not an affiliated interest.

J. Electric billing and metering services. "Electric billing and metering services" means the following services:
   (1) billing and collection;
   (2) provision of a meter;
   (3) meter maintenance and testing; and
   (4) meter reading.

K. Electric utility. "Electric utility" [here insert the definition of the jurisdictional regulated monopoly supplier of electricity under the existing electric industry regulatory structure in the state].

L. Entity. "Entity" means a person or organization, including but not limited to any natural person, or any political, governmental, quasigovernmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.
M. Generation assets. "Generation assets" include all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the generation of electric power.

N. Generation service. "Generation service" means the provision of electric power to a consumer through a distribution utility but does not encompass any activity related to the transmission or distribution of that power.

O. Large, investor-owned distribution utility. "Large, investor-owned distribution utility" means an investor-owned distribution utility serving more than 10 percent of the retail electricity customers in the state.4

P. Marketer. "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

Q. Public entity. "Public entity" includes the state, any political subdivision of the state, a municipality and any quasi-municipal entity.

R. Qualifying facility. "Qualifying facility" has the same meaning as provided in section [cross-reference any state PURPA statute, or PURPA itself and FERC regulations thereunder].

S. Small, investor-owned distribution utility. "Small, investor-owned distribution utility" means an investor-owned distribution utility serving fewer than 10 percent of retail electricity customers in the state.

T. Retail access. "Retail access" means the right of a retail consumer of electricity to purchase generation service from a competitive electricity provider.

U. Transmission plant. "Transmission plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with, or to facilitate, the transmission of

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4 Maine's statute used the figure 50,000 as the dividing line between large and small utilities. Maine has about 350,000 customers, so 50,000 is between 10 and 15 percent of the customers in the state.

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electricity for public use, and includes all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used, or to be used, for the transmission of electricity for light, heat or power.

V. Transmission utility. "Transmission utility" means an entity, its lessees, its trustees, and its receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission plant for compensation within the state.

W. Voting securities. "Voting securities" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

SEC. XXX-4. RETAIL ACCESS; DEREGULATION OF PRICES

A. Declaration of competitive conditions; right to purchase generation. Beginning on [transition date], if the commission has issued an order declaring electricity supply to be a potentially competitive service, all consumers of electricity have the right to purchase generation services directly from competitive electricity providers.

B. Deregulation of generation services. Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation of prices for generation service under this Title on or after [transition date]. There shall be no charge to any residential customer for initiating or terminating low-income discount rates, default service, or standard-offer service when said initiation or termination request is made after a regular meter reading. All fees, other than for electricity, shall be cost-based.

C. Aggregation to be encouraged. When retail access begins, consumers of electricity may aggregate their purchases of generation service in any manner they choose. The commission

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3 Choose a date that is sufficiently far in the future to permit any necessary planning (e.g., two years from passage of the legislation), yet which does not delay the transfer longer than desired.

4 Maine language on municipal aggregation limitation is removed, and subject is treated in later section on municipal aggregation from Massachusetts statute. In

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and each electric distribution utility shall take all reasonable steps to facilitate consumer-initiated aggregation.

D. Evaluation of market. In determining whether a market for an electric service has potential competition, the commission shall:

(1) identify the relevant market;
(2) identify, where feasible, the alternative sellers that participate and are reasonably expected to participate in the relevant market;
(3) calculate, where feasible, the market share of the sellers that are reasonably expected to participate in the relevant market, and evaluate the significance of each share;
(4) determine, where feasible, the capacity of any seller in the relevant market to bid strategically and withhold supply to manipulate prices, and evaluate the significance of such capacity; and
(5) determine the likely prices of electricity or other related potentially competitive services in a competitive market as proposed, relative to the likely prices of such services in a regulated monopoly market.

SEC. XXX-5. REDUCTION IN RESIDENTIAL RATES; STANDARD OFFER*

When retail access begins, the commission shall ensure that standard-offer service is available to all consumers of electricity.

A. Establishment of terms and conditions. The commission shall open a rulemaking proceeding no later than [three months after passage of statute] to establish terms and conditions for standard-offer service that include, but are not limited to:

(1) entry and exit restrictions;

* In addition, section is recast to go beyond mere right to aggregation, to include obligation of commission and incumbent utilities to facilitate aggregation.

7 Maine Revised Statutes, Title 35-A, § 3212. References to "transmission and distribution utility" were replaced with references to "distribution utility." The focus here in limiting utility participation is to deal with retail competition issues, not wholesale issues.

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(2) protection against a standard-offer service provider’s failure to provide service as contracted for;
(3) appropriate rate design issues;
(4) retaining averaged prices for all customers in the same class; and
(5) credit, collection and disconnection practices.

By [five months after passage of legislation], the commission shall provisionally adopt rules establishing terms and conditions for standard-offer service.

B. Selection of standard-offer service providers. After terms and conditions for standard-offer service have been established under subsection A, the commission shall administer a bid process to select a standard-offer service provider for that distribution utility’s service territory. By [nine months after passage of statute], the commission shall review the bid submissions for each distribution utility and select the standard-offer service provider or providers for that utility’s service territory.

(1) The commission shall determine the general credit data and specific information from general load and usage data that distribution utilities must provide to potential standard-offer service bidders, including, but not limited to, monthly demand and energy consumption and the number of customers in each customer class. The commission shall ensure that individual customer confidentiality is preserved in this process and that a distribution utility releases customer-specific data only with the customer’s permission. If the distribution utility incurs additional costs to develop and produce the required data, the commission shall permit that utility to recover those costs through distribution rates.

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8 A number of states either mandate or encourage a bid process. The model statute here combines the Ohio “retail marketing area” concept of a bid for portions of the service area of a utility, with a utility-provided standard offer as a fallback in the event no winning bid is made that proposes a price matching or lower than the standard-offer price. Where the statute is drafted merely to encourage a bid process, states typically leave the issue to the public utilities commission (PUC) to decide later. Some states, though, give the job to the incumbent utility, at least at the beginning. This is a valuable market, and utilities (or marketers, for that matter) should give value for obtaining it.
(2) The commission shall establish the maximum duration of a standard-offer service contract after considering all relevant factors, including, but not limited to, market risks and the need for price stability and contract flexibility.

