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The Environmental Duties of Public Utilities Commissions

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The Environmental Duties of Public Utility Commissions

MICHAEL DWORKIN,* DAVID FARNSWORTH**
& JASON RICH***

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INTRODUCTION

A common misconception is that public utility commissions are solely economic regulators, and have neither the authority nor

the obligations to evaluate the environmental impacts of the entities they supervise, nor to make decisions on the basis of environmental considerations. Under this view, environmental protection agencies have the sole authority to address the environmental and public health implications of electric utility service.

That simplistic view ignores statutes in many states that explicitly recognize the link between economic and environmental issues. The narrow view is contradicted both by the explicit authority vested in state utility commissions to consider such diverse and environmentally-significant issues as facility siting, resource planning and acquisition, energy conservation programs, renewable energy development, and emissions disclosure; and by the general charge that regulation of public utilities further the public interest.

This document reviews the statutory authority of state commissions. We present the overwhelming evidence that most public utility commissions have authority to make decisions with the good of the environment in mind.¹ The various types of authority found have been organized below in the following sections:

- General Authority and Obligations;
- Certification, Siting, and Compliance;
- State "NEPA" Statutes;²
- Resource Planning, Conservation Programs, and Environmental Externalities; and
- Restructuring Provisions.

I. General Authority and Obligations

Sixteen state commissions have statutes explicitly setting out a general authority or obligation to consider environmental matters.³ For example, in defining the Maryland Public Service Commission's supervisory and regulatory power, Maryland law provides, in part, that the Maryland Public Service Commission shall, in its role supervising and regulating public service compa-

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

2. See National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370 (1994).

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

nies, "consider the public safety, the economy of the State, the conservation of natural resources, and the preservation of environmental quality."⁴ Furthermore, Vermont law defines the goal of utility policy as:

meeting the public's need for energy services, after safety concerns are addressed, *at the lowest present value life cycle cost, including environmental and economic costs*, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.⁵

Environmental protection may also explicitly be specified as one of the many general policies that a commission is expected to consider in reaching its decisions. For example, one of the general policies of the Commission in North Carolina is to "encourage and promote harmony between public utilities, their users and the environment."⁶

II. Certification, Siting, and Compliance

The primary instrument used by a commission for ensuring adherence with its rules and regulations is the certification process. Applications by new entrants to a state's market are typically reviewed and a certification granted when a commission determines that the applicant has met criteria concerning, *e.g.*, consumer protection, financial and managerial resources, and the public good or necessity. Existing utility companies also seek certification for the siting of discrete projects or for entry into contracts defining major power supply commitments.⁷

In thirty states, certification and siting review includes consideration of environmental protection.⁸ For example, the Arkansas Code provides that state's commission with authority to grant

4. MD. CODE ANN., PUBLIC UTIL. COMP. § 2-113 (2000).

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

6. N.C. GEN. STAT. § 62-2(5) (2000).

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

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

"Certificates of Environmental Compatibility and Public Need."⁹ Thus, pursuant to this statute, and in addition to the other economic issues that commissions typically consider, Arkansas' Commission must take environmental issues into consideration when it reviews applications for siting of such projects as generation stations, or jurisdictional power lines and pipelines.

Commissions may also have environmental review authority in the compliance phase of a project. For example, the Indiana Code requires regulated electric and water utilities to file Environmental Compliance Plans with that state's commission.¹⁰ These filings, reviewed by the state commission, are designed to help the commission ensure ongoing compliance with environmental standards.

Alternatively, a commission may conduct a limited environmental review in the context of certification. This may occur by simply validating the participation and appropriate review by other state (environmental) agencies in the commission's overall certification process. In Kentucky, for instance, for generation siting to be certified by the commission, a project must first have been reviewed by the state's Environmental Cabinet that is comprised of, among others, representatives from state environmental agencies.¹¹ State commissions may also simply have a role in reviewing compliance with federal environmental standards. Under Michigan law, for example, the Michigan Commission must ensure that "all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions."¹²

Other environmental programs developed by the federal government delegate duties to state commissions. The Acid Rain Program developed under the 1990 Clean Air Act amendments is one such program.¹³ The Acid Rain Program employs a market-based system of flexible compliance and allows utilities to choose least-cost strategies, including the use of conservation programs.¹⁴ In 1993, the EPA promulgated regulations specifically listing energy conservation measures and renewable energy sources which may qualify for purposes of allocating sulfur dioxide (SO₂) al-

9. ARK. CODE ANN. § 23-18-501 (Michie 2000).

10. See IND. CODE ANN. §§ 8-1-27 to -28 (2000).

11. See KY. REV. STAT. ANN. § 278.025 (1998).

12. MICH. COMP. LAWS ANN. § 460.10d(9) (West 2000).

13. See Clean Air Act §§ 401-416, 40 U.S.C. §§ 7651-7651o (1994).

14. See *id.* at §§ 404(f), (g).

lowances.¹⁵ State commissions are delegated the authority to certify whether eligible utility companies have conducted energy conservation programs in a manner that meets the program guidelines.¹⁶

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

III. State NEPA Statutes

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

As of 1995, nearly twenty jurisdictions had their own NEPA statutes.¹⁹ Twelve commissions are subject to their state NEPA statutes.²⁰ For example, in New York, where the commission is the lead agency in a project, it must find that

15. See 40 C.F.R. 73.81 (2001) (developed pursuant to section 404(f) of the Clean Air Act).

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

17. See KAN. STAT. ANN. § 74-616(d) (2000).

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

19. Arkansas, California, Connecticut, District of Columbia, Florida, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, Puerto Rico, South Dakota, Virginia, Washington, and Wisconsin. See, e.g., CAL. PUB. RES. CODE §§ 21050-21169 (1994) (California Environmental Quality Act); MONT. CODE ANN. §§ 75-1-101 through 324 (Smith 1997) (Montana Environmental Policy Act (MEPA)); WASH. REV. CODE ANN. § 43.21C.010 through .910 (2000); see also discussion *infra* Appendix.

20. California, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Minnesota, New York, North Carolina, South Dakota, and Washington. See discussion *infra* Appendix. While the State of Montana has a mini-NEPA, the Montana

consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.²¹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

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

V. Restructuring Provisions

The electric industry nationwide has changed considerably over the last several years. Generation of electricity, traditionally, part of integrated utility service, is now, in many places, being treated as a competitive industry. As a result, individual customers in many states are now able to shop for their power. To date, twenty-four states, plus the District of Columbia, have restructur-

Commission's "exercise of regulatory authority over rates and charges" is specifically exempted from the statute's provisions. MONT. CODE ANN. § 75-1-201 (Smith 1997).

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

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

23. FLA. STAT. ANN. § 366.041 (West 2000).

tured their electric industries to allow for retail choice.²⁴ In a restructured electric market, environmental matters can be addressed in numerous ways. Here we consider three mechanisms:

- renewable energy mandates;
- requirements for the disclosure of generation characteristics; and
- the use of ratemaking to support environmental and other programs.

In general terms, renewable energy resources are considered relatively benign or less damaging than alternative sources from an environmental standpoint. Fourteen states promote or mandate the purchase of certain amounts of "renewable" sources.²⁵ In Connecticut, for instance, a company seeking to sell electricity in that market is

required to demonstrate that not less than 0.5 percent of its total electricity output is generated from Class I renewable energy sources and an additional 5.5 percent of its total electricity output shall be from Class I or Class II renewable energy sources.²⁶

Another environmental protection mechanism is a requirement that electricity suppliers disclose information regarding the fuel sources of electric power. Disclosure is intended to ensure in-

24. Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia. Restructuring information is based on Energy Information Agency (EIA) data. See ENERGY INFO. AGENCY, DEP'T OF ENERGY, STATUS OF ELECTRIC INDUS. RESTRUCTURING ACTIVITY AS OF [THE CURRENT MONTH], available at http://www.eia.doe.gov/cneaf/electricity/chg_str/regmap.html (updated monthly). In addition to the legislative restructuring occurring in many states, the State of New York is restructuring its electric industry through regulatory means. See *id.* Legislation and orders are also pending in Alaska and South Carolina. Finally, in seventeen other states, commission or legislative investigations are ongoing. See *id.*

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

26. CONN. GEN. STAT. ANN. § 16-245a (West 1998 & Supp.); CONN. AGENCIES REGS. § 16-245-5 (2001). See *In re SCASCO, Inc.*, Docket No. 99-10-02, 2000 WL 504274 (Conn. Dep't of Pub. Util. Control Mar. 22, 2000).

formed decision making about sources of electricity, and to enable customers to make choices based on criteria other than just price. Nine states require disclosure of a electricity retailers' fuel mix characteristics.²⁷ For example, Illinois issued an order and disclosure rule in 1998:

Section 16-127 of the Public Utilities Act requires each electric utility and ARES [alternative retail electric supplier] to provide customers with information concerning the known sources of electricity supplied, broken out by percentages of biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power, and other resources. Moreover, the Act requires each electric utility and ARES to provide customers with information on the amounts of carbon dioxide, nitrous oxides, and sulfur dioxide emissions, as well as nuclear waste, attributable to the known sources of electricity supplied.²⁸

Finally, ratemaking is another method used in restructuring legislation to promote environmental goals. In much of the United States a portion of retail rates is identified and designated as a "system benefits charge" or "public benefits charge." This mechanism is used to support the use of renewable resources, and to promote energy efficiency and conservation.²⁹ System benefits charges for various environmental programs are used in sixteen states and the District of Columbia.³⁰ In California, for instance, the Commission is required to order electric corporations to direct funds toward various public benefit programs, including research, environmental and low income energy programs to ensure their continued existence in a restructured environment.³¹ In Delaware, the system benefits charge is targeted at programs for conservation and energy efficiency.³²

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

28. Illinois Commerce Commission Docket 98-0194 Regarding Implementation of Section 16-127 of the Public Utilities Act, 1998 WL 698377, at *1 (July 22, 1998) (Illinois Commission order issuing proposed rules concerning environmental disclosures to be made to customers and the commission by electric utilities and ARESSs).

