APPENDIX II: ALTERNATIVE STRANDED COST RECOVERY SECTIONS

SEC. XXX-19-A. STRANDED COST RECOVERY—NON-NUCLEAR GENERATION ASSETS

A. Definitions. As used in this section:

1. "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and
2. "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. Divestiture precondition for stranded cost recovery.

1. No electric utility shall be eligible to claim any stranded costs as provided in Sections XXX-7 through XXX-9 inclusive unless the utility (i) before the date when the commission approves a divestiture plan has sold its non-nuclear generating assets and (ii) on and after the date when the commission approves such a plan, has submitted all of its remaining non-nuclear generation assets owned or held as of the effective date of this act to a public auction held in a manner designed to produce a maximum sale price in accordance with this subsection.

2. Each electric utility that elects to divest itself of non-nuclear generation assets shall, not later than [date soon after passage of Act] submit a plan to the commission. The divestiture plan shall include:

(i) any documentation the commission reasonably determines is necessary to approve the auction procedure, including a copy of the request for proposal and a description of the solicitation process;

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127 Connecticut standard of "commercially reasonable" replaced with higher standard.

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(ii) a detailed description of the process for the sale and transfer of non-nuclear generation assets; and

(iii) the book value of all assets the electric utility intends to make available for sale. The commission shall issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date two years from enactment].

The commission shall appoint a consultant who shall be an entity unrelated to the electric utility and that meets the commission’s qualifications, to conduct the auction process.

(3) The commission shall not approve a sale unless (i) the sale price of an asset or assets equals or exceeds the book value for the asset or assets, (ii) the commission determines the bidder meets all the applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan approved by the commission, (iv) the bidder proves to the satisfaction of the commission that it will preserve labor agreements in effect at the time of the sale and (v) the sale will result in a net benefit to ratepayers, as determined by the commission.128

(4) All net proceeds realized by an electric utility from the sale of nonnuclear generation assets pursuant to this section that exceed the total book value of all the assets sold pursuant to this section shall be netted against the amount of stranded costs as provided in subdivision (4) of subsection H and subsection I of Section XXX-19-C of this Act.

(5) If an electric utility complies with the provisions of this subsection but does not receive any bids for an asset by a qualified bidder that equal or exceed the minimum bid as provided in this subsection, the commission shall calculate the value of stranded costs for each such asset in accordance with subsection G of Section XXX-19-C of this Act.

SEC. XXX-19-B. STRANDED COST RECOVERY—NUCLEAR GENERATION ASSETS

A. Definitions. As used in this section:

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128 Section allowing affiliates to bid removed.
(1) "Generation assets" means electric generation facilities and generation-related operations and functions owned by an electric utility and includes associated contractual obligations for energy or capacity from such generation assets; and

(2) "Net proceeds" means the book income from the sale or divestiture of assets, consisting of sales price less reasonable expenses of sale and related income and other taxes.

B. Divestiture or transfer. Not later than [four to seven years after enactment], each electric distribution utility shall either (1) submit its nuclear generation assets to a public auction held in a manner designed to produce the best sale price,129 in accordance with subsection C of this section in order to divest itself of remaining nuclear generation assets, or (2) transfer remaining nuclear generation assets to one or more legally separate corporate affiliates at their book value, in which case no stranded costs shall be recovered.

C. Divestiture plan.

(1) Each electric distribution utility that elects to divest itself of its nuclear generation assets shall, in a time frame that will allow divestiture to occur by [date chosen above], submit a divestiture plan to the commission. The divestiture plan shall include (i) any documentation the commission determines is reasonably necessary to approve the auction procedure, (ii) a detailed description of the process for the sale and transfer of nuclear generation assets and (iii) information the commission determines is necessary for the commission to determine the value of the minimum bid for each nuclear generation asset, as provided in subdivision 3 of this subsection. The commission shall hold a hearing and issue a final order approving or modifying the plan in a time frame that will allow divestiture to be accomplished by [date chosen above]. Any hearing shall be conducted as a contested case. The commission shall appoint a consultant to conduct the auction process, who shall be an entity unrelated to the said utility and that meets the qualifications of the commission.130