(3) A competitive electricity provider that is an affiliate of a large investor-owned distribution utility may submit bids to provide standard-offer service for up to 20 percent of the electric load within the service territory of the large investor-owned distribution utility with which it is affiliated. To prevent the unfair use of information possessed by a large investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

(4) A consumer-owned distribution utility and a small investor-owned distribution utility may submit bids to provide standard-offer service for that utility’s service territory. To prevent the unfair use of information possessed by a consumer-owned distribution utility or a small investor-owned distribution utility, the commission shall ensure that such a utility seeking to bid on standard-offer service has no greater access to relevant information than is provided to other potential bidders.

(5) The commission may divide the service area of the distribution utility into retail marketing areas as provided in [cross-reference location of language from Appendix I, if included in statute], and conduct separate bid procedures for each such marketing area.

(6) The commission shall not accept a proposal to provide standard-offer service if the price exceeds the reduced price provided for in Section XXX-5(C), below. Where the commission has not accepted a proposal to provide standard-offer service, the distribution utility shall provide such service.

(7) By [five months after passage of statute], the commission shall provisionally adopt rules establishing a methodology for structuring the bidding process for standard-offer service in order to implement the provisions of this subsection. In adopting rules, the commission shall consider methods to ensure, to the extent possible, at least [three] providers of standard-offer service in each distribution utility service territory, as long as the method does not
result in any significant adverse impacts on rates paid by consumers. Such providers may be distinguished by the respective retail marketing area in which they provide service, the types of pricing option they offer to residential and small commercial customers, or such other factors as the commission may approve.

C. Standard offer; rate reductions.

(1) Each distribution utility, or a competitive electricity provider selected in accordance with this Section XXX-5, shall offer a standard service transition rate by no later than [same date as implementation of restructuring], which, together with the transmission, distribution and transition charges, produces for such a service package a rate reduction of at least 15 percent from the comparable rate in effect on the filing date of this statute.

(2) The total rate reduction, net proceeds from the divestiture and the net savings from stranded cost mitigation, in combination with the rate reduction implemented by or on [same date as implementation of restructuring], shall be 25 percent on or before [date one and one-half years later].

(3) The standard service transition rate shall be offered for a transition period of seven years at prices and on terms approved by the commission. The generation services portion of the standard offer shall be provided by a competitive electricity provider chosen through a competitive bid process that is reviewed and approved by the commission, so long as the prices charged by such competitive electricity provider do not exceed the standard offer as determined by this Section XXX-5(C).

(4) If a distribution utility claims that it is unable to meet a total price reduction of 15 percent without jeopardizing its financial integrity, it shall petition the commission to explore any and all possible mechanisms and options within the limits of the constitution which may be available to the commission to achieve compliance with the provisions of this section, including, but not limited to, the authorization of a competitive electricity provider to provide the standard-offer service package.

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C. [ALTERNATIVE to C above] Price cap; investigation. If the qualifying bids under subsection B for standard-offer service in any service territory, when combined with the regulated rates of transmission and distribution service and any stranded costs charge, exceed, on average, the total rate for electricity immediately before the implementation of retail access, the commission shall investigate whether the implementation of retail access remains in the public interest or whether other mechanisms to achieve the public interest and to adequately protect consumer interests need to be put in place. Pursuant to Section XXX-27, the commission shall notify the Legislature of the results of its investigation and its determination.

D. Implementation period. Standard-offer service must be available for a minimum of seven years after opening retail sales to competition. By [one year before the proposed end date of the service], the commission shall begin an investigation to determine whether the continued availability of standard-offer service is necessary and in the public interest. The commission shall conclude the investigation by [six months before the end date] and report its results to the Legislature pursuant to Section XXX-27.

E. Territorial and rate class. Nothing in this section precludes the commission from permitting or requiring different terms and conditions for standard-offer service in different utility service territories or for different customer classes.

SEC. XXX-6. LIMIT ON SPREAD BETWEEN RESIDENTIAL AND OTHER RATES

A. Limit on spread between residential and industrial rates. Whenever the average of industrial class prices for a 12-month period is less than that of residential class prices by a percentage that is greater than the percentage differential was in the calendar year 1990, the distribution utility will increase the access charge per kilowatt-hour to all industrial customers by an amount equal to the difference between the average industrial price in the aforementioned 12-month period and the average industrial price in that period had the price been the same percentage less than the average residential price that it was in 1990. The sums so collected
shall be credited to the residential access charge as an equal amount per kilowatt-hour in the subsequent 12 months. 11

B. Limit on spread between default and regional average rates. Whenever the average of residential default service prices for a 12-month period is more than that of average prices in the region, the distribution utility will increase the access charge per kilowatt-hour to all non-residential default customers by an amount equal to the difference between the average residential default service price in the aforementioned 12-month period and the average system price in that period. The sums so collected shall be credited to the residential default service access charge as an equal amount per kilowatt-hour in the subsequent 12 months. 12

C. Evaluation of rate impacts of restructuring. Prior to the termination of the standard service transition rate, the commission shall, in consultation with [specify any other necessary participants in the review], evaluate the effects of electricity restructuring on the level of residential rates, and the affordability of electric power for low-income customers. 13

SEC. XXX-7. MUNICIPAL AGGREGATION

A. Authorization to aggregate electric and natural gas loads. Any municipality or any group of municipalities acting together within the state is hereby authorized to aggregate the electrical or natural gas loads of interested consumers within its boundaries, provided, however, that such municipalities shall not aggregate loads if such are served by an existing municipal lighting and or gas utility. 14


13 Ma. Stat. 1997, c. 164, § 193; Ma. G. L. c. 164, § 1(4)(c)—The Massachusetts provision specifically focuses on affordability, and requires recommendation on whether to institute a burden-based low-income affordability rate. The model statute starts with the assumption that a burden-based rate is best, so this section has been changed to focus more broadly on whether restructuring is achieving the rate reduction objectives the Legislature has in mind for it.

14 Note that your state may have a specific term for a municipal utility, such as a municipal light department, or light plant, or other such term, which would then

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Such municipalities may enter into agreements for services to facilitate the sale and purchase of electricity, natural gas and other related services. Such service agreements may be entered into by a single city, town, county or by a group of cities, towns or counties.

B. Municipal aggregators not utilities. A municipality which aggregates its electric load and operates pursuant to the provisions of this section shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality shall not be considered a wholesale utility transaction.