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

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

31. See CAL. PUB. UTIL. CODE § 381 (West 1994 & Supp. 2000).

32. See DEL. CODE ANN. tit. 26, § 1012(b) (Int. Supp. 1999).

CONCLUSION

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

APPENDIX

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

- General Authority and Obligations;
- Certification, Siting, and Compliance;
- State NEPA Statutes;
- Resource Planning, Conservation Programs, and Environmental Externalities; and
- Restructuring Provisions.

Generally speaking, the report on each state is structured under each of these headings, however, where there appears to be no authority in a certain category, that category is not listed. Where state utility commission authority is not evident in any category, that state is not listed. A summary of this information is contained in Table A.

TABLE A

	GENERAL AUTHORITY AND OBLIGATIONS	CERTIFICATION, SITING, AND COMPLIANCE	STATE NEPA STATUTES	RESOURCE PLANNING, CONSERVATION PROGRAMS, AND ENVIRONMENTAL EXTERNALITIES	RESTRUCTURING: GENERATION DISCLOSURE RENEWABLES PORTFOLIO PUBLIC BENEFITS
TOTALS	15	30	11	36	21
STATES					
Alabama					
Alaska	X				
Arizona		X			
Arkansas		X		X	Disclosure, Public Benefits
California		X	X	X	Disclosure, Public Benefits
Colorado				X	
Connecticut	X	X	X	X	Renewable Portfolio Standard, System Benefits Charge
Delaware					Disclosure, System Benefits Charge, Net Metering
Florida	X			X	
Georgia		X	X	X	

	GENERAL AUTHORITY AND OBLIGATIONS	CERTIFICATION, SITING, AND COMPLIANCE	STATE NEPA STATUTES	RESOURCE PLANNING, CONSERVATION PROGRAMS, AND ENVIRONMENTAL EXTERNALITIES	RESTRUCTURING: GENERATION DISCLOSURE RENEWABLES PORTFOLIO PUBLIC BENEFITS
Hawaii			X	X	
Idaho				X	
Illinois	X	X		X	Disclosure
Indiana		X			
Iowa	X	X		X	
Kansas				X	
Kentucky		X		X	
Louisiana					
Maine	X	X		X	Generation Portfolio Standard, Conservation, Air Quality Monitoring
Maryland	X	X	X	X	Disclosure, Study of Renewables Portfolio Standard and Air Emissions Surcharge
Massachusetts		X	X	X	Conservation, Disclosure, Renewables Portfolio Standard, Energy Efficiency
Michigan				X	Disclosure, Renewables Education
Minnesota		X	X	X	
Mississippi	X				
Missouri					
Montana					System Benefits Charge, Conservation, Renewables
Nebraska				X	
Nevada		X		X	Renewables Portfolio Standard
New Hampshire		X		X	Principles Support Environmental Goals
New Jersey	X	X			Disclosure, Emission Portfolio Standard
New Mexico					Disclosure, System Benefits Charge
New York	X	X	X	X	
North Carolina	X	X	X	X	
North Dakota		X		X	
Ohio		X		X	Energy Efficiency Loan Program
Oklahoma				X	

	GENERAL AUTHORITY AND OBLIGATIONS	CERTIFICATION, SITING, AND COMPLIANCE	STATE NEPA STATUTES	RESOURCE PLANNING, CONSERVATION PROGRAMS, AND ENVIRONMENTAL EXTERNALITIES	RESTRUCTURING: GENERATION DISCLOSURE RENEWABLES PORTFOLIO PUBLIC BENEFITS
Oregon		X		X	System Benefits Charge
Pennsylvania				X	Public Benefits Charge for Conservation
Rhode Island	X	X		X	
South Carolina		X			
South Dakota		X	X		
Tennessee				X	
Texas		X		X	Energy Efficiency, Renewables Promotion
Utah	X			X	
Vermont		X		X	Net Metering, Energy Efficiency
Virginia		X		X	Net Metering
Washington		X	X	X	Net Metering
West Virginia	X	X		X	
Wisconsin	X	X		X	
Wyoming					

ALABAMA

The Alabama Energy Management and Conservation Act of 1980 created the Alabama Department of Energy (ADE), and enumerates among its objectives, the conservation of energy resources, as well as the objective of ensuring “an energy supply adequate to protect the economic, social and environmental values the state’s citizens now enjoy.”³³ The ADE also monitors

existing programs relating to curtailment, allocation, conservation, planning, regulation and management of all forms of energy and energy sources; and [it administers] all other programs that are not otherwise provided by law.³⁴

33. ALA. CODE § 41-6A-2(3)(6) (1991).

34. *Id.* § 41-6A-4(6)

ALASKA

I. General Authority and Obligations

The general powers and duties of the Alaska Public Utilities Commission, in establishing electric service rates, include the promotion of the conservation of resources used in the generation of electric energy.³⁵

ARIZONA

II. Certification, Siting, and Compliance

The Arizona Corporation Commission establishes the eleven-person "Power Plant and Transmission Line Siting Committee," which has the power to issue or deny the required Certificates of Environmental Compatibility. The evaluation process includes broad consideration of environmental factors including "the total environment of the area."³⁶ The Committee must also give special consideration to areas that have "biological wealth" or that are "habitats for rare and endangered species."³⁷

V. Restructuring Provisions

Arizona has restructured its electricity industry.³⁸ "The delivery of electricity over distribution systems should continue to ensure environmental protection and fair access for all market participants."³⁹

ARKANSAS

II. Certification, Siting, and Compliance

The Utility Facility Environmental and Economic Protection Act provides the Arkansas Public Utility Commission with the authority to consider the environment in regulating the siting and construction of new facilities.⁴⁰ Certificates of Environmental Compatibility and Public Need are required for the construction of major utility facilities.⁴¹

35. See ALASKA STAT. § 42.05.141(7)(c) (Michie 1998) (Public Utilities Commission Act).

36. ARIZ. REV. STAT. §§ 40-360.01, 40-360.06A(6) (2000).

37. *Id.* §§ 40-360.06(B), 40-360.07.

38. See *id.* § 40-202(B).

39. *Id.* § 30-801.

40. See ARK. CODE ANN. §§ 23-18-501-529 (Michie 1987 & Supp. 1999).

41. See *id.* § 23-18-510.

The Commission may not issue the certificate unless it finds that

the facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, and the various alternatives, if any, and other pertinent considerations.⁴²

III. State NEPA Statute

Although Arkansas does not have a mini-NEPA statute, the Commission is required to invite comments from other state agencies as to the adequacy of an applicant's statements on the Certificate application.⁴³

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Under the Energy Conservation Endorsement Act,

it shall be considered a proper and essential function of [the] public utilities to engage in energy conservation programs, projects and practices which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels.⁴⁴

The Arkansas Commission has the power to "propose, develop, solicit, approve, require, implement, and monitor measures by utility companies which conserve, as well as distribute, electrical energy and supplies of natural gas, oil, and other fuels."⁴⁵

V. Restructuring Provisions

The Electric Consumer Choice Act of 1999 requires the Public Service Commission to establish standards for the "disclosure of the environmental effects of the generation being supplied, where such disclosure would be practical and accurate."⁴⁶

42. *Id.* § 23-18-519(4).

43. *See id.* § 23-18-514.

44. *Id.* § 23-3-404.

45. ARK. CODE ANN. § 23-3-405(a)(1).

46. *Id.* § 23-19-401(7).

The Public Service Commission shall also adopt rules to "[e]valuate the impact of competition on renewable energy development and on low income and energy efficiency programs."⁴⁷

CALIFORNIA

II. Certification, Siting, and Compliance

The Public Utilities Commission (PUC) shall consider, as a factor in granting a Certificate of Public Convenience and Necessity, the "influence [of that facility] on the environment" if the PUC concludes that "any emissions or discharges therefrom would have a significant influence on the environment of this state."⁴⁸

III. State NEPA Statute

The California Environmental Quality Act (CEQA) applies to the California PUC.⁴⁹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The California legislature found and declared that

a principal goal of electric and public utilities' resource planning and investment shall be to improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, biomass, and geothermal energy.⁵⁰

The PUC must also consider "a value for any costs and benefits to the environment, including air quality. . . in calculating the cost effectiveness of energy resources, including conservation and load management options."⁵¹

V. Restructuring Provisions

California has restructured its electricity and natural gas industries.⁵² The PUC has a duty to order electric corporations to direct funds toward various research, environmental, and low-in-

47. *Id.* § 23-19-401(9).

48. CAL. PUB. UTIL. CODE § 1002(a)(4) (West 1994).

49. *See* CAL. PUB. RES. CODE §§ 21000-21178 (West 1994 & Supp. 2000).

50. CAL. PUB. UTIL. CODE § 701.1(a).

51. *Id.* § 701.1(c).