129 Connecticut standard of “commercially reasonable” replaced with higher standard.

130 Connecticut requires consultation with Office of Consumer Counsel in selection of consultant.
(2) The commission shall not approve a sale unless (i) the sale price equals or exceeds the minimum bid established by the commission for the asset, (ii) the commission determines the bidder meets all applicable qualifications established by federal law and regulation, (iii) the sale is conducted in accordance with the divestiture plan as approved by the commission, (iv) the bidder proves to the satisfaction of the commission that the bidder will preserve labor agreements in effect at the time of sale\textsuperscript{131} and (v) the sale will result in a net benefit to ratepayers, as determined by the commission. Transfer in ownership of any asset shall not occur until the commission determines that the purchaser is fully qualified to provide electric generation services pursuant to [Section XXX-8], or pursuant to applicable federal law and regulation.\textsuperscript{132}

(3) The commission shall determine the minimum bid price for each nuclear generation asset by determining the future net cash flow that a nuclear generation asset of comparable size, age and technical characteristics that is prudently and efficiently operated would be expected to produce over its expected remaining useful life, discounted to a present value.\textsuperscript{133}

(4) If a final bid is less than book value for an asset, the electric distribution utility shall be entitled to recover the difference between the bid price and the book value as stranded costs pursuant to subdivision (2) of subsection H of Section XXX-19-C.\textsuperscript{134} If a final bid exceeds book value for an asset, the net

\textsuperscript{131} Connecticut statute has many protections for labor. In this case, the risk is that a bidder will promise a high bid, hoping to reduce costs after the sale by firing existing plant staff, and hiring new non-union labor or renegotiating with the current staff to stay on at lower wages.

\textsuperscript{132} If the purchaser does not intend to sell the power at retail, no license is required.

\textsuperscript{133} Connecticut subdivision permitting affiliate of utility to bid is deleted.

\textsuperscript{134} This provision would effectively fix the value of stranded costs, and make them a function of the bid process, with no later true-up if circumstances change. For example, if the plant later were to be taken out of service before the end of its useful life, but were still subject to regulation, the utility would have to take the plant out of ratebase, and might not recover its undepreciated value. For a further discussion of the difference between fixing stranded cost based on the results of a divestiture sale and

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proceeds realized by the electric distribution company that are above book value should be netted against the amount of stranded costs as provided in subdivision (4) of subsection H of Section XXX-19-C of this Act.

D. No satisfactory bid; calculation of stranded costs.

(1) If an electric utility elects to sell all its remaining nuclear generation assets by public auction and complies with the provisions of subsection C of this section but does not receive bids for an asset by a qualified bidder that equal or exceed the minimum bid price, as determined by the commission in accordance with the provisions of subsection C of this section, the commission shall calculate the value of stranded costs for each such action in accordance with subdivision (3) of subsection H of Section XXX-19-C of this Act.

(2) Not later than [date from above] the electric utility shall transfer the nuclear generation assets described in subdivision 1 of this subsection to one or more legally separate corporate affiliates. If in order to comply with rules, regulations or licensing requirements of the United States Nuclear Regulatory Commission an electric utility is unable to legally separate its nuclear assets to one or more corporate affiliates, the generation assets may remain in separate divisions of the electric utility.

E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the stranded cost recovery assessment in accordance with Section XXX-19-D of this Act.

fixing stranded costs by a recurring administrative (commission) determination of the difference between the costs of the asset and the likely value, see Stranded Costs and Market Structures in the Electric Industry, prepared by Tellus Institute for AARP, 1997.
(2) On or after the date when a nuclear generation asset is sold at public auction or transferred to a corporate affiliate, the commission shall calculate the stranded costs for nuclear generation assets in accordance with subsection H of Section XXX-19-C of this Act.\textsuperscript{135}

\section*{SEC. XXX-19-C. STRANDED COST ESTIMATION}

\textbf{A. Definitions.}\textsuperscript{136}

(1) "Stranded cost recovery assessment"\textsuperscript{137} means those non-bypassable rates and other charges that are authorized by the commission (i) to recover stranded costs as determined under this section or (ii) to recover costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act.\textsuperscript{138} If requested by the electric utility or electric distribution utility, the commission shall include in the stranded cost recovery assessment non-bypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions contemplated in this section.