C. Procedure for securing public authorization for aggregation. A municipality may initiate a process to aggregate electrical and natural gas loads upon authorization by vote of the legislative authority of the municipality. A referendum of voters in the municipality may be held if the council chooses. Upon an affirmative vote to initiate said process, a municipality establishing load aggregation pursuant to this section shall develop a plan detailing the process for review by its citizens. The plan shall provide for universal access, reliability and equitable treatment of all classes of customers and shall meet any requirements established by law. Said plan shall be filed with the commission for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations and its

have to be inserted here. Your state may also have other forms of local governmental or quasi-governmental utility operations, such as utility districts, county utilities, and the like. The model statute language can be adapted to cover any of these forms. For ease of drafting, the municipal approach is reflected in the model.

Your state may have some municipal law precedents that discuss the creation of municipal public power utilities; typically these have overly onerous procedures for obtaining approvals to create a municipal power utility. Municipal aggregation should not require such complex and prohibitively expensive procedures. The same type of vote used in the municipalities to authorize the municipal executive (whether the mayor, or some other officer) to make a major purchase for the municipality is all that is needed. This may be, for example, a city council vote, a board of selectmen's vote, or a town meeting vote. Remember that the service will be acquired for aggregated businesses and residents by competitive bid, and that all customers have the opportunity to opt-out of the aggregator, so there is no need for excessively cumbersome approval procedures.

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funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants and termination of the program. Said plan shall not be implemented until the commission has approved a contract for a supplier that has been selected and recommended to citizens in the municipality or group of municipalities. Approval of said contract will include consideration of both price and non-price terms and elements that affect the environment, economic development and other policy issues in the public interest.

D. Participation voluntary; opt-out procedure. Participation by any retail customer in a municipal or group aggregation program shall be voluntary. A municipality may provide for automatic enrollment in its aggregation program, consistent with this section. A customer enrolled in a municipal aggregation program that is not operational on the retail access date shall receive standard-offer service in the absence of any other selection. Once enrolled in the aggregated entity, any ratepayer may opt-out according to the established plan and/or contract provisions and shall be entitled to receive standard-offer service as if originally enrolled therein.

E. Energy plans authorized; energy efficiency and renewable energy, commission review.

(1) A municipality or group of municipalities establishing load aggregation pursuant to subsection (A) may, by a vote of its legislative body, adopt an energy plan which shall define the manner in which the municipality or municipalities may implement energy-efficiency programs and renewable energy programs that are consistent with the state energy plan or a municipal energy plan adopted pursuant to this section.

(2) After adoption of the energy plan by such legislative body, the city or town clerk shall submit the plan to the commission to certify that it is consistent with any such state energy plan. If the plan is certified by the department, the municipality or group of municipalities shall receive and expend moneys from the state renewable energy trust fund and the demand-side management fund (system benefits charges if they exist in your state) in an amount not to exceed that contributed by retail customers within said municipality or group of municipalities.
This will not prevent said municipality or municipalities from applying for additional funds to the fund administrators.

(3) If the commission determines said energy plan is not consistent with the state energy plan, it shall inform the municipality or municipalities within one month of the decision by written notice of the reasons why it is not consistent with the state energy plan. The municipality or municipalities may reapply at any time with an amended version of the energy plan. The municipality or municipalities shall not be prohibited from proposing for certification an energy plan which is more specific, detailed or comprehensive, or which covers additional subject areas than the state energy plan. This subsection shall not prohibit a municipality from considering, adopting, enforcing or in any other way administering an energy plan which does not comply with any such statewide goals so long as it does not violate the laws of the state.

(4) The municipality or municipalities shall, within two years of approval of its plan or such further time as the commission may allow, provide a written notice to the commission that its plan is implemented. The commission may revoke certification of the energy plan if the municipality or municipalities fail to substantially implement the plan or if it is determined by independent audit that the funds were misspent within the time allowed under this subsection.

**SEC. XXX-8. LICENSING COMPETITIVE PROVIDERS; CONSUMER PROTECTIONS; ENFORCEMENT**

A. Authority to provide generation and/or sales service. In order to provide effective competition in the market for the generation and sale of electricity in the state and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section. All entities seeking to do business in the state as competitive electricity providers shall submit a license application to the commission, subject to the rules and regulations promulgated by the commission. 16

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B. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this state without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

(1) evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason, and to honor contracts for purchase of electricity at wholesale and to participate in the spot market as necessary in aggregate amounts corresponding to anticipated retail sales;  

(2) evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;  

(3) disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;  

(4) evidence of the ability to satisfy the renewable resource portfolio requirement established under Section XXX-21;  

(5) evidence of technical and managerial capacity to provide the services proposed in compliance with all applicable laws and policies of the state, with due consideration to the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve;  

(6) a description and map of the area or areas in which the applicant intends to offer service and the types of services it intends to offer, and, if the applicant intends to serve residential or small business customers in any area of the state smaller than the entirety of the service area of an existing electric utility,

17 There are two types of financial ability customers care about—the ability to make good on individual promises to customers, and the ability to make good on requirements to supply adequate power. This latter issue was dramatized in the summer of 1998 when some suppliers in the Midwest defaulted on their contracts, unable to come through with adequate power at peak times.  

18 This provision is based on the entry requirements many commissions follow today to determine the qualifications of competitive providers in the telephone industry and other utility businesses.  


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evidence demonstrating that the designation of this smaller area does not violate Section XXX-9(I); and
(7) disclosure of the names and corporate addresses of all affiliates of the applicant, and the doing/business/as names the applicant will use in the state.

C. Bonding. The commission shall require a competitive electricity provider to file a bond with the commission as evidence of financial ability (1) to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service, and (2) compensate consumers harmed by violations of the protections mandated by this Title.

D. Predatory marketing and gouging prohibited. The commission may not issue a license to an applicant, and may suspend or revoke a license of a competitive electricity provider, that (1) proposes to market predominantly to low-income customers, to customers who have been disconnected from service or denied service or to otherwise vulnerable customers; and (2) whose proposed rates are significantly higher than prevailing residential rates for the same services.

E. Misleading names prohibited. No applicant may be granted a license to do business in the state under a name that is misleading, or that would tend to confuse a customer as to whether the customer is applying to or agreeing to take service from the applicant.