52. *See id.* §§ 328-398.5.

come energy programs, to ensure their continued existence.⁵³ Retail suppliers of electricity are required to disclose their sources of electricity pursuant to California Energy Resources Conservation and Development Commission guidelines.⁵⁴

COLORADO

IV. Resource Planning, Conservation Programs, and Environmental Externalities

In evaluating the rates charged by utilities, the Commission has authority to consider "any factors which influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development."⁵⁵

V. Restructuring Provisions

The Colorado legislature is evaluating whether the state should restructure its electric industry.⁵⁶ Colorado has restructured the natural gas industry. Moneys received through the public benefits charge shall continue to be used for energy conservation programs.⁵⁷

CONNECTICUT

I. General Authority and Obligations

The Public Utility Environmental Standards Act provides the Connecticut Department of Public Utility Control with the authority to consider environmental issues as part of its regulatory mandate.⁵⁸ Enumerated within the legislative findings and purpose of the act is the purpose:

[t]o provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as

53. *See id.* § 381.

54. *See id.* § 398.4.

55. COLO. REV. STAT. ANN. § 40-3-111(1) (West Supp. 2000).

56. *See id.* § 40-4-113.

57. *See id.* § 40-2-122(3)(c)(VIII).

58. *See* CONN. GEN. STAT. ANN. §§ 16-50g to 16-50aa (West 1998 & Supp. 2000) (Public Utility Environmental Standards Act).

stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state.⁵⁹

The Connecticut Siting Council (Siting Council), located within the Department of Public Utility Control shall:

prescribe and establish such reasonable regulations and standards in accordance with the provisions of [the Uniform Administrative Procedure Act] as it deems necessary and in the public interest with respect to siting of facilities and environmental standards applicable to facilities, including, but not limited to, regulations or standards relating to: (1) [r]eliability, effluents, thermal effects, air and water emissions, protection of fish and wildlife and other environmental factors.⁶⁰

When the Public Utility Standards Act conflicts with other provisions, it shall take precedence.⁶¹

II. Certification, Siting, and Compliance

The Council is authorized to issue a Certificate of Environmental Compatibility and Public Need for utility facility siting.⁶² The application procedure for a certificate requires disclosure of effects on the environment.⁶³ Siting Council membership includes chairman or designee of Public Utility Control Authority.⁶⁴

III. State NEPA Statute

The Connecticut Environmental Policy Act requires each state department to review its policies and practices to insure that they are consistent with the states environmental policy plan.⁶⁵ Each state department, institution or agency must include an alternatives analysis in its written environmental impact evaluations.⁶⁶

59. *See id.* § 16-50g.

60. *Id.* § 16-50t(a).

61. *See id.* § 16-50w.

62. *See id.* § 16-50k.

63. *See* CONN. GEN. STAT. ANN. § 16-50l.

64. *See id.* § 16-50j(b).

65. *See id.* §§ 22a-1 to 27p.

66. *See id.* § 22a-1b(b)(4).

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The sixteen member Connecticut Energy Advisory Board includes the Chairperson of the Siting Council, and the Chairperson of the Public Utilities Control Authority; its duties include recommending energy conservation methods in accordance with the state's comprehensive energy plan.⁶⁷ The Council requires each electric generator to provide an annual report containing a twenty-year forecast of loads and resources.⁶⁸

The Department of Public Utility Control appoints and convenes a ten member Energy Conservation Management Board to advise electric distribution companies in the development and implementation of a comprehensive plan to implement cost-effective energy conservation programs and market transformation initiatives.⁶⁹ In evaluating a utility's resource planning, the Department of Public Utility Control must consider the external costs and benefits of all proposed resources, consistent with the state's energy and other policies, including integrated resource planning principles.⁷⁰ The Department of Public Utility Control may approve rate amendments in order to promote a utility's conservation or load management programs.⁷¹

V. Restructuring Provisions

Connecticut has restructured its electric industry.⁷² The State has adopted a Portfolio Standard for renewable energy resources.⁷³ Connecticut has enacted a systems benefit charge which under certain circumstances may be used to fund the legal, appraisal and purchase costs incurred by municipalities "to ensure the environmental, recreational and scenic preservation of any reservoir located within this state created by a pump storage hydroelectric generating facility."⁷⁴

67. *See id.* §§ 16a-3, 16a-35k, 16a-35m.

68. *See* CONN. GEN. STAT. ANN. § 16-50r.

69. *See id.* § 16-245m.

70. *See id.* § 16-19mm.

71. *See id.* § 16-19oo.

72. *See id.* § 16-244.

73. *See* CONN. GEN. STAT. ANN. § 16-245a.

74. *Id.* § 16-245l(a).

DELAWARE

V. Restructuring Provisions

Delaware has restructured its electric utility industry.⁷⁵ The commission:

may promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable sources, biomass, hydroelectric and other such generating sources.⁷⁶

"The commission shall also require each electric supplier to provide disclosure, on a quarterly basis, of a uniform set of information about the fuel mix of electricity purchased by its customers or disclosure of a regional average."⁷⁷

The commission shall establish a working group to "design and implement a consumer education program, including 'Green Power' options, to prepare the citizens of Delaware for retail competition."⁷⁸

"The Commission shall promulgate rules and regulations that provide for net energy metering for residential and small commercial customers who own and operate an electric generation facility. . . ."⁷⁹

FLORIDA

I. General Authority and Obligations

"In the exercise of its jurisdiction, the [Florida Public Service Commission] shall have power over electric utilities. . . [t]o require electric power conservation. . . ."⁸⁰

75. See DEL. CODE ANN. tit. 26, §§ 1001-1017 (Int. Supp. 1999).

76. *Id.* § 1012(b).

77. *Id.*

78. *Id.* § 1014(c).

79. *Id.* § 1014(d).

80. FLA. STAT. ANN. § 366.04(2) (West 2000).

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The commission is authorized to require each utility to develop plans and implement programs for increasing energy efficiency, and to encourage the use of renewable energy sources.⁸¹ In fixing rates "the commission is authorized to give consideration to the efficiency, sufficiency and adequacy of the facilities provided and the services rendered; and energy conservation and the efficient use of alternative energy resources."⁸²

GEORGIA

II. Certification, Siting, and Compliance

Georgia requires utilities to obtain certificates of public convenience and necessity for the construction or sale of power plants.⁸³ The application to the commission for the certificate must include both an integrated resource plan, and a cost-benefit analysis covering the useful life of all capacity resource options considered in developing its current integrated resource plan.⁸⁴

III. State NEPA Statute

Georgia's Environmental Policy Act imposes responsibilities upon the public service commission to "conduct their affairs with an awareness that they are stewards of the air, land, water, plants, animals, and environmental, historical, and cultural resources."⁸⁵

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities are required to file an integrated resource plan with the commission which contains: both demand-side and supply-side capacity options, alternatives analysis for the fuel type and method proposed, and environmental impact estimates including means to avoid potential adverse impacts.⁸⁶

81. *See id.* § 366.81.

82. *Id.* § 366.041.

83. *See* GA. CODE ANN. § 46-3A-3 (1992).

84. *See id.* § 46-3A-4.

85. GA. CODE ANN. § 12-16-2(2) (1992 & Supp. 1996) (Environmental Policy Act).

86. *See id.* §§ 46-3A-1, 46-3A-2.

HAWAII

III. State NEPA Statute

Hawaii has enacted a mini-NEPA provision for the purpose of "establish[ing] a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations."⁸⁷

As a body of state government, the Public Utility Commission (PUC) is subject to the requirements of the provision which include environmental assessments and environmental impact statements for certain actions.⁸⁸

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The policy of the state, as enumerated in the State Planning Act, is to promote renewable energy sources, to conserve energy, and to consider environmental concerns in the development or expansion of power systems.⁸⁹ Utilities are required to conduct net energy metering.⁹⁰

IDAHO

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The commission has the power to authorize rate adjustments to pay for energy conservation measures.⁹¹

ILLINOIS

I. General Authority and Obligations

The Illinois Public Utility Act declares that utilities shall be regulated to ensure efficiency and environmental quality:

The protection of the environment from the adverse external costs of public utility service so that (i) environmental costs of proposed actions having a significant impact on the environment and the environmental impact of the alternatives are iden-

87. HAW. REV. STAT. § 343-1 (1993).

88. *See id.* §§ 343-5.

89. *See id.* § 226-18.

90. *See id.* § 269-16.21 (1993 & Supp. 1996).

91. *See* IDAHO CODE § 61-336 (Michie 1994).

tified, documented, and considered in the regulatory process; (ii) the prudently and reasonably incurred costs of environmental controls are recovered.⁹²

II. Certification, Siting, and Compliance

The Commission shall issue certificates of public convenience and necessity only if the utility demonstrates “that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers.”⁹³

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Department of Natural Resources and the Commission work together on creating objectives for the state’s Energy Policy and Planning Act, for which the General Assembly declared the following benchmarks:

Policies for the protection of the environment must be maintained, [t]he growth of energy demand must be prudently restrained through conservation and improved efficiency of energy use, [and] energy prices should generally reflect the true replacement cost of energy.⁹⁴

V. Restructuring Provisions

The legislative findings concerning the restructuring of the electric industry included: “Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.”⁹⁵

Utilities are required to give a detailed quarterly “Environmental Disclosure” describing the sources of electricity supplied, as well as the amounts of certain pollutants attributable to each type of source.⁹⁶

92. 220 ILL. COMP. STAT. ANN. 5/1-102 (West 1997 & Supp. 2000).