(2) "Customer" means any individual, business, firm, corporation, association, tax-exempt organization, joint stock association, trust, partnership, limited liability company, the United States or its agencies, this state, any political subdivision thereof or state agency that purchases electric generation or distribution services as a retail end user in the state from any electric supplier, electric utility or electric distribution utility;

\textsuperscript{135} Subdivision 2, regarding securitization bonds, deleted.

\textsuperscript{136} Subsections and subdivisions dealing with securitization deleted.

\textsuperscript{137} Connecticut uses term "competitive transition assessment."

\textsuperscript{138} "E. Calculation, recovery of interim stranded nuclear generation costs."

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return on and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."
(3) "Net proceeds" means net proceeds as defined in Section 6 of this Act.

(4) "Stranded costs" means that portion of generation assets, generation-related regulatory assets or long-term contract costs determined by the commission in accordance with the provisions of subsections E, F, G and H of this section.

(5) "Generation assets" means the total construction and other capital asset costs of generation facilities expressly approved for inclusion in rates before July 1, 1997 [a recent date by which time the risk that the system would be opened to competition would be clear to any reasonable person], but does not include (i) any costs relating to the decommissioning of any such facility or (if) any costs which the commission found during a proceeding initiated before [effective date of statute], were incurred because of imprudent management.

(6) "Generation-related regulatory assets" means generation-related costs authorized or mandated before [same date as cut-off for imprudence proceeding initiation in subdivision 5], by the commission, expressly approved for inclusion in rates, and include, but are not limited to, costs incurred for deferred taxes, conservation programs, environmental protection programs, public policy costs and research and development costs, net of any applicable credits payable to customers, but does not include any costs which the commission found during a proceeding initiated before [same imprudence proceeding cutoff], were incurred because of imprudent management.

(7) "Long-term contract costs" mean the above-market portion of the costs of contractual obligations expressly approved for inclusion in the rates that were entered into before [date], arising from independent power producer contracts required by law or purchased power contracts approved by the Federal Energy Regulatory Commission.

139 Modifier "expressly" added.

140 Modifier "expressly" added.

141 Modifier "expressly" added.

142 Connecticut uses transition date.
B. Commission order; divestiture as precondition. The commission shall, in accordance with the provisions of this section, identify and calculate, upon application by an electric utility, those stranded costs that may be collected through the stranded cost recovery assessment, which shall be calculated and collected in accordance with Section XXX-19-D of this Act. No electric distribution utility shall be eligible to claim stranded costs unless a public auction has been held to divest itself of all non-nuclear generation assets in accordance with subsection B of Section XXX-6 of this Act or the electric utility has sold its non-nuclear generation assets in accordance with [cross-reference any statutory requirements on sale of generation assets].

C. Efforts to reduce stranded costs; mitigation of near-term rate impacts.

(1) Notwithstanding subdivision (1) of subsection E of Section XXX-19-B of this Act,\(^{144}\) any electric utility seeking to claim stranded costs shall, in accordance with this subsection, take all reasonable efforts to reduce such stranded costs, and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased.\(^{145}\) Before the approval

\(^{143}\) Some states require utilities to get commission or even legislative approval to sell off the assets they use in providing their public service. The reason these statutes were enacted was to make sure that a public utility did not take itself out of business and leave customers without service, unless other means to provide service were assured.

\(^{144}\) "E. Calculation, recovery of interim stranded nuclear generation costs.

(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

\(^{145}\) The term "mitigate" is used in the Connecticut statute. "Mitigation" has come to mean a large number of actions that tend to reduce near-term rate impacts or the total amount claimed in stranded costs, but which do not necessarily reduce the outlay expected of customers, at least over the remaining useful life of the assets claimed to be stranded by competition. This rewrite, therefore, takes pains to use language that is more specific in describing what is authorized, and what the impact will be, requiring always that the net present value of any steps not increase as a result of "mitigation" efforts.
by the commission of any stranded cost recovery, the electric utility shall show to the satisfaction of the commission that the electric utility has taken all reasonable steps to reduce such stranded costs and to mitigate near-term rate impacts, so long as the present value of such stranded costs is not thereby increased, and also that it has taken all reasonable steps to minimize the net present value cost to be recovered from customers.