F. Licensing renewals and revocations. Consistent with all applicable requirements of [here insert cross-reference to state’s Mini-APA language, if applicable], the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct

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21 This is a new clause, prompted by the emergence of at least one firm that uses d/b/a names like “I don’t know” and “It doesn’t matter,” to trick consumers into appearing to justify taking service from them when the customer responds in this fashion to the salesperson’s inquiry such as “which electric company do you want to have?”
proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

SEC. XXX-9. CONSUMER PROTECTIONS, OBLIGATIONS OF COMPETITIVE ELECTRICITY PROVIDERS

A. Existing consumer protections to continue at a minimum. The commission is authorized and directed to retain or make increasing protective of retail ratepayers the rules adopted by the commission and codified at Title YYY of the Code of [Name of State] Regulations, sections #, ##, ### . . . [here insert the references to the appropriate code and statute provisions] and the policies reflected in the commission’s adjudication of customer complaints, and, notwithstanding anything in this chapter to the contrary, shall continue to apply them to generation and thus to all competitive electricity providers.22

B. Conditions of licensure: standard consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a customer, wherever located:

1. may not terminate generation service without at least 30 days prior notice to the customer;
2. must offer service to the customer for a minimum period of 30 days;
3. must allow the customer to rescind selection of the competitive electricity provider orally or in writing within five days of receipt of the written disclosures required by subsection B(5) and Section XXX-13, below;
4. may not telemarketing services to the customer if the customer has filed with the commission a request not to receive telemarketing from competitive electricity providers or has advised the applicant upon the occasion of a telemarking contact that he or she does not wish to receive further telephone solicitations;23


23 Last clause added to Maine language. The requirement that the notice be in writing is removed, because such a requirement is a major barrier to a consumer wishing to be protected from such unwanted solicitations.

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(5) must provide to the customer within 30 days of contracting for retail service a disclosure of information, as required by Section XXX-13 and rules adopted pursuant thereto, in a standard written format established by the commission;

(6) may not mislead customers as to the terms or conditions of the competitive electricity provider’s service or as to those of any other provider; 24

(7) may not charge significantly more than the prevailing rates to low-income or other vulnerable residential customers for similar services available to residential customers generally in the area; and

(8) must comply with any other provisions adopted by the commission by rule or order.

C. Disconnection restricted. A distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under Section XXX-5. No distribution utility or competitive electricity provider may disconnect or discontinue service to a customer for a disputed amount if that customer has filed a complaint which is pending with the commission. 25 No distribution utility or competitive electricity provider shall terminate a contract for service for nonpayment of any bill other than that of the company proposing to terminate service. Undesignated partial payments shall be applied in such a way as to, first, avoid termination of distribution service and, second, minimize charges.

D. Prepayment and other unfair requirements prohibited. No entity shall require a residential electricity customer to make a prepayment for service or to require a customer to accept time-of-day metering, arbitration of disputes, service limiters, automatic renewal periods longer than one month or a multi-year contract as a condition of obtaining or retaining service from that entity. Form

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24 Added prohibition on misleading customers.

contracts containing any of these provisions are against public policy and are null and void, and no entity may collect for any charges thereunder.

E. Credit life/disability for residential bills prohibited. No entity may sell credit life or disability insurance to insure the payment of any residential electric bill.26

F. Return to standard offer. A residential customer eligible for low-income discount rates shall receive the service on demand and may return to standard-offer service at any time, including from default service. An existing residential customer eligible for low-income discount on the date of start of retail access who orders service for the first time from a distribution utility shall be offered standard-offer service from that distribution utility. A residential customer eligible for low-income discount receiving standard-offer service shall be allowed to retain standard-offer service upon moving within the service territory of a distribution utility.27

G. Limit on charges for switching; notice. There shall be no charge to any residential customer for initiating or terminating default service, or standard-offer service, when said initiation or termination request is made after a regular meter reading. A distribution utility may impose a reasonable charge, as set by the commission through regulation, for initiating or terminating default service or standard-offer service when a customer does not make such an initiation or termination request upon the receipt of said meter reading results and prior to the receipt of the next regularly scheduled meter reading. For purposes of this subsection, there shall be a regular meter reading conducted of every residential account no less often than once every two months. Notwithstanding the foregoing, there shall be no charge when the initiation or termination is involuntary on the part of the customer.28 Distribution utilities and competitive electricity providers shall prominently disclose their lawful charges for initiating and

26 New provision.


terminating service in their advertising, marketing and billing, and
at the time of initial contact with a particular customer, before any
request for service or termination is effected.

H. Redlining and other unfair discrimination prohibited. No
competitive electricity provider shall refuse to provide electric
generation service to any customer because of race, creed, color,
national origin, ancestry, sex, marital status, lawful source of
income, disability or familial status. No competitive electricity
provider shall decline to provide electric generation services to a
customer for the reason that the customer is located in an
economically distressed geographic area or the customer qualifies
for low-income affordability or energy-efficiency services.29 As a
condition of a license, the commission shall prohibit each provider
from declining to provide service to customers for the reason that
the customers are located in economically distressed areas.30

I. Limits on miscellaneous charges, fees and penalties. In addition
to any provisions of this Act, the commission shall promulgate rules
limiting any charges, fees, penalties or other conditions imposed upon
a customer should he or she choose to purchase power from another
competitive electricity provider during the term specified in the
contract; whether a credit agency will be contacted; deposit
requirements and the interest paid on deposits; due date of bills and
all consequences of late-payment; consumer rights where a bill is
estimated; consumer rights of third-party billing and like
arrangements; consumer rights to deferred payment arrangements;
limits, if any, on warranty and damages; a toll-free telephone number
for service complaints; and any other fees, charges, penalties or terms
and conditions of service to residential customers.31

orientation removed).


out in greater detail rights of consumers in numerous situations. Ideally, the statute
would contain all the consumer rights spelled out in detail, as here, rather than a more
limited set of more generally described rights, or a cross-reference to regulations or
statute sections, or a mandate and authority to the commission to create specific rules.

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J. Inaccurate billing, rebilling.\textsuperscript{12}

(1) No electric utility, electric distribution utility, or competitive electricity provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for more than one year after the customer receives such service, unless the customer, by an affirmative act, is responsible for the inaccurate billing or prevents reasonable access to the premises where the company’s meter is located by an employee of the company during business hours for the purpose of reading the meter.