93. *Id.* § 5/8-406(b).

94. *Id.* §§ 1120/2, 1120/4, 1120/5.

95. *Id.* § 5/16-101A(d).

96. *See id.* § 5/16-127.

INDIANA

II. Certification, Siting, and Compliance

New utility construction requires certificate of public convenience and necessity.⁹⁷ Indiana law provides that:

In acting upon any petition for the construction, purchase, or lease for the generation of electricity, the commission shall take into account. . . other methods for providing reliable, efficient, and economical electric service, including refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.⁹⁸

Indiana has enacted regulations covering "clean coal technology" which also require a certificate of public convenience and necessity for the use of such technology. The criteria for issuance of the certificate include an evaluation of the environmental impact of the use of this technology.⁹⁹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Indiana Utility Regulatory Commission may "inquire into or audit a utility's powerplant efficiency and system reliability."¹⁰⁰

IOWA

I. General Authority and Obligations

"The [Iowa Utilities Board] has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electric current for light, heat, and power."¹⁰¹

"The jurisdiction of the board under this chapter [476] shall include effort designed to promote the use of energy efficiency strategies by rate or service-regulated gas and electric utilities."¹⁰²

97. IND. CODE ANN. § 8-1-8.5-2 (1998).

98. *Id.* § 8-1-8.5-4.

99. *See id.* § 8-1-8.7-3.

100. *Id.* § 8-1-2-48(c).

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

102. *Id.* § 476.1.

II. Certification, Siting, and Compliance

A certificate is required for the construction of an electric generating facility. The criteria for the issuance of the certificate include:

[that] the construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact [and that the applicant] has in effect a comprehensive energy management program designed to reduce peak loads and to increase energy efficiency.¹⁰³

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities are required to submit energy efficiency plans to the Board; the Board may approve recovery of the costs to implement conservation program based on the “reasonableness and prudence of the utility’s implementation of an approved energy efficiency plan and budget.”¹⁰⁴

The board has the duty to direct all gas and electric companies to remit funding for the Iowa energy center and the center for global and regional energy research.¹⁰⁵ Electric and gas providers are prohibited from discriminating against customers who use or intend to use renewable energy sources.¹⁰⁶

KANSAS

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Corporation Commission is responsible for developing “a comprehensive state energy conservation plan and the procedures for implementing the plan according to federal requirements.”¹⁰⁷

KENTUCKY

II. Certification, Siting, and Compliance

The Public Service Commission requires utilities to obtain certificates of public convenience and necessity before construc-

103. *Id.* § 476A.6(3), (4).

104. *Id.* § 476.6(19)(e).

105. *See id.* § 476.10A.

106. *See* IOWA CODE ANN. § 476.21.

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

tion of a new facility.¹⁰⁸ Certificates of environmental compatibility are also required before construction of generating facilities. A utility must first submit its plan to the Natural Resources and Environmental Protection Cabinet, that then reports its recommendation to the Commission. Before making its decision, the Commission must conduct a public hearing open to all whose "living environment would be affected by the construction of the proposed facility."¹⁰⁹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Commission may determine the reasonableness of any demand-side management plan proposed by any utility under its jurisdiction.¹¹⁰

MAINE

I. General Authority and Obligations

See Restructuring Provisions below.

II. Certification, Siting, and Compliance

See Restructuring Provisions below.

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Public utilities are prohibited from increasing rates due to customer generation that uses solar energy.¹¹¹

V. Restructuring Provisions

In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable, efficient and indigenous resources, it is the policy of this state to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production.¹¹²

108. See KY. REV. STAT. ANN. § 278.020 (Michie 1989 & Supp. 1998).

109. *Id.* § 278.025(5).

110. See *id.* § 278.285.

111. See ME. REV. STAT. ANN. tit. 35-A, § 702(2) (West 1988).

112. *Id.* § 3210(1).

As a condition of licensing an electricity provider, the Commission must be satisfied that "no less than thirty percent of its portfolio of supply sources for retail electricity sales in this state is accounted for by eligible resources [either a renewable source or an efficient source]."¹¹³

The policy declared in the Electric Rate Reform Act, is that:

improvements in transmission and distribution utility rate design and related regulatory programs have great potential for reducing the cost of electric utility service to consumers, for encouraging energy conservation and efficient use of existing facilities and for minimizing the need for expensive new electric transmission capacity.¹¹⁴

The commission, as it determines appropriate, shall order transmission and distribution utilities to develop and submit specific rate design proposals and related programs for implementing energy conservation and energy efficiency techniques and innovations, either in conjunction with or independent of any rate-making proceeding pending before the commission.¹¹⁵

"The commission shall include the cost of conservation programs in the rates of transmission and distribution utilities."¹¹⁶

The commission was specifically granted the authority to "[m]onitor trends and make recommendations, as appropriate, to the Legislature, to the Governor, to Congress or any federal agency regarding the effects or potential effects of market competition on Maine's air quality."¹¹⁷

MARYLAND

I. General Authority and Obligations

"In supervising and regulating public service companies the Commission shall consider the public safety, the economy of the State, the conservation of natural resources, and the preservation of environmental quality."¹¹⁸

113. *Id.* § 3210(3)

114. *Id.* § 3152(1) (West 1998 & Supp. 1999).

115. *Id.* § 3153-A(1).

116. ME. REV. STAT. ANN. tit. 35-A, § 3211(7).

117. *Id.* § 3215 (1)(B)(2).

118. MD. CODE ANN., PUB. UTIL. COMP. § 2-113(2) (1998).

II. Certification, Siting, and Compliance

Certificates of public convenience and necessity are required for the construction of generating facilities and some transmission lines. The Commission is required to hold a public hearing, and is required to give due consideration to

the effect of the generating station or overhead transmission line on: aesthetics; when applicable, air and water pollution; [and] the availability of means for the required timely disposal of wastes produced by any generating station.¹¹⁹

Alternatives analysis is required for transmission line construction.¹²⁰

III. State NEPA Statute

The Maryland Public Service Commission (PSC) is required to identify, develop, and adopt methods and procedures that evaluate the environmental consequences of their decisions.¹²¹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Each public service company in Maryland is required to formulate and implement long-range plans to provide service. Further, "[t]he Commission shall require each electric company in the State to include in the long-range plan adequate provisions to promote energy conservation to decrease or moderate electric and, as appropriate, natural gas demand from customers."¹²² The Commission shall "(i) impose an environmental surcharge per kilowatt hour of electricity generated within the State; and (ii) authorize each electric company to add the full amount of the surcharge to its customer's bills."¹²³ The money is placed into the "Environmental Trust Fund," and funds a Power Plant Research Program.¹²⁴

119. *Id.* § 7-207(e)(3).

120. *See id.* § 7-209.

121. *See* MD. CODE ANN., NAT. RES. I §§ 1-301 to 1-305.

122. MD. CODE ANN., PUB. UTIL. COMP. §§ 2-118, 7-201, 7-211.

123. *Id.* § 7-203 (1997 & Supp. 1998, 1999).

124. *Id.* § 7-203.

V. Restructuring Provisions

The Maryland legislature declared that one of the purposes of deregulating the electric industry was to “ensure compliance with federal and state environmental standards.”¹²⁵

The Commission shall, by regulation or order, require each electric company and electricity supplier to provide adequate and accurate information to each customer on the available electric services of the electric company or electricity supplier, including disclosure, every 6 months, of a uniform common set of information about: [1.] the fuel mix of the electricity purchased by customers, including categories of electricity from coal, natural gas, nuclear, oil, hydroelectric, solar, biomass, wind, and other resources, or disclosure of a regional fuel mix average; and [2.] the emissions, on a pound per megawatt-hour basis, of pollutants identified by the Commission, or disclosure of a regional fuel mix average.¹²⁶

The Commission must issue a license for a utility to distribute electricity. The application to the Commission must contain “a certification of compliance with applicable federal and State environmental laws and regulations that relate to the generation of electricity.”¹²⁷ Maryland is considering a renewables portfolio standard:

On or before February 1, 2000, the Commission, in consultation with the Maryland Energy Administration, shall report to the Governor and, to the General Assembly on the feasibility of requiring a renewables portfolio standard, including the feasibility and structure of a two-tiered standard, and the estimated costs and benefits of establishing this requirement.¹²⁸

The legislature enacted the following provisions to address the “environmental concerns” of restructuring the electricity industry:

(1)(i) In recognition of the potential environmental impacts of restructuring the electric industry, it is the intent of the General Assembly to minimize the effects of electric restructuring on the environment. (ii) Electric companies in Maryland shall

125. *Id.* § 7-504(5).

126. *Id.* § 7-505(b)(4)(i).

127. MD. CODE ANN., PUB. UTIL. COMP. § 7-507(b)(3)(iii).

128. *Id.* § 7-516(c).

conduct a study that tracks shifts in generation and emissions as a result of restructuring the electric industry (iii) The study shall be submitted to the Department of the Environment and the Commission one year after the initial date of implementation of customer choice.