(2) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, shall include:

(i) except to the extent provided in collective bargaining agreements or agreements to purchase generation assets entered into before [effective date of statute], the obtaining of written commitments from purchasers of generation facilities divested pursuant to Sections XXX-14 and XXX-19-B of this Act, that the purchasers will offer employment to persons who were employed in nonmanagerial positions by a divested facility at any time during the three-month period prior to divestiture, at levels of wages and overall compensation not lower than the employees' lowest level during the six-month period before the date the contract to divest the asset was entered into;

(ii) good faith efforts to negotiate the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission;

(iii) the reasonable costs of the consultants appointed to conduct the auctions of generation assets pursuant to Sections XXX-6 and XXX-7 of this Act;

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146 Inserted qualifier "net present value."

147 This section is not needed if employment-related costs are not included in stranded costs for recovery in the stranded cost recovery assessment.

148 Connecticut also requires that "the fixed present value of any contract to which a political subdivision of the state is a party shall be calculated using the political subdivision's tax-exempt borrowing rate as the discount rate."

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(iv) maximization of market revenues from existing generation assets;\(^{149}\) and
(v) efforts to maximize current and future operating efficiency, including appropriate and timely maintenance, trouble-shooting, aggressive identification and correction of potential problem areas.\(^{150}\)

(3) Steps to reduce costs, mitigate near-term rate impacts, or minimize the net present value cost to be recovered from customers, may include:

(i) reallocation of depreciation reserves for generation assets to existing generation assets to the extent consistent with generally accepted accounting principles,\(^{151}\) and so long as net costs are not shifted between customer classes as a result of such reallocation;

(ii) reduction of book assets by application of net proceeds of any sale of existing assets, so long as net costs are not shifted between customer classes as a result of such application;\(^{152}\)

(iii) voluntary write-offs of above-market generation assets;\(^{153}\)

\(^{149}\) Connecticut’s original language would make it permissive for a utility to try to get the best price for the output of its generation assets not used for own-load supply. It should be mandatory, not permissive, so the language is moved to the mandatory subdivision of the subsection.

\(^{150}\) Again, appropriate and timely maintenance to maximize operating efficiency is a baseline requirement of sound utility management, and should not be permissive. As with the other items of sound utility management that the language in the Connecticut statute makes permissive, the better course is not only to require such behavior, but to reduce stranded cost recovery by the extent of costs incurred that would have been avoided by such sound practices. For this reason, such steps are mandatory in the model statute.

\(^{151}\) Reallocation of depreciation reserves does not lower net present value costs. Also, it is necessary to be alert for cost-shifting when reallocating such depreciation reserves.

\(^{152}\) Connecticut leaves open the question of whether the commission can require that such offsets be done, or whether it is up to the utility. It would be preferable to require that such offsets be made, except where and to the extent the result is cost-shifting between classes.

\(^{153}\) As noted by Tellus Institute in their white paper for AARP, *Stranded Costs and Market Structures in the Electric Industry*, 1997, voluntary write-offs amount to a sharing of stranded costs between stockholders and ratepayers.
(iv) the decision to retire uneconomical generation assets, and
(v) efforts to divest generating sites at market prices reflective of best use of sites.

(4) Cost reduction and rate impact mitigation measures shall not include any expenditures to restart a nuclear generation asset that was not operating for reasons other than scheduled maintenance or refueling at the time such expenditure was made.

(5) Any such cost reduction and rate impact mitigation efforts shall be subject to approval by the commission.

(6) The commission shall allow the cost of such cost reduction and rate impact mitigation measures to be included in the calculation of stranded costs to the extent that such costs are reasonable relative to the amount of the reduction in stranded costs resulting from the measures.

D. Application; contents; contested hearing. An electric utility shall submit to the commission an application for recovery of that portion of generation-related regulatory assets, long-term contract costs, generation assets and cost-reduction and rate impact mitigation costs which are determined by the commission in accordance with this section and subdivision (1) of subsection E of Section XXX-19-B of this Act. The application shall contain

154 The impact such retirement will have on rates will vary based on the state's treatment of the undepreciated costs of retired uneconomic plant. Typically, utilities have not received 100 percent recovery under monopoly regulation for the undepreciated costs of such plant, but rather some sharing has been imposed. One typical formula is amortization (recovery over time) of the undepreciated costs, without any return, which means the utility loses the expected profits and time value of money related to the undepreciated portion of the plant. In such a scenario, a 10 year recovery period would cause the utility to recover approximately 50 percent of the net present value of the undepreciated amount.