(2) Any such utility or provider that inaccurately bills a customer for service may bill or otherwise hold the customer financially liable for not more than one year after the customer receives such service, unless a delayed bill for the service (i) would deprive the customer of the opportunity to apply for or receive energy assistance or (ii) is the result of the customer’s meter erroneously registering another customer’s consumption, in which case the company may not bill or otherwise hold the customer liable for the service provided to another customer.

(3) Any such utility or provider that holds a customer financially liable under this subsection shall establish a payment plan that prorates all arrearages for service the customer owes over a period of time that is no shorter than the period of time for which the customer is being held financially liable. The payment plan shall provide that no payment charged to a customer under such plan shall exceed 50 percent of the average amount that the company charged such customer for each billing period over the previous 12-month period for services received during that period.

\textsuperscript{12} Material in subsections J through P is adapted from sections 16-259a, and 16-262c through 16-262j of the general statutes of Connecticut. Deletes telephone-specific material, and reference to accelerated back-billing in the event of any missed payments. Clarifies that customer, not third party, must deny meter access to trigger longer period of back-billing. Deletes specific privacy provision.
K. Termination of utility service for nonpayment, when prohibited.

(1) Notwithstanding any other provision of the general statutes no electric, gas, telephone or water provider, electric utility, electric distribution utility and no municipal utility furnishing electric, gas, telephone or water service shall cause cessation of any such service by reason of delinquency in payment for such service (i) on any Friday, Saturday, Sunday, legal holiday or day before any legal holiday; (ii) at any time during which the business offices of said company or municipal utility are not open to the public; or (iii) within one hour before the closing of the business offices of said company or municipal utility.

(2) Extreme weather prohibition.

(i) From November first to April fifteenth, inclusive, no electric provider, electric utility, electric distribution utility and no municipal utility furnishing electricity shall terminate or refuse to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his or her entire account.

(ii) From November first to April fifteenth, inclusive, no gas company and no municipal utility furnishing gas shall terminate or refuse to reinstate residential gas service in hardship cases where the customer uses such gas for heat and lacks the financial resources to pay his or her entire account.

(iii) Except a gas company that, between April sixteenth and October thirty-first, terminated gas service to a residential customer who uses gas for heat and who, during the previous period of November first to April fifteenth, had gas service maintained because of hardship status, may refuse to reinstate the gas service from November first to April fifteenth, inclusive, only if the customer has failed to pay, since April fifteenth, the lesser of: (a) 20 percent of the outstanding principal balance owed the gas company as of the date of termination, (b) one hundred dollars, or (c) the 

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In warm-temperature states, the summer period should be substituted throughout this subsection.
minimum payments due under the customer’s amortization agreement.

(3) Notwithstanding any other provision of the general statutes to the contrary, no electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall terminate or refuse to reinstate residential electric or gas service where the customer lacks the financial resources to pay his or her entire account and for which customer or a member of the customer's household the termination or failure to reinstate such service would create a life-threatening situation.

(4) During any period in which a residential customer is subject to termination, an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electricity or gas shall provide such residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay such delinquent account and to avoid termination of service. Such amortization agreement shall permit such customer adequate opportunity to apply for and receive the benefits of any available energy-assistance program. An amortization agreement shall be subject to amendment on customer request if there is a change in the customer’s financial circumstances.

(5) As used in this section,

(i) “household income” means the combined income over a 12-month period of the customer and all adults, except children of the customer, who are and have been members of the household for six months or more; and

(ii) “hardship case” includes, but is not limited to: (a) a customer receiving local, state or federal public assistance; (b) a customer whose sole source of financial support is Social Security, Veterans’ Administration or unemployment compensation benefits; (c) a customer who is head of the household and is unemployed, and the household income is less than 300 percent of the poverty level determined by the federal government; (d) a customer who is seriously ill or who has a household member who is seriously ill; (e) a customer whose income falls below 125
percent of the poverty level determined by the federal government and (f) a customer whose circumstances threaten a deprivation of food and the necessities of life for himself or dependent children if payment of a delinquent bill is required.

(6) Energy-assistance coordination.

(i) In order for a residential customer of a gas public service company to be eligible to have any money due and owing deducted from the customer's delinquent account pursuant to this subdivision, the company furnishing electricity or gas shall require that the customer (a) apply and be eligible for benefits available under the [Name of State] energy-assistance program or [any state-appropriated fuel-assistance program]; (b) authorize the company to send a copy of the customer's monthly bill directly to any energy-assistance agency for payment and (c) enter into and comply with an amortization agreement, which agreement is consistent with decisions and policies of the commission. Such an amortization agreement shall reduce a customer's payment by the amount of the benefits reasonably anticipated from the [Name of State] energy-assistance program, state-appropriated fuel-assistance program or other energy-assistance sources.

(ii) Unless the customer requests otherwise, the company shall budget a customer's payments over a 12-month period with an affordable increment to be applied to any arrearage, provided such payment plan will not result in loss of any energy-assistance benefits to the customer.

(iii) If a customer authorizes the company to send a copy of his monthly bill directly to any energy-assistance agency for payment, the energy-assistance agency shall make payments directly to the company.

(iv) If, on April thirtieth, a customer has been in compliance with the requirements of subparagraph (6)(i) of this subsection, during the period starting on the preceding November first, or from such time as the customer's account becomes delinquent, the company shall deduct from such customer's delinquent account an additional amount equal to the amount of money paid by the

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customer between the preceding November first and April thirtieth and paid on behalf of the customer through the energy-assistance program [and any state-appropriated fuel-assistance program]. Any customer in compliance with the requirements of subparagraph (6)(i) of this subsection on April thirtieth who continues to comply with an amortization agreement through the succeeding October thirty-first, shall also have an amount equal to the amount paid pursuant to such agreement and any amount paid on behalf of such customer between May first and the succeeding October thirty-first deducted from the customer's delinquent account. In no event shall the deduction of any amounts pursuant to this subdivision result in a credit balance to the customer's account.