(2) If, after review of the study required under paragraph (1) of this subsection, the Department of the Environment determines that the emissions levels impose a higher emission burden in Maryland, the Department of the Environment, in consultation with the Commission, shall study the appropriateness, constitutionality, and feasibility of establishing an air quality surcharge or other mechanism to protect Maryland's environment in connection with the implementation of customer choice of electricity suppliers.¹²⁹

MASSACHUSETTS

II. Certification, Siting, and Compliance

The Energy Facilities Siting Board has the duty to implement energy policies "to provide a necessary energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." Three of the seven members are commissioners of the Department Telecommunications and Energy.¹³⁰ Construction of new energy facilities requires approval by the Siting Board of a Certificate of Environmental Impact and Public Need. The application must include an alternatives analysis, as well as "a description of the environmental impact of each proposed facility."¹³¹ The Board shall periodically "conduct a rulemaking to establish a technology performance standard" covering facility emissions and other environmental impacts, to be used in reviewing petitions to construct new generating facilities.¹³²

III. State NEPA Statute

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and deter-

129. *Id.* § 7-516(d).

130. *See* MASS. GEN. LAWS ANN. ch. 164, § 69H (West 1992 & Supp. 2000).

131. *Id.* § 69J. *See also id.* §§ 69K, 69O.

132. *Id.* § 69J 1/4.

mine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment.¹³³

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities are required to submit to the Board long-range plans, which must include an alternatives analysis as well as "a description of the environmental impact of each proposed facility."¹³⁴ In establishing conditions for determining sources which electric utility must select when seeking generation of additional electric power in integrated resource management, the Massachusetts Commission exceeded its authority in requiring consideration of environmental externality values that may not reasonably be expected to have effect on utility's costs and on rates that its customers would have to pay.¹³⁵

V. Restructuring Provisions

Massachusetts has introduced competition into the electric industry.¹³⁶ All electric utility restructuring plans must include "proposed programs and recovery mechanisms to promote energy conservation and demand-side management."¹³⁷ The department shall promulgate rules and regulations regarding the mandatory disclosure within customer billing statements for: "the fuel mix and emissions of the generation sources."¹³⁸

The Division of Energy Resources shall "establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth."¹³⁹

133. *Id.* ch. 30, § 61. *See also* MASS. GEN. LAWS ANN. ch. 164, § 69J (West 1992 & Supp. 2000) (outlining "alternatives analysis" under "Certification and Siting").

134. MASS. GEN. LAWS ANN. ch. 164, § 69I(3). *C.f.*, *Mass. Elec. Co. v. Dep't of Pub. Util.*, 419 Mass. 239 (1994).

135. *See Mass. Elec. Co.*, 419 Mass. at 241.

136. *See* MASS. GEN. LAWS ANN. ch. 164, §§ 1A to 1H.

137. *Id.* § 1A(a).

138. *Id.* § 1F(5)(i).

139. *Id.* ch. 25A, § 11F(a).

The Division of Energy Resources is separate from the Department of Telecommunications and Energy.¹⁴⁰

The Division of Energy Resources also coordinates ratepayer-funded energy efficiency programs. The division must submit an annual report to the Department for review and approval.¹⁴¹

MICHIGAN

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Commission may "approve energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities."¹⁴² The Commission has the power to collect funds from utilities, which are used to provide grants to certain parties for the "protection of the environment, energy conservation, the creation of employment and a healthy economy of the state, and the maintenance of adequate energy resources."¹⁴³

V. Restructuring Provisions

Michigan's disclosure statute states the following:

The commission shall require that, starting January 1, 2002, all electric suppliers disclose in standardized, uniform format information about the environmental characteristics of electricity products purchased by the customer, including all of the following: (a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. [Also], [(b)] the average emissions, in pounds per megawatt hour, sulfur dioxide, carbon dioxide, and oxides of nitrogen.¹⁴⁴

There is also a renewables statute, which states:

The commission shall establish the Michigan renewable energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing

140. *See id.* ch. 25A, § 11F.

141. *See* MASS. GEN. LAWS ANN. ch. 25A, § 11G.

142. MICH. COMP. LAWS ANN. § 460.6c(1) (West 1991 & Supp. 2000).

143. *Id.* § 460.6m(12).

144. *Id.* § 460.10r(3).

renewable energy sources and encourage the development of new facilities.¹⁴⁵

MINNESOTA

II. Certification, Siting, and Compliance

No proposed large energy facility shall be certified for construction unless the applicant can show that the demand cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.¹⁴⁶

A certificate may not be issued for a generating facility that generates by means of nonrenewable sources,

unless the applicant for the certificate has demonstrated to the commissioner's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source.¹⁴⁷

III. State NEPA Statute

Minnesota's mini-NEPA provision does apply to the PUC.¹⁴⁸

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities must file with the Commission a resource plan.

As part of its resource plan filing, a utility shall include the least cost plan for meeting 50 to 75 percent of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.¹⁴⁹

The commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with

145. *Id.* § 460.10r(6).

146. MINN. STAT. ANN. § 216B.243 subd. 3 (West 1992 & Supp. 2000).

147. *Id.* § 216B.243 subd. 3a.

148. *See id.* § 116D.03 (West 1992 & Supp. 1997).

149. *Id.* § 216B.2422 subd. 2 (West 1992 & Supp. 2000).

each method of electricity generation. A utility shall use the values established by the commission in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings.¹⁵⁰

The Commissioner of the Department of Public Service has an energy conservation mandate which includes undertaking a "continuing assessment of trends in the consumption of all forms of energy and analyze the social, economic, and environmental consequences of these trends."¹⁵¹ "The commission may order public utilities to develop and submit for commission approval incentive plans that describe the method of recovery and accounting for utility conservation expenditures and savings."¹⁵²

MISSISSIPPI

I. General Authority and Obligations

The Mississippi State Legislature declared that state policy is to "provide just and reasonable rates and charges for public utility services consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy" as well as to "encourage and promote harmony between public utilities, their users and the environment."¹⁵³

MONTANA

III. State NEPA Statute

The Montana Environmental Policy Act requires most state agencies to take into account the environmental effects of their actions. However the "department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt."¹⁵⁴

150. *Id.* § 216B.2422 subd. 3.

151. MINN. STAT. ANN. § 216C.09(d).

152. *Id.* § 216B.16 subd. 6c (West 1992 & Supp. 2000).

153. MISS. CODE ANN. § 77-3-2(1) (1991).

154. MONT. CODE ANN. § 75-1-201 (Smith 1997) (Montana Environmental Policy Act).

V. Restructuring Provisions

The Montana Legislature declared that

[t]he public interest requires the continued protection of consumers through: continued funding for public purpose programs for: cost-effective local energy conservation; renewable resource projects and applications; [and] research and development programs related to energy conservation and renewables.¹⁵⁵

Under its restructuring provisions, Montana has enacted a Universal Systems Benefit Charge “to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications.”¹⁵⁶

NEBRASKA

I. General Authority and Obligations

The Nebraska PSC does not regulate electric utilities. Electric utilities in Nebraska are publicly owned institutions. The PSC has authority over siting certain transmission facilities. The Nebraska Power Review Board has general authority over electric utilities, including approval of new generation and certain transmission facilities.

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Nebraska has adopted an integrated resource planning policy. Public utilities are required to “practice integrated resource planning and include least cost options when evaluating alternatives for providing energy supply and managing energy demand in Nebraska.”¹⁵⁷

NEVADA

II. Certification, Siting, and Compliance

The policy enumerated by the Utility Environmental Protection Act is to “provide a forum for the expeditious resolution of all matters concerning the location and construction of electric, gas

155. *Id.* § 69-3-103.

156. *Id.* § 69-8-402.

157. NEB. REV. STAT. § 66-1060 (1996).

and water transmission lines and associated facilities.”¹⁵⁸ Application for the required construction permit must include:

A summary of any studies which have been made of the environmental impact of the facility; and . . . [a] description of any reasonable alternative location or locations for the proposed facility, a description of the comparative merits or detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility.¹⁵⁹

III. State NEPA Statute

Nevada has not enacted a mini-NEPA statute. However, the application for the required construction permit, as noted above, must contain a review of alternative locations for proposed facilities.¹⁶⁰

IV. Resource Planning, Conservation Programs, and Environmental Externalities

“A utility which supplies electricity in this state may apply to the commission for authority to charge, as part of a program of optional pricing, a higher rate for electricity that is derived from renewable energy resources.”¹⁶¹

V. Restructuring Provisions

“The commission shall establish portfolio standards for domestic energy that sets forth the minimum percentage of the total electricity sold during each calendar year that must be derived from renewable energy sources.”¹⁶² The statute sets forth guidelines for this task.¹⁶³

NEW HAMPSHIRE

II. Certification, Siting, and Compliance

The State’s Site Evaluation Committee evaluates energy facility proposals. This committee is separate from the PUC, however. The Chairperson of the PUC shall be the vice-chairperson of

158. NEV. REV. STAT. § 704.825(2) (1996 & Supp. 2000).

159. *Id.* § 704.870(1)(a), (b).

160. *See id.*

161. *Id.* § 704.743.