155 See note above about offsets by proceeds of sales.

156 "E. Calculation, recovery of interim stranded nuclear generation costs.
(1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (2) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."
description of cost reduction and rate impact mitigation efforts, and a request for recovery through the stranded cost recovery assessment.\textsuperscript{157} The commission shall hold a contested hearing for each electric utility and shall issue a finding of the calculation of stranded costs in a time frame that allows for collection of the stranded cost recovery assessment to begin on [transition date].

E. Value of regulatory assets. The commission shall calculate the stranded costs for generation-related regulatory assets to be their book value as of [transition date].\textsuperscript{158}

F. Calculation of stranded costs; long-term contracts.

(1) The commission shall calculate the stranded costs for any portion of a long-term contract cost that have been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission as such present value. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.

(2) The commission shall calculate the stranded costs for any portion of a long-term contract cost that has not been reduced to a fixed present value through the buyout, buydown or renegotiation of independent power producer contracts and purchased power contracts approved by the Federal Energy Regulatory Commission by comparing the contract price to the market price at least annually. In making such calculation, the commission shall net purchased power contracts approved by the Federal Energy Regulatory Commission that are below market value against any such contracts that are above market value.\textsuperscript{159}

\textsuperscript{157} Connecticut reference to securitization deleted.

\textsuperscript{158} Connecticut reference to securitization deleted.

\textsuperscript{159} Connecticut reference to securitization eliminated. (Connecticut allows long-term contract stranded costs to be recovered, but not securitized.)
G. Non-nuclear generation asset; estimation of stranded cost if not sold.

(1) The commission shall calculate the stranded cost for each generation asset described in this Act to be the difference between its book value and the market value of a prudently and efficiently managed non-nuclear generation facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any,\(^{160}\) (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity,\(^{161}\) (iii) independent market appraisals or (iv) other relevant factors.

(2) The commission shall calculate the stranded costs for such generation assets at least every three years.\(^{162}\)

H. Nuclear generation stranded cost recovery; application; process.

(1) On or before [four years after transition date], an electric utility may submit to the commission an application for recovery of that portion of nuclear generation assets which is determined by the commission in accordance with this subsection, which application shall contain a request for recovery through the stranded cost recovery assessment. The commission shall hold a hearing for each electric utility and issue a finding of the calculation of such nuclear generation assets in accordance with the provisions of this subsection. Any hearing shall be conducted as a contested case.\(^{163}\)

\(^{160}\) Reference to regional sales added.

\(^{161}\) Substituted "energy and/or capacity" for "power and capacity" in Connecticut statute.

\(^{162}\) Connecticut reference to securitization eliminated. (Connecticut allows stranded costs for non-divested nonnuclear generation assets to be recovered, but not securitized.)

\(^{163}\) Connecticut reference to securitization eliminated. (Connecticut allows nuclear stranded costs from nondivested plants, and from divested plants sold at less than book value, to be recovered, but not securitized.)
(2) The commission shall calculate stranded costs for each nuclear generation asset that was divested at a price less than book value as described in subdivision (4) of subsection C of Section XXX-19-B of this Act as the difference between the book value of such asset and the final bid price of the asset. 164

(3) The commission shall calculate the stranded costs for each nondivested nuclear generation asset described in subdivision (1) of subsection D of Section XXX-19-B of this Act as the difference between the book value of this asset and the market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics in a competitive market. In determining the market value of any such asset, the commission may consider (i) the dollars per kilowatt received from the sale of similar generation facilities in the region, if any, 165 (ii) income capitalization based on the operating history and capacity of the facility, the market rates for power, and any existing long-term contracts for the sale of energy and/or capacity, 166 (iii) independent market appraisals or (iv) other relevant factors.

At least every four years after the date when the commission issues an initial finding of the calculation of stranded costs for such nondivested nuclear generation assets as provided in this subdivision until the earlier of (i) the expiration of the collection of the stranded cost recovery assessment or (ii) the date when such an asset is divested, the commission shall hold a hearing and issue a finding to adjust the stranded cost calculation of each such asset and to adjust the stranded cost recovery assessment accordingly to true-up the stranded cost recovery for the difference between the

164 Connecticut language on finality of calculation—"The commission's calculation of stranded costs pursuant to this subdivision shall be final and shall not be subject to further adjustment by the commission."—deleted.