(v) No customer shall be denied the benefits of this subsection due to an error by the company. The commission shall allow the amounts deducted from the customer's account pursuant to the implementation plan, described in subdivision (vi) of this subsection, to be recovered by the company in its rates as an operating expense, pursuant to said implementation plan. If the customer fails to comply with the terms of the amortization agreement or any decision of the department rendered in lieu of such agreement and the requirements of subparagraph (6)(i) of this subsection, the company may terminate service to the customer, pursuant to all applicable regulations, provided such termination shall not occur between November first and April fifteenth.

(vi) Each utility and competitive electricity provider shall submit to the commission annually, on or before July first, an implementation plan which shall include information concerning amortization agreements, counseling, reinstatement of eligibility, rate impacts and any other information deemed relevant by the commission. The commission may approve or modify such plan within 90 days of receipt of the plan. If the commission does not take any action on such plan within 90 days of its receipt, the plan shall automatically take effect at the end of the 90-day period, provided the commission may extend such period...
for an additional 30 days by notifying the gas public service company before the end of the 90-day period. Any amount recovered by a company in its rates pursuant to this subsection shall not include any amount approved by the commission as an uncollectible expense. The commission may deny all or part of the recovery required by this subsection if it determines that the company seeking recovery has been imprudent, inefficient or acting in violation of statutes or regulations regarding amortization agreements.

(7) All electric and gas utilities, electric distribution utilities, competitive electricity providers and municipal utilities furnishing electricity or gas shall collaborate in developing, subject to approval by the commission, standard provisions for the notice of delinquency and impending termination under subsection (1) of Section XXX-9(K). Each such provider and utility shall place on the front of such notice a provision that the company or utility may not effect termination of service to a residential dwelling for nonpayment of disputed bills during the pendency of any complaint. In addition, the notice shall state that the customer must pay current and undisputed bill amounts during the pendency of the complaint.

(8) At the beginning of any discussion with a customer concerning a reasonable amortization agreement, any such provider or utility shall inform the customer:

(i) of the availability of a process for resolving disputes over what constitutes a reasonable amortization agreement;

(ii) that the provider or utility will refer such a dispute to one of its review officers as the first step in attempting to resolve the dispute;

(iii) that the provider or utility may not effect termination of service to a residential dwelling, or in the case of a provider, the provider’s contract with the customer, for nonpayment of a delinquent account during the pendency of any complaint, investigation, hearing or appeal initiated by the customer, unless the customer fails to pay undisputed bills, or undisputed portions of bills, for service received during such period; and

(iv) of the availability of all public and private energy-conservation programs, for hardship cases, including
programs sponsored or subsidized by such companies and utilities, eligibility criteria, where to apply and the circumstances under which such programs are available without cost.

(9) The commission shall adopt regulations to carry out the provisions of this subsection. Such regulations shall include, but not be limited to, criteria for determining hardship cases and for reasonable amortization agreements, including appeal of such agreements, for categories of customers.  

(10) Each electric and gas utility, electric distribution utility, competitive electricity provider and municipal utility shall, not later than December first, annually, submit a report to the commission and the Legislature indicating:

(i) the number of customers in each of the following categories and the total delinquent balances for such customers as of the preceding April fifteenth;

(ii) customers who are hardship cases and (a) who made arrangements for reasonable amortization agreements, (b) who did not make such arrangements and (c) customers who are non-hardship cases and who made arrangements for reasonable amortization;

(iii) (a) the number of heating customers receiving energy assistance during the preceding heating season and the total amount of such assistance and (b) the total balance of the accounts of such customers after all energy assistance is applied to the accounts;

(iv) the number of hardship cases reinstated between November first of the preceding year and April fifteenth of the same year, the number of hardship cases terminated between April fifteenth of the same year and November first and the number of hardship cases reinstated during each month from April to November, inclusive, of the same year;

(v) the number of reasonable amortization agreements executed and the number breached during the same year by (a) hardship cases and (b) non-hardship cases; and

(vi) the number of accounts of (a) hardship cases and (b) non-hardship cases for which part or all of the outstanding

34 Deleted reference to interest on unpaid bills.

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balance is written off as uncollectible during the preceding year and the total amount of such uncollectibles.

(11) Nothing in this section shall prohibit an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility from terminating residential utility service upon request of a customer or in accordance with Section XXX-9(K) upon default by a customer on an amortization agreement or collecting delinquent accounts through legal processes, including the processes authorized by section.

L. Notice of termination of residential service or contract; process. 35

(1) No electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric, gas or water service may terminate such service to a residential dwelling on account of nonpayment of a delinquent account unless such company or municipal utility first gives notice of such delinquency and impending termination by first-class mail addressed to the customer to which such service is billed, at least 30 calendar days prior to the proposed termination, except that if an electric or gas utility, electric distribution utility, competitive electricity provider or municipal utility furnishing electric or gas service has issued a notice under this subsection but has not terminated service prior to issuing a new bill to the customer, such company or municipal utility may terminate such service after mailing the customer an additional notice of the impending termination, by certified mail, at least seven calendar days prior to the termination. In no event shall such company or municipal utility terminate service prior to the date of the proposed termination in the initial termination notice. For purposes of this subsection, the 30-day period and seven-day period shall commence on the date such notice is mailed. If such company or municipal utility does not terminate service within 120 days after mailing the initial notice of termination, such company or municipal utility shall give the customer a new notice at least 30 days prior to termination. Every termination

35 From Connecticut general statutes, § 16-262d.
notice issued by a utility, electric distribution utility, competitive electricity provider or municipal utility shall contain or be accompanied by an explanation of the rights of the customer provided in subsection (3) of Section XXX-9(L).

(2) No such company or municipal utility shall effect termination of service for nonpayment during such time as any resident of a dwelling to which such service is furnished is seriously ill, if the fact of such serious illness is certified to such company or municipal utility by a registered physician within such period of time after the mailing of a termination notice pursuant to subsection (1) of Section XXX-9(L) as the commission may by regulation establish, provided the customer agrees to amortize the unpaid balance of his account over a reasonable period of time and keeps current his account for utility service as charges accrue in each subsequent billing period.

(3) No such company or municipal utility shall effect termination of service to a residential dwelling for nonpayment during the pendency of any complaint, investigation, hearing or appeal initiated by a customer within such period of time after the mailing of a termination notice pursuant to subsection (1) of this section as said commission may by regulation establish.