162. NEV. REV. STAT. § 704.989(1).

163. *See id.*

the committee. The application process includes an evaluation of the environmental impact of the facility.¹⁶⁴ Utilities are required to prepare annually long-range plans for supplying bulk power, and to submit them to the state site evaluation committee. The plans must “[r]eflect and describe such utility’s effort to involve environmental protection and land-use planning agencies in their planning process so as to identify environmental problems at the earliest possible stage.”¹⁶⁵

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The New Hampshire Legislature declared that it was in the public interest to “encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health.”¹⁶⁶

Electric public utilities are obligated to buy back power from “limited electrical energy producers” with a capacity of up to five megawatts.¹⁶⁷ Such producers include cogeneration facilities and other small power producers.¹⁶⁸ The Commission creates requirements respecting fuel use, efficiency and reliability for those producers who are eligible.¹⁶⁹

New Hampshire also requires least cost energy plans to be filed with the commission at least every two years which contain: An assessment of demand-side management programs, including conservation, efficiency improvement, and load management programs; integration of demand-side and supply-side options; an assessment of plan integration and impact on state compliance with the Clean Air Act Amendments of 1990; an assessment of plan integration and impact on state compliance with the National Energy Policy Act of 1992; and finally an assessment of the plan’s long- and short-term environmental, economic and energy price and supply impact on the state.¹⁷⁰ These plans are to be evaluated by the commission. “In deciding whether or not the utility’s planning process is adequate the commission shall consider poten-

164. N.H. REV. STAT. ANN. §§ 162-H:3, 162-H:7(V)(c) (1994 & Supp. 1999).

165. *Id.* § 162-H:17(c).

166. *Id.* § 362-A:1 (1994 & Supp. 1995, 1998).

167. *See id.* § 362-A:3.

168. *See id.*

169. *See* N.H. REV. STAT. ANN. § 362-A:3.

170. *See id.* § 378:38.

tial environmental, economic and health-related impacts of each proposed action."¹⁷¹

V. Restructuring Provisions

The State legislature declared that the

overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.¹⁷²

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

VIII. Environmental Improvement. Continued environmental protection and long term environmental sustainability should be encouraged.

IX. Renewable Energy Resources. Increased future commitments to renewable energy resources should be consistent with the New Hampshire energy policy.

X. Energy Efficiency. Restructuring should be designed to reduce market barriers to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective customer conservation.¹⁷³

NEW JERSEY

I. General Authority and Obligations

The New Jersey Department of Public Utilities is authorized to

require any public utility to furnish safe, adequate and proper service, including furnishing and performing service in a manner that tends to conserve and preserve the quality of the envi-

171. *Id.* § 378:39.

172. *Id.* § 374-F:1(I) (1995 & Supp. 1998).

173. *Id.* § 374-F:3.

ronment, and prevent the pollution of the waters, land and air of this state, including public water supply.¹⁷⁴

II. Certification, Siting, and Compliance

Companies generating hydroelectric power must return diverted water as unpolluted as before it was used.¹⁷⁵

V. Restructuring Provisions

The DPU is authorized to establish disclosure requirements and emission portfolio standards for electric power suppliers.¹⁷⁶ The DPU is authorized to require electric power suppliers to disclose, in a uniform manner, information about the fuel mix and emissions of the energy sold on customer contracts, bills, and marketing materials,¹⁷⁷ and to develop emissions portfolio standards.¹⁷⁸ Moreover, the DPU must adopt net metering standards.¹⁷⁹

NEW MEXICO

V. Restructuring Provisions

New Mexico has restructured its electricity industry.¹⁸⁰

The commission shall promulgate rules governing competitive electric suppliers for the protection of customers, including[,] required disclosure to a potential customer of unbundled prices, generation sources and fuel mix, [and] associated emissions. . . .¹⁸¹

There is a systems benefits charge to pay for certain state programs, including a program to encourage the use of renewable energy.¹⁸²

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

175. *See id.* § 48:14-12.

176. *See id.* § 48:3-87(a), (c) (West 1998 & Supp. 2000).

177. *See id.* § 48:3-87(a).

178. *See id.* § 48:3-87(c) (West 1998 & Supp. 2000).

179. *See* N.J. STAT. ANN. § 48:3-87(e)(1).

180. *See* N.M. STAT. ANN. §§ 62-3A-1 to 62-3A-23 (Michie 1999).

181. *Id.* § 62-3A-9(F).

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

NEW YORK

I. General Authority and Obligations

The Public Service Commission (PSC) shall encourage the formulation and carrying out of long-range programs for the performance of their public service responsibilities with efficiency, and "the preservation of environmental values and the conservation of natural resources."¹⁸³

II. Certification, Siting, and Compliance

The PSC shall require major new utility transmission facilities to obtain a certificate of environmental compatibility and public need.¹⁸⁴ Any application for the certificate shall include a summary of any studies made on the environmental impact of the project, and an evaluation of alternative locations.¹⁸⁵ The Commission may not grant the certificate, unless it shall find and determine that the facility represents the minimum adverse environmental impact.¹⁸⁶ Article X of the Public Service Law provides the New York State Board on Electric Generation Siting and the Environment with powers analogous to the State Environmental Quality Review Act (SEQRA).¹⁸⁷

The Chairperson of the PSC shall also sit on the State Energy Planning Board which, in turn, shall adopt the state energy plan which must give due regard to "adverse and beneficial environmental impacts, and conservation of energy and energy resources."¹⁸⁸

III. State NEPA Statute

The PSC is subject to the State Environmental Quality Review Act, and may sometimes assume lead agency status.¹⁸⁹ The Environmental Impact Study shall include an analysis of alternatives to the proposed action.¹⁹⁰

183. N.Y. PUB. SERV. LAW § 5(2) (McKinney 1989).

184. *See id.* § 121(1).

185. *See id.* § 122(1).

186. *See id.* § 126(1)(c).

187. *See id.* art. X.

188. N.Y. ENERGY LAW §§ 6-102, 6-104(2)(d) (McKinney 1998 & Supp. 1999-2000).

189. *See* N.Y. ENVTL. CONSERV. LAW § 8-0109 (McKinney 1989 & Supp. 1997).

190. *See id.* § 8-0109(2).

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The PSC shall encourage the formulation and carrying out of long-range programs for the performance of utilities' public service responsibilities with efficiency, and the preservation of environmental values and conservation of natural resources.¹⁹¹

The Chairperson of the PSC shall also sit on the State Energy Planning Board which shall adopt the state energy plan. The state energy plan must give due regard to "adverse and beneficial environmental impacts, and conservation of energy and energy resources."¹⁹²

The commission shall not grant a certificate for the construction or operation of a major utility transmission facility unless it shall find and determine that the facility represents the minimum adverse environmental impact, considering but not limited to, the effect on agricultural lands, wetlands, parklands, and river corridors transversed.¹⁹³

V. Restructuring Provisions

New York is restructuring administratively.

NORTH CAROLINA

I. General Authority and Obligations

An enumerated policy of the North Carolina Utilities Commission is to "encourage and promote harmony between public utilities, their users and the environment."¹⁹⁴

II. Certification, Siting, and Compliance

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

develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of

191. See N.Y. PUB. SERV. LAW § 5(2) (McKinney 1989).

192. N.Y. ENERGY LAW §§ 6-102, 6-104(2)(d) (McKinney 1989 & Supp. 1999-2000).

193. See N.Y. PUB. SERV. LAW § 126(1)(c) (McKinney 1989).

194. N.C. GEN. STAT § 62-2(5) (2000).

generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities to achieve maximum efficiencies for the benefit of the people of North Carolina.¹⁹⁵

III. State NEPA Statute

The Utilities Commission is directed to comply with the North Carolina Environmental Policy Act of 1971.¹⁹⁶

IV. Resource Planning, Conservation Programs, and Environmental Externalities

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

direct each public utility company to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day.¹⁹⁷

NORTH DAKOTA

II. Certification, Siting, and Compliance

North Dakota does require certificates of public convenience and necessity for electric and other utilities.¹⁹⁸ The policy of the North Dakota Energy Conversion and Transmission Facility Siting Act is that

the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of the state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter [and] [t]he legis-

195. *Id.* § 62-110.1.

196. *See id.* § 113A-4(2) (1999) (North Carolina Environmental Policy Act of 1971).

197. *Id.* § 62-155(b).

198. *See* N.D. CENT. CODE §§ 49-03-01, 49-03-02 (1999).

lative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.¹⁹⁹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

“The Commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service.”²⁰⁰

OHIO

II. Certification, Siting, and Compliance

The Commission Chair presides over the Power Siting Board (within the PUC) whose members also include the state Director of the Office of Environmental Protection, the Director of the Department of Health, and the Director of the Office of Natural Resources. Among the powers and duties of this board is the responsibility to “adopt rules establishing the criteria for evaluating the effects on environmental values of proposed and alternative sites, and projected needs for electric power.”²⁰¹ The Commission’s Power Siting Board controls the issuance of mandatory utility construction permits. Permit applications must contain “A summary of any studies which have been made by or for the applicant of the environmental impact of the facility” as well as a “statement of how the facility fits into the applicant’s [long-range] forecast contained in the report submitted under section 4935.04.”²⁰²

IV. Resource Planning, Conservation Programs, and Environmental Externalities

“The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduc-

199. *Id.* § 49-22-02.

200. *Id.* § 49-02-23.