165 Reference to regional sales added.

166 Substituted "energy and/or capacity" for "power and capacity" in Connecticut statute.

167 Connecticut language on use of systems benefit charge to pay for decommissioning costs—"the provision for decommissioning and related costs to be paid from the systems benefit charge provided in section XXX-X of this Act"—deleted.
market value project in such initial finding and the actual market value of a prudently and efficiently managed nuclear generating facility of comparable size, age and technical characteristics during the time period between the initial finding and the adjustment date, provided the second and subsequent adjustments shall reflect the difference during the time period since the most recent true-up. The commission shall calculate the value of each such asset in accordance with the methodology provided in this subdivision. Any hearing shall be conducted as a contested case.

(4) After the commission has calculated the total value of stranded costs of all nuclear generating assets, the commission shall (i) reduce such amount by the net proceeds that are above book value realized by an electric utility from the sale of non-nuclear generation assets pursuant to Section XXX-14 of this Act, (ii) reduce such valuation to reflect the total net proceeds that are above book value realized by an electric utility from the sale of any nuclear generation assets pursuant to subsection C of Section XXX-19-B of this Act and (iii) reduce such amount by the net proceeds that are above book value received by an electric utility for the sale or lease of any real property after [effective date of Act].

1. Balance of net proceeds; application to long-term contracts. If any net proceeds described in subdivision (4) of subsection H of this section remain after the reduction in the calculation of nuclear generation assets pursuant to said subdivision (4) or are realized after said reduction is calculated, the additional amount of such net proceeds shall be netted against long-term contract costs described in subdivision (2) of subsection F of this section, and the stranded cost recovery assessment shall be adjusted accordingly.

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164 Caution about potential for cost-shifting in application of net proceeds of sale of real property, if such real property costs would have been allocated to one class under ratemaking, and are simply netted out against all classes' stranded cost recovery obligation under this provision.

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J. Disallowance for non-operating nuclear plant and regulatory assets.\(^{169}\)

(1) No electric utility shall be eligible to claim any stranded costs for a nuclear generation asset or for any generation-related regulatory asset related to such generation asset, if the generation asset is not operating as a result of an order issued by the United States Nuclear Regulatory Commission that applies specifically to such asset. Any such asset shall be eligible after it is permitted to and has resumed operation, and is selling power provided, however, that no true-up shall provide stranded cost recovery for that period during which such asset was not operating.\(^{170}\)

(2) Any generation asset that is retired shall no longer be eligible for stranded cost recovery as previously calculated pursuant to this section, but may be eligible for stranded cost recovery for so much of the undepreciated cost that would have been permitted to be included in rates under traditional regulation.\(^{171}\)

K. Netting proceeds of post-transition sale of nuclear assets. If an electric utility elected to transfer any of its nuclear generation assets and related operations and functions to a separate corporate affiliate or to a division that is functionally separate from the electric distribution utility pursuant to Section XXX-19-B of this Act, and subsequently sold any such assets in an arm’s length transaction to an unrelated entity prior to [date 10-15 years after effective date] the net proceeds realized from such sale that exceed book value for such assets shall be netted against the total amount of stranded costs, and the stranded cost recovery assessment shall be adjusted accordingly, and, if appropriate, other reimbursement of ratepayers shall be ordered by the commission.

\(^{169}\) Connecticut only creates a disallowance of stranded cost recovery for non-operating nuclear plant. Question whether there should be any stranded cost recovery for non-operating plants, or at least whether the recovery should be adjusted to reflect any reduction in cost recovery that would have taken place had the asset remained subject to regulation.

\(^{170}\) Added proviso regarding no true-up covering period of non-operation.

\(^{171}\) Deleted subdivision (2), regarding particular Connecticut nuclear generating plant, and replaced with generic language on retired plant.
SEC. XXX-19-D. STRANDED COST RECOVERY ASSESSMENT AUTHORIZED

A. Assessment authorized. The commission shall assess and beginning [one year after transition date], impose a stranded cost recovery assessment, which shall be imposed on all customers of each electric distribution utility to provide funds for the purposes described in section D of this section. The commission shall hold a contested case hearing to determine the amount of the stranded cost recovery assessment.