(4) Any customer who has initiated a complaint or investigation under subsection (C) of this section shall be given an opportunity for review of such complaint or investigation by a review officer of the company or municipal utility other than a member of such company’s or municipal utility’s credit staff, provided the commission may waive this requirement for any company or municipal utility employing fewer than 25 full-time employees, which review shall include consideration of whether the customer should be permitted to amortize the unpaid balance of his account over a reasonable period of time. No termination shall be effected for any customer complying with any such amortization agreement, provided such customer also keeps current his account for utility service as charges accrue in each subsequent billing period.

(5) Any customer whose complaint or request for an investigation has resulted in a determination by a company or municipal utility which is adverse to him may appeal such determination to the commission or a hearing officer appointed by the commission.
(6) If, following the receipt of a termination notice or the entering into of an amortization agreement, the customer makes a payment or payments amounting to 20 percent of the balance due, the utility, electric distribution utility or competitive electricity provider shall not terminate service without giving notice to the customer, in accordance with the provisions of this section, of the conditions the customer must meet to avoid termination, but such subsequent notice shall not entitle such customer to further investigation, review or appeal by the company, municipal utility or commission.

M. Notice furnished tenants by utility regarding intended termination.34

(1) Notwithstanding the provisions of subsection K, wherever an owner, agent, lessor or manager of a residential dwelling is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building not occupied exclusively by such owner, agent, lessor or manager, and such company or municipal utility has actual or constructive knowledge that the occupants of such dwelling are not the persons to whom the company or municipal utility usually sends its bills, such company or municipal utility shall not terminate such service for nonpayment of a delinquent account owed to such company or municipal utility by such owner, agent, lessor or manager unless:

(i) such company or municipal utility makes a good faith effort to notify the occupants of such building of the proposed termination by the means most practicable under the circumstances and best designed to provide actual notice; and

(ii) such company or municipal utility provides an opportunity, where practicable, for such occupants to receive service in their own names without any liability for the amount due while service was billed directly to the lessor, owner, agent or manager and without the necessity for a security deposit, provided, if it is not practicable for

34 From Connecticut general statutes, § 16-262a.
such occupants to receive service in their own names, the company or municipal utility shall not terminate service to such residential dwelling but may pursue the remedy provided in subsection M.

(2) Whenever a company or municipal utility has terminated service to a residential dwelling whose occupants are not the persons to whom it usually sends its bills, such company or municipal utility shall, upon obtaining knowledge of such occupancy, immediately reinstate service and thereafter not effect termination unless it first complies with the provisions of subsection (1) of Section XXX-9(M).

(3) The owner, agent, lessor or manager of a residential dwelling shall be liable for the costs of all electricity, gas, water or heating fuel furnished by a public service company, municipal utility or heating fuel dealer to the building, except for any service furnished to any dwelling unit of the building on an individually metered or billed basis for the exclusive use of the occupants of that dwelling unit. If service is not provided on an individually metered or billed basis and the owner, agent, lessor or manager fails to pay for such service, any occupant who receives service in his own name may deduct, in accordance with the provisions of subsection (4) of Section XXX-9(M), a reasonable estimate of the cost of any portion of such service which is for the use of occupants of dwelling units other than such occupant’s dwelling unit.

(4) Any payments made by the occupants of any residential dwelling pursuant to subsection (1) or (3) of Section XXX-9(M) shall be deemed to be in lieu of an equal amount of rent or payment for use and occupancy and each occupant shall be permitted to deduct such amounts from any sum of rent or payment for use and occupancy due and owing or to become due and owing to the owner, agent, lessor or manager.

(5) Wherever a company or municipal utility provides service pursuant to subdivision (ii) of subsection (1) of Section XXX-9(M), the company or municipal utility shall notify each occupant of such building in writing that service will be provided in the occupant’s own name. Such writing shall contain a conspicuous notice in boldface type stating, “NOTICE TO OCCUPANT. YOU MAY DEDUCT THE
FULL AMOUNT YOU PAY (name of company or municipal utility) FOR (type of service) FROM THE MONEY YOU PAY YOUR LANDLORD OR HIS AGENT."

(6) The owner, agent, lessor or manager shall not increase the amount paid by such occupant for rent or for use and occupancy in order to collect all or part of that amount lawfully deducted by the occupant pursuant to this section.

(7) Nothing in this section shall be construed to prevent the company, municipal utility, heating fuel dealer or occupant from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

N. Petition for receiver of rents; hearing; appointment; duties.

(1) Receivership conditions, process.

(i) Upon default of the owner, agent, lessor or manager of a residential dwelling who is billed directly by an electric, gas, telephone or water utility, electric distribution utility, competitive electricity provider or by a municipal utility for utility service furnished to such building, such company or municipal utility may petition the Superior Court, or a judge thereof, for appointment of a receiver of the rents or payments for use and occupancy for any dwelling for which the owner, agent, lessor or manager is in default.

(ii) The court or judge shall forthwith issue an order to show cause why a receiver should not be appointed, which shall be served upon the owner, agent, lessor or manager or his agent in a manner most reasonably calculated to give notice to such owner, agent, lessor or manager as determined by such court or judge, including, but not limited to, a posting of such order on the premises in question. A hearing shall be had on such order no later than 72 hours after its issuance or the first court day thereafter. The sole purpose of such a hearing shall be to determine whether there is an amount due and owing between the owner, agent, lessor or manager and the company or municipal utility.

(iii) The court shall make a determination of any amount due and owing and any amount so determined shall constitute
a lien upon the real property of such owner. A certificate of such amount may be recorded in the land records of the town in which such property is located describing the amount of the lien and the name of the party in default. When the amount due and owing has been paid, the company or municipality shall issue a certificate discharging the lien and shall file the certificate in the land records of the town in which such lien was recorded.

(iv) The receiver appointed by the court shall collect all rents or payments for use and occupancy forthcoming from the occupants of the building in question in place of the owner, agent, lessor or manager. The receiver shall pay the petitioner or other supplier, from such rents or payments for use and occupancy, for electric, gas, telephone, water or heating oil supplied on and after the date of his appointment.

(v) The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made. The owner, agent, lessor or manager shall be liable to the petitioner for reasonable attorney's fees and costs incurred by the petitioner, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service and heating oil deliveries has been made and after payments of reasonable fees and costs to the receiver.