201. OHIO REV. CODE ANN. §§ 4906.02, 4906.03(C) (Anderson 2000).

202. *Id.* §§ 4906.06(2), 4906.06(5).

tion in the growth rate of energy consumption, promote economic efficiencies and take into account long-run incremental costs."²⁰³

The Commission has the duty of estimating energy needs for ten year periods

which in the opinion of the commission, will reasonably balance the requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources.²⁰⁴

The commission also has the duty to estimate

statewide and regional demands within the state for energy for twenty years ahead, to be used in formulation of long-range policies and proposals for reduction of demand, conservation of energy, development of potential sources of energy, and action to affect the rate of growth in demand for energy.²⁰⁵

To achieve these duties the Commission has the power to require utility owners to file long-range forecasts which supply the relevant information.²⁰⁶

V. Restructuring Provisions

Ohio has restructured its electricity industry.²⁰⁷ An Energy Efficiency Loan Program was established "to assist in the improvement of air, water or thermal pollution control facilities and solid waste disposal facilities."²⁰⁸

OKLAHOMA

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Under the Oklahoma Environmental Quality Act, the Corporation Commission shall have exclusive jurisdiction and the duty to enforce rules and regulations concerning the conservation of oil and gas, activities associated with the exploration and extraction

203. *Id.* § 4905.70.

204. *Id.* § 4935.01(A)(1).

205. *Id.* § 4935.01(A)(2).

206. *See* OHIO REV. CODE ANN. § 4935.04.

207. *See id.* §§ 4928.01-4928.67.

208. *Id.* § 4928.63.

of oil and gas, as well as for underground and aboveground storage tank activities.²⁰⁹

Electric utilities are prohibited from placing a surcharge upon customers who install solar energy devices.²¹⁰

VI. Delegation of Federal Environmental Authority

"The Corporation Commission shall have the power to implement and administer the Public Utility Regulatory Policies Act and the Residential Energy Conservation Program."²¹¹

OREGON

II. Certification, Siting, and Compliance

Certificates of public convenience and necessity are required for overhead transmission lines and are obtained from the Commission.²¹²

IV. Resource Planning, Conservation Programs, and Environmental Externalities

"All Public Utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public."²¹³

"The Public Utility Commission, by rule, may adopt policies designed to encourage the acquisition of cost effective conservation resources and small-scale, renewable fuel electric generating resources."²¹⁴ The PUC may "allow a rate or rate schedule of a public utility to reflect amounts for small scale programs that enable the utility to gain experience with tree planting on under-producing forestland as an offset to carbon dioxide emissions."²¹⁵

V. Restructuring Provisions

Oregon has restructured its electricity industry.²¹⁶

209. See OKLA. STAT. ANN. tit. 27A, § 1-3-101(E) (West 1997).

210. See *id.* tit. 17, § 156 (West 1999).

211. *Id.* § 34.1. See also Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601-2645 (1994); Residential Energy Conservation Program, 42 U.S.C. §§ 8211-8235i (1994).

212. See OR. REV. STAT. § 758.015 (1999).

213. *Id.* § 757.056.

214. *Id.* § 757.262.

215. *Id.* § 757.266.

216. See *id.* §§ 757.600-757.691.

There is established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources, and new low-income weatherization.²¹⁷

PENNSYLVANIA

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Bureau of Conservation, Economics and Energy Planning within the Pennsylvania Public Utilities Commission, is required to conduct studies and research on conservation, conduct long-range forecasting of energy needs, conduct research into new means of efficient energy production, review current levels of efficiency for operating facilities, and develop a program for energy conservation.²¹⁸

The commission has the authority to order conservation and load management practices.

In determining or prescribing safe, adequate, and sufficient services and facilities of a public utility, the commission may order the utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective.²¹⁹

V. Restructuring Provisions

Pennsylvania has restructured its electricity industry.²²⁰ There is a public benefits wire charge:

The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively-neutral cost-recovery mechanisms that fully re-

217. OR. REV. STAT. § 757.612(1).

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

219. *Id.* § 1505(b).

220. See *id.* § 501.

cover the costs of universal service and energy conservation services.²²¹

VI. Delegation of Federal Environmental Authority

Utilities in Pennsylvania have a duty to submit plans that comply with the Federal Clean Air Act to the Commission.²²² The Commission has a duty to evaluate those plans.²²³

RHODE ISLAND

I. General Authority and Obligations

The legislature's reason for creating the Rhode Island Public Utilities Commission is the following:

Preservation of the State's resources, commerce, and industry requires the assurance of adequate public transportation and communication facilities, water supplies, and an abundance of energy, all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning.²²⁴

II. Certification, Siting, and Compliance

A license from the Siting Board is required to construct a major energy facility in Rhode Island. The three person Board is chaired by the PUC Commissioner, along with the director of the department of environmental management and the associate director of the administration of planning.²²⁵

An application for the siting license must include:

A detailed description of the proposed facility in its physical and social environment together with a detailed description of all environmental characteristics of the proposed site, and a summary of all studies prepared and relied upon in connection therewith . . . [as well as] [a] complete life-cycle management plan for the proposed facility, including measures for protecting

221. *Id.* § 2804(9).

222. *See id.* § 530.

223. *See* 66 PA. CONS. STAT. ANN. § 530.

224. R.I. GEN. LAWS § 39-1-1(a)(3) (1997).

225. *See id.* §§ 42-98-5, 42-98-7.

public health and safety and the environment during the facility's operations, including plans for the handling and disposal of wastes from the facility, and plans for the decommissioning of the facility at the end of its useful life.²²⁶

In addition, it must also include

[a] study of the alternatives to the proposed facility, including alternatives as to energy sources, methods of energy production, and sites for the facility, together with reasons for the applicant's rejection of these alternatives. The study shall include estimates of facility cost and unit energy costs of alternatives selected.²²⁷

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Rhode Island has imposed a charge that electric distribution companies must include in their bills "to fund demand-side management programs and renewable energy resources."²²⁸

V. Restructuring Provisions

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

Although reducing air emissions from power plants is a goal of electricity industry restructuring, power plants in Rhode Island already have low emissions relative to their counterparts in other states. For this reason it is unnecessary for the restructuring plans required by this section to address in-state air emission reductions.²²⁹

As part of the valuation process of utilities that have restructured, certain capital expenditures which "were reasonably necessary to (i) enable the electrical generating facilities to operate safely and in compliance with applicable laws and regulations, (ii) improve environmental performance or to increase fuel diversity or flexibil-

226. *Id.* § 42-98-8.

227. *Id.*

228. *Id.* § 39-2-1.2(b).

229. R.I. GEN. LAWS. § 39-1-27(f).

ity" may be taken into consideration as an adjustment to contract termination fees.²³⁰

SOUTH CAROLINA

II. Certification, Siting, and Compliance

Certificates are required for construction of major utility facilities. The application to the South Carolina Public Service Commission must contain "A summary of any studies which have been made by or for applicant of the environmental impact of the facility."²³¹

SOUTH DAKOTA

II. Certification, Siting, and Compliance

The South Dakota legislature declared that

[i]t is necessary to ensure that the location, construction and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that an energy conversion or transmission facility may not be constructed or operated in this state without first obtaining a permit from the public utilities commission.²³²

III. State NEPA Statute

"Prior to the issuance of a [construction or operation] permit, the public utilities commission shall comply with the provisions of chapter 34A-9 relating to an environmental impact statement."²³³

TENNESSEE

IV. Resource Planning, Conservation Programs, and Environmental Externalities

Utilities may not discriminate against customers who also use alternative energy.

230. *Id.* § 39-1-27(g).

231. S.C. CODE LAWS. § 58-33-120(1)(b) (Michie 1993).

232. S.D. CODIFIED LAWS § 49-41B-1 (Michie 1993).

233. *Id.* § 49-41B-21. *See also id.* §§ 34A-9-1 to 34A-9-13 (Michie 1993 & Supp. 1999) (South Dakota Environmental Policy Act).

When any public utility regulated by the commission supplies its services to consumers who use solar or wind-powered equipment as a source of energy, such public utility shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy.²³⁴

TEXAS

II. Certification, Siting, and Compliance

Certificates of public convenience and necessity are required in order for an electric utility to provide service to the public.

The commission shall grant each certificate on a nondiscriminatory basis after considering . . . other factors, such as: (A) community values; (B) recreational and park areas; (C) historical and aesthetic values; (D) environmental integrity[.]²³⁵

IV. Resource Planning, Conservation Programs, and Environmental Externalities

In establishing rates for an electric utility, the commission may: (1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power . . . and (2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.²³⁶

"The commission may serve as a resource center to assist school districts in developing energy efficient facilities."²³⁷

V. Restructuring Provisions

Through the System Benefit Fund, the Commission shall fund regulatory programs for "targeted energy efficiency programs."²³⁸ The Commission has the duty to provide oversight and adopt rules to meet the state legislature's goals that "electric utilities will administer energy savings incentive programs," that "all customers in all customer classes, have a choice of and access to energy efficiency alternatives and other choices from the market

234. TENN. CODE ANN. § 65-4-105(d) (West 1993 & Supp. 1999).

235. TEX. UTIL. CODE ANN. § 37.056 (West 1993 & Supp. 1998).

236. *Id.* § 36.204.

237. *Id.* § 31.004.

238. *Id.* § 39.902(f)(2).

that allow each customer to reduce energy consumption and reduce energy costs,” and thirdly that “each electric utility will provide incentives sufficient for retail electric providers to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility’s annual growth in demand.”²³⁹

The state legislature declared a goal for the addition of renewable energy generating facilities in the state. The Commission is charged with establishing a renewable energy credits training program along with the rules and standards necessary to administer and enforce their renewable energy mandate.²⁴⁰

UTAH

I. General Authority and Obligations

Effective July 1, 2001, the enabling legislation of the Public Service Commission shall include the duty to balance the interests of the consumers and the public utilities. In doing so it may consider “encouraging conservation of resources and energy.”²⁴¹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Public Service Commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources. The commission shall make and submit to the governor and the Legislature an annual report containing a full and complete account of the transactions of its office, together with any facts, suggestions and recommendations it may deem necessary.²⁴²

VERMONT

II. Certification, Siting, and Compliance

Before the Public Service Board issues a certificate of public good . . . it shall find that the purchase, investment or construction . . . (2) is required to meet the need for present and future demand for service which could not otherwise be provided in a

239. *Id.* § 39.905.