B. Factors to consider. The commission shall consider the effect on all customer rates and other factors relevant to reducing rates in determining the amount of the stranded cost recovery assessment and the manner in which and the period over which it shall be imposed in any decision of the commission to set or adjust the stranded cost recovery assessment.

C. Allocation of costs. The stranded cost recovery assessment shall be determined by the commission in a general and equitable manner and shall be imposed on all customers at a rate that is applied equally to all customers of the same class in accordance with the methods of allocation in effect as of [effective date of Act]. The assessment shall have a generally applicable manner of determination that may be measured on the basis of percentages of total costs of retail sales of electric generation services. Any exemption of the assessment by customers under a special contract shall not result in an increase in rates to any customer.

D. Amount of assessment. The commission shall establish, fix and revise the assessment in an amount sufficient at all times to:

(1) pay an electric utility’s stranded costs; and

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\[172\] Securitization references deleted.

\[173\] Language exempting special contract customers deleted, except for last sentence, below, by which utility is permitted to exempt such customers in whole or in part, but may not recover costs attributable to such customers from other customers.

\[174\] Securitization language deleted.
(2) Pay interim capital costs determined under subdivision (1) of subsection E of Section XXX-19-B of this Act.175

175 "E. Calculation, recovery of interim stranded nuclear generation costs. (1) On and after [date two years or so after passage of Act], and prior to the date when a nuclear generation asset is sold at public auction or transferred to a separate affiliate, the difference between the return of and on capital costs allowed in rates for the nuclear generation asset and the income capitalization value established for such asset for such interim period pursuant to the methodology described in subdivision (3) of subsection C of this section shall be collected through the competitive transition assessment in accordance with Section XXX-19-D of this Act."

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APPENDIX III: STATE UDAP CITATIONS

Ala. Code § 8-19-1
Alaska Stat. § 45.50.471
Ark. Code Ann. § 4-88-101
Cal. Civ. Code § 1750 (West)
Cal. Bus. & Prof. Code §§ 17200 & 17500 (West)
Colo. Rev. Stat. § 6-1-101
Conn. Gen. Stat. § 42-110a
Del. Code Ann. tit. 6 § 2511
Del. Code Ann. tit. 6 § 2531
D.C. Code Ann. § 28-3901
Ga. Code Ann. § 10-1-370
Haw. Rev. Stat. § 480
Haw. Rev. Stat. § 481A
Idaho Code § 48-601
815 Ill. Comp. Stat. Ann. § 505/1 et seq. (Smith-Hurd)
815 Ill. Comp. Stat. Ann. § 510/1 et seq. (Smith-Hurd)
Ind. Code Ann. § 24-5-0.5-1 (Burns)
Iowa Code Ann. § 714.16 (West)
Ky. Rev. Stat. § 367.110
Mass. Gen. Laws Ann. ch. 93A

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
Minn. Stat. Ann. § 8.31 (West)
Minn. Stat. Ann. § 325D.44
Minn. Stat. Ann. § 325F.69
Miss. Code Ann. § 75-24-1
Mo. Rev. Stat. § 407.010
Mont. Code Ann. § 30-14-101
Neb. Rev. Stat. § 87-301
Nev. Rev. Stat. §§ 41.600, 598.0903
N.M. Stat. Ann. § 57-12-1
N.Y. Exec. Law § 63(12) (Consol.)
N.Y. Gen. Bus. Law § 349 and § 350 (Consol.)
N.C. Gen. Stat. § 75-1.1
Ohio Rev. Code Ann. § 1345.01 (Baldwin)
Ohio Rev. Code Ann. § 4165 (Baldwin)
Or. Rev. Stat. § 646.605
R.I. Gen. Law § 6-13.1-1
S.D. Codified Laws Ann. § 37-24-1
Utah Code Ann. §§ 13-2-1 and 13-5-1
Utah Code Ann. § 13-11-1
Va. Code § 59.1-196
W. Va. Code § 46A-6-101
Wis. Stat. Ann. § 100.18 (West)
Wis. Stat. Ann. §§ 100.20, 100-24, 100-26 (West)
Wyo. Stat. § 40-12-101
March 23, 2001

The Honorable Dick Cheney
The White House
Washington, DC 20500

Dear Mr. Vice President:

I am writing to you in your capacity as chairman of the White House Energy Policy Development Task Force. The Association of American Railroads (AAR) appreciates this opportunity to offer its observations on the impact of higher energy prices on the nation's rail sector.