(vi) Any money from rental payments or payments for use and occupancy remaining after payment for current electric, gas, telephone and water service or heating oil deliveries, and after payment for reasonable costs and fees to the receiver, and after payment to the petitioner for reasonable attorney's fees and costs, shall be applied to any arrearage found by the court to be due and owing the company or municipal utility from the owner, agent, lessor or manager for service provided such building. Any
moneys remaining thereafter shall be turned over to the owner, agent, lessor or manager. The court may order an accounting to be made at such times as it determines to be just, reasonable and necessary.

(2) Any receivership established pursuant to subsection (1) of Section XXX-9(N) shall be terminated by the court upon its finding that the arrearage which was the subject of the original petition has been satisfied, or that all occupants have agreed to assume liability in their own names for prospective service supplied by the petitioner, or that the building has been sold and the new owner has assumed liability for prospective service supplied by the petitioner.

(3) Nothing in this section shall be construed to prevent the petitioner from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

(4) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any occupant of a building subject to an order appointing a receiver shall be found, after due notice and hearing, to be in contempt of court.

(5) If a proceeding is initiated under any proceedings relative to repairs to residential rental property under court supervision, or if a receiver of rent or use and occupancy payments shall be made pursuant to such proceeding or action without regard to whether such proceeding or action is initiated before or after a receivership is established under this section, and such proceeding or action shall take priority over a receivership established under this section in regard to expenditure of such rent or use and occupancy payments.

(6) Any willful or malicious violation of subsections M and N by any agent, owner, lessor or manager of residential rental property shall be punishable by a fine of not more than 500 dollars or imprisonment for not more than 30 days or both.37

(7) Nothing in subsections M and N, inclusive, shall be construed to prevent the occupant of such building from pursuing any

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37 From Connecticut general statutes Sec. 16-262g. Reference to utilities deleted, as material is covered in Sections XXX-8 and XXX-10.

AARP Model State Legislation on Electric Utility Restructuring

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DOE003-0822

Obtained and made public by the Natural Resources Defense Council, March/April 2002
other action or remedy at law or equity that it may have against
the owner, agent, lessor, manager, company or municipal
utility. 38

O. Nonpayment by absent spouse. 39 The commission may adopt
regulations setting forth the terms and conditions under which an
electric, gas, telephone and water utility, electric distribution utility,
competitive electricity provider or municipal utility furnishing
electric, gas or water service may be prohibited from terminating
service to a residential dwelling on account of nonpayment of a
delinquent account in the name of the former spouse or spouse of
the person who occupies the dwelling, if the marriage of such
persons has been dissolved or annulled or such persons are legally
separated or have an action for dissolution or annulment of a
marriage or for legal separation pending, pursuant to [cross-
reference provisions on divorce and separation].

P. Refusal of residential utility service. 40

(1) No public utility, electric distribution utility, competitive
electricity provider or municipal utility shall refuse to provide
electric, gas or water service to a residential customer based on
the financial inability of such customer to pay a security deposit
for such service. The commission shall adopt regulations to
carry out the provisions of this subsection.

(2) No telephone company shall refuse to provide
telecommunications service to a candidate or a political
committee on the grounds that such candidate, such committee
or the person acting on behalf of such committee has offered to
pay the security deposit for such service with a credit card.

(3) Each such company shall pay interest on any security deposit it
receives from a customer at the average rate paid on savings
deposits by insured commercial banks as published from time
to time in the Federal Reserve Board bulletin and rounded to

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38 From Connecticut general statutes Sec. 16-262b. Reference to utilities
deleted, as material is covered in Sections XXX-8 and XXX-10.

39 From Connecticut general statutes, Sec. 16-262i.

40 From Connecticut general statutes, Sec. 16-262j.
the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent, and the rate for each calendar year shall be not less than the deposit index as defined in subsection (4) of Section XXX-9(P) for that year and rounded to the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half percent.

(4) The deposit index for each calendar year shall be equal to the average rate paid on savings deposits by insured commercial banks as last published in the Federal Reserve Board bulletin in November of the prior year. The Commissioner of Banking shall determine the deposit index for each calendar year and publish such deposit index in the Department of Banking news bulletin no later than December fifteenth of the prior year. For purposes of this section, “Federal Reserve Board bulletin” means the monthly survey of selected deposits published as a special supplement to the Federal Reserve Statistical Release Publication H.6 published by the Board of Governors of the Federal Reserve System or, if such bulletin is superseded or becomes unavailable, a substantially similar index or publication.

Q. Additional requirements. The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider to the extent not specifically provided in this chapter.

SEC. XXX-10. CONSUMER PROTECTION: RECOURSE AND ENFORCEMENT

A. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers of electricity concerning standards established under or pursuant to sections XXX-8, 9, 11 and 12.

B. Restitution. The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.
C. Enforcement. The commission through its own counsel or through the Attorney General may apply to the [Superior Court of any county] [identify trial court of broadest jurisdiction] of the state to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it. The commission shall, in coordination with the office of consumer affairs,\(^4\) promulgate rules and regulations which shall include a provision that any violation of said rules and regulations shall be deemed an unfair and deceptive act.\(^4\)

D. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider, distribution utility, or transmission utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this state or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

E. Private right of action. A customer or applicant for service may bring an action at law or equity to enforce his rights under this statute. Nothing in this statute shall be construed to prevent any customer or applicant for service from pursuing any remedy available at law or equity. Nothing in this statute shall be construed to require any customer or applicant to exhaust administrative remedies before pursuing non-administrative remedies.

F. Penalties. In an adjudicatory proceeding, the commission may impose a penalty of up to $25,000 for each violation of this section or any consumer protection rule adopted under this section, provided, however, that the maximum civil penalty shall not exceed $2,000,000. Each day a violation continues constitutes a separate offense, provided,

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\(^4\) Insert name of comparable consumer protection agency in your state.

\(^4\) Ma. Stat. 1997 c. 164, § 244; Ma. G.L. c.164, § 102C(b). Need to use language from, and cross reference to, appropriate unfair and deceptive acts and practices (UDAP) statute in statute (mini-FTC legislation). See Appendix III for list of such statutes by state. Effect should be to give consumers a stronger avenue of recourse in the courts, including treble damages and attorneys fees in many states.