240. *See* TEX. UTIL. CODE ANN. §39.904 (West Supp. 2000).

241. UTAH CODE ANN. § 54-1-1 (1994 & Supp 2000).

242. *Id.* § 54-1-10.

more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures. . .[as well as] (5) with respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. . . .²⁴³

IV. Resource Planning, Conservation Programs, and Environmental Externalities

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

A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.²⁴⁴

The state's public advocate and energy planning office, the Vermont Department of Public Service, and

all gas and electric utility companies are encouraged to propose, develop, solicit and monitor energy efficiency and conservation programs and measures. Such programs and measures may be approved by the board if it determines they will be beneficial to the ratepayers of the companies after such notice and hearing as the board may require by order or by rule.²⁴⁵

V. Restructuring Provisions

Vermont has not restructured its electric industry, but has developed a net metering program²⁴⁶ and an Energy Efficiency Utility.²⁴⁷

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

244. *Id.* § 218c.

245. *Id.* § 209(d).

246. *See id.* § 219a.

247. *See id.* § 209d (2000).

VIRGINIA

II. Certification, Siting, and Compliance

Certificates of convenience and necessity are required for a utility to construct, enlarge or acquire any facilities for use in public service.²⁴⁸

Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact.²⁴⁹

This statute also applies to certain electrical transmission facilities.²⁵⁰

III. State NEPA Statute

The Virginia mini-NEPA was repealed. However, the State Corporation Commission (as well as other state agencies) must continue to take into consideration the effects of their actions on farmlands.²⁵¹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

According to Virginia law, it is the duty of the

Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service.²⁵²

The Commission also has the authority to order the utility to adopt substitute practices, and to educate the public in order to promote the effective conservation of resources.²⁵³

248. VA. CODE ANN. § 56-265.2 (Michie 1994 & Supp. 1995, 2000).

249. *Id.* § 56-46.1.

250. *See id.*

251. *Id.* § 3.1-18.8.

252. *Id.* § 56-235.1.

253. *See* VA. CODE ANN. § 56-235.1.

V. Restructuring Provisions

Virginia has restructured its electricity industry.²⁵⁴ The requirements for construction and operating certificates for generating facilities have been reaffirmed.²⁵⁵ The Virginia restructuring provisions also provide for net energy metering.²⁵⁶

WASHINGTON

II. Certification, Siting, and Compliance

The Washington State legislature declared a state policy that "the location and operation of such [energy generating] facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life."²⁵⁷ The Washington State legislature also declared that:

it is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises . . . to preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.²⁵⁸

III. State NEPA Statute

The Washington State Environmental Policy Act, "SEPA", imposes a duty to protect the environment upon the Utilities and Transportation Commission.²⁵⁹

IV. Resource Planning, Conservation Programs, and Environmental Externalities

In establishing rates for each gas and electric company . . . the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration . . . measures

254. *See id.* §§ 56-576-595.

255. *See id.* § 56-580(D).

256. *See id.* § 56-594.

257. WASH. REV. CODE ANN. § 80.50.010 (West 1991 & Supp. 2000).

258. *Id.* §§ 80.50.010, 80.50.010(2).

259. *See id.* §§ 43.21C.010 to 43.21C.914 (West 1991 & Supp. 1998).

which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable sources.
...²⁶⁰

The Commission shall adopt policies allowing utilities an incentive rate of return for certain energy efficiency programs.²⁶¹

V. Restructuring Provisions

Washington's electric utilities are required to make net metering available to "customer-generators on a first-come first-serve basis until the cumulative generating capacity of net metering systems equals 0.1 percent of the utility's peak demand during 1996."²⁶²

WEST VIRGINIA

I. General Authority and Obligations

The West Virginia legislature declared that they

confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to: . . . (5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises.²⁶³

Further, "[t]he Legislature directs the public service commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation."²⁶⁴

II. Certification, Siting, and Compliance

Utilities are required to "obtain from the public utilities commission a certificate of public convenience and necessity requiring [such] construction, franchise, license or permit."²⁶⁵ Applications for a certificate of public convenience and necessity for the construction of high voltage transmission lines must contain a statement of the environmental impact of such line facilities. The

260. *Id.* § 80.28.025 (West 1991 & Supp. 2000).

261. *Id.* § 80.28.260.

262. WASH. REV. CODE ANN. § 80.60.020(1).

263. W. VA. CODE § 24-1-1(a)(5) (1999).

264. *Id.* § 24-1-1(c).

265. *Id.* § 24-2-11.

commission may approve the application if it shall find and determine that the proposed line "[w]ill result in an acceptable balance between reasonable power needs and reasonable environmental factors."²⁶⁶

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The Public Service Commission may

authorize rate-making allowances for electric utility investment in clean coal and clean air technology facilities or electric utility purchases of power from clean coal technology facilities located in West Virginia which shall provide an incentive to encourage investment in such technology.²⁶⁷

[T]he public service commission shall authorize ratemaking allowances for public utilities to encourage the use of alternative fuel in new demonstration technologies, including alternative fuel vehicles, which provide incentives to encourage investments in such technologies.²⁶⁸

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I. General Authority and Obligations

To the extent cost-effective, technically feasible and environmentally sound the commission shall implement the priorities under section 1.12(4) [the state energy policy] in making all energy related decisions and orders, including advance plan, rate setting and rule-making orders.²⁶⁹

The priorities enumerated under the state energy policy are that:

In meeting energy demands, the policy of the state is that, to the extent of cost-effective and technically feasible, options be considered based on the following priorities, in the order listed: (a) Energy conservation and efficiency; (b) Noncombustable [sic] renewable energy resources; (c) Combustable [sic] renewable en-

266. *Id.* §§ 24-2-11a(b)(3), 24-2-11a(d)(2) (1999).

267. *Id.* § 24-2-1g(b) (1999).

268. W. VA. CODE. § 24-2D-2(b).

269. WIS. STAT. ANN. § 196.025 (West 1996 Supp. 1999).

ergy resources; (d) Nonrenewable combustible [sic] energy resources, in the order listed: 1. Natural gas[,] 2. Oil or coal with a sulphur [sic] content of less than 1%[,] [and then] 3. All other carbon-based fuels.²⁷⁰

II. Certification, Siting, and Compliance

According to the state energy policy: "It is the goal of the state, to the extent that is cost-effective and technically feasible, [that] all new installed capacity for electric generation in the state be based on renewable energy resources."²⁷¹ A certificate of public convenience and necessity is required for the commencement of construction of a utility facility, unless the Commission determines that "The design and location or route is in the public interest considering alternative sources of supply, alternative locations or routes, individual hardships, engineering, economic, safety, reliability and environmental factors."²⁷² Further,

in its considerations of environmental factors, the commission may not determine that the design and location or route is not in the public interest because of the impact on air pollution if the proposed facility will meet the requirements of chapter 285 [state air pollution regulations].²⁷³

The certification process also requires that the Commission determine that

[t]he proposed facility will not have undue adverse impact on other environmental values such as, but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use.²⁷⁴

Again, if the facility meets the state air regulations, the effect on air quality can not be the reason for finding an adverse environmental impact.²⁷⁵

270. *Id.* § 1.12(4).

271. *Id.* § 1.12(3)(b).

272. *Id.* § 196.491(3)(d)(3).

273. *Id.*

274. 66 PA. CONS. STAT. ANN. § 530 (West 2000).

275. *See* WIS. STAT. ANN. § 196.491(3)(d)(4) (West 1996 & Supp 1999).

III. State NEPA Statute

The Public Service Commission is directed to take into consideration the impact of its actions on the environment.²⁷⁶ The state energy policy also requires state agencies to “investigate and consider the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy usage.”²⁷⁷

IV. Resource Planning, Conservation Programs, and Environmental Externalities

The commission shall encourage public utilities to develop and demonstrate electric generating technologies that utilize renewable sources of energy, including new, innovative or experimental technologies. The commission may ensure that a public utility fully recovers the cost of developing, constructing and operating such demonstrations through rates charged to customers of the utility.²⁷⁸

Further, each “Eastern Wisconsin Utility” is mandated to “construct or procure, on a competitive basis, the construction of an aggregate total of 50 megawatts of new electric capacity in this state that is, to the satisfaction of the commission, generated from renewable sources.”²⁷⁹ The Commission has the duty to prepare a “biennial strategic energy assessment” that “consider[s] the public interest in economic development, public health and safety, protection of the environment and diversification of sources of energy supplies,” as well as “assess the extent to which effective competition is contributing to a reliable, low-cost and environmentally sound source of electricity for the public.”²⁸⁰

276. *See id.* § 1.11.

277. *Id.* § 1.12(2) (West 1996).

278. *Id.* § 196.377(1).

279. *Id.* § 196.377(4)(b).

280. WIS. STAT. ANN. §§ 196.491(2)(a)(10), 196.491(2)(a)(12).