I would note that AAR's comments are intended to supplement the briefing papers submitted to you earlier by the Coal-Based Generation Stakeholders group of which the railroads are leading members. Some 52 percent of our nation's electricity is generated by coal (with more than two-thirds of that coal transported by rail) and coal is one of the nation's least expensive sources of electrical energy.

In developing an effective energy strategy, it is important to remember that America — at least until recently — has enjoyed some of the lowest energy prices in the world. These low energy costs have enhanced our competitive position in all sectors of trade from agriculture to manufacturing.

Railroads applaud the Bush administration's efforts to develop a national energy strategy, and we commend you for personally taking on the responsibility for this effort. Energy improvements will contribute to the industry's bottom line due to both lower diesel fuel costs as well as their impact on railroad customers. These customers range from automobile manufacturers whose products can be affected by higher fuel prices to electric utility customers for whom railroads ship millions of tons of coal each year.
Despite the fact that railroads are three times more fuel efficient than trucks, the price of diesel fuel continues to be a major challenge for the rail industry. In providing cost and energy efficient freight service, U.S. freight railroads consume huge volumes of diesel fuel — over four billion gallons annually. Because the cost of fuel is a major cost component of railroad operations — comprising 7.1 percent of industry costs — the alarming jump in fuel prices over recent periods has been a substantial hardship for railroads and their customers.

The price of railroad fuel toward the end of 2000 was the highest during the past 20 years, and likely the highest ever. As of the end of 2000, the average price paid by railroads for diesel fuel had rocketed to a level 239 percent of the price at the beginning of 1999. Long term contracts and customer agreements often limit the ability of railroads to recover major cost increases in a timely fashion. Thus, railroads are being forced to expend an additional $2.4 billion annually or $6.6 million more each and every day. Moreover, because this huge increase in costs is required to perform exactly the same level of service, these increased costs have a direct impact on the industry’s financial bottom line. In fact, they represent an amount equal to three-quarters of industry net income.

Looking ahead, future pricing policies will have to include major price increases to recover lost profitability as a result of fuel cost increases. Some shippers have indicated that they will be unable to absorb these transportation rate increases and will be forced to pass the expense on to their customers.

Because railroads have huge fixed costs to cover, it makes economic sense to move traffic that is marginally profitable (i.e., railroads handle traffic that is slightly above variable cost because it contributes to fixed cost). However, the fuel cost increases have raised our variable costs to such a degree that, in some segments, variable costs are becoming higher than the revenue, and traffic that has been historically profitable may have to be eliminated.

Moreover, higher energy prices are having a negative effect on some freight shippers, a development that affects freight railroads indirectly. For instance, eight of the ten major aluminum producers served by one leading railroad are currently shut down, and the remaining two are operating at 50 percent capacity. Instead of producing product, these companies are selling their allotted power.

Other railroads report that dramatically higher natural gas prices have led to significant traffic losses due to reductions in production and plant closures in areas such as plastics, cement, fertilizer, and intermediate gases such as propane and butane.

For these reasons, AAR encourages you to take strong and immediate action to formulate an effective national energy strategy. In addition to urging support for actions...
to reduce energy prices and for the positions of the Coal-Based Generation Stakeholders group, I am pleased to enclose AAR briefing papers on the following three railroad priorities: repeal of the 4.3 cent per gallon "deficit reduction" diesel fuel tax, an acceptable resolution of the coal mine valley fill issue, and establishment of a locomotive fuel efficiency program within the Department of Energy.

AAR looks forward to working with you and the other members of the Energy Policy Development Task Force to craft a balanced and effective energy policy for our nation.

Sincerely,

Edward R. Hamberger

cc: The Honorable Norman Mineta
    The Honorable Spencer Abraham
    Mr. Lawrence Lindsey
    Mr. Andrew Lundquist
    Ms. Karen Kmutson
    Mr. John Frenzel