

AMENDMENT NO. 87

**TO THE CHAIRMAN'S MARK FOR TITLE XI
OF THE ENERGY POLICY BILL**

Intended to be Proposed by Mr. DOMENICI

Purpose: To provide a complete substitute for the Chairman's Mark.

Viz:

Strike all after "Title XI—Electricity" and insert:

1 **SEC. 1101. DEFINITIONS.**

2 (a) **ELECTRIC UTILITY**—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is
3 amended to read as follows:

4 "(22) 'electric utility' means any person or Federal or State agency (including any municipality)
5 that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power
6 marketing agency;".

7 (b) **TRANSMITTING UTILITY**—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is
8 amended to read as follows:

9 "(23) 'transmitting utility' means an entity, including any entity described in section 201(f), that
10 owns or operates facilities used for the transmission of electric energy—

11 "(A) in interstate commerce; or

12 "(B) for the sale of electric energy at wholesale;".

13 (c) **ADDITIONAL DEFINITIONS**—At the end of section (3) of the Federal Power Act, add the
14 following:

15 "(26) 'unregulated transmitting utility' means an entity that—

16 "(A) owns or operates facilities used for the transmission of electric energy in interstate
17 commerce, and

1 generation capacity.

2 “(4) The term ‘reliable operation’ means operating the components of the bulk-power
3 system within equipment and electric system thermal, voltage, and stability limits so that
4 instability, uncontrolled separation, or cascading failures of such system will not occur as a
5 result of a sudden disturbance or unanticipated failure of system components.

6 “(5) The term ‘Interconnection’ means a geographic area in which the operation of
7 bulk-power system components is synchronized such that the failure of one or more of such
8 components may adversely affect the ability of the operators of other components within the
9 system to maintain reliable operation of the portion of the system within their control.

10 “(6) The term ‘transmission organization’ means an RTO or other transmission
11 organization finally approved by the Commission for the operation of transmission facilities.

12 “(7) The term ‘regional entity’ means an entity having enforcement authority pursuant to
13 subsection (e)(4).

14 “(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by
15 the Commission under subsection (c), any regional entities, and all users, owners and operators of the
16 bulk-power system, including the entities described in section 201(f), for purposes of approving
17 reliability standards established under this section and enforcing compliance with this section. All users,
18 owners and operators of the bulk-power system shall comply with reliability standards that take effect
19 under this section. The Commission shall issue a final rule to implement the requirements of this section
20 not later than 180 days after the date of enactment of this section.

21 “(c) Following the issuance of a Commission rule under subsection (b), any person may submit
22 an application to the Commission for certification as the Electric Reliability Organization. The
23 Commission may certify one such ERO if the Commission determines that such ERO—

24 “(1) has the ability to develop and enforce, subject to subsection (d)(2), reliability
25 standards that provide for an adequate level of reliability of the bulk-power system; and

26 “(2) has established rules that—

27 “(A) assure its independence of the users and owners and operators of the

1 bulk-power system, while assuring fair stakeholder representation in the selection of its
2 directors and balanced decisionmaking in any ERO committee or subordinate
3 organizational structure;

4 “(B) allocate equitably reasonable dues, fees, and other charges among end
5 users for all activities under this section;

6 “(C) provide fair and impartial procedures for enforcement of reliability
7 standards through the imposition of penalties in accordance with subsection (e)
8 (including limitations on activities, functions, or operations, or other appropriate
9 sanctions);

10 “(D) provide for reasonable notice and opportunity for public comment, due
11 process, openness, and balance of interests in developing reliability standards and
12 otherwise exercising its duties; and

13 “(E) provide for taking, after certification, appropriate steps to gain recognition
14 in Canada and Mexico.

15 “(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it
16 proposes to be made effective under this section with the Commission.

17 “(2) The Commission may approve by rule or order a proposed reliability standard or
18 modification to a reliability standard if it determines that the standard is just, reasonable, not unduly
19 discriminatory or preferential, and in the public interest. The Commission shall give due weight to the
20 technical expertise of the ERO with respect to the content of a proposed standard or modification to a
21 reliability standard and to the technical expertise of a regional entity organized on an Interconnection-
22 wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall
23 not defer with respect to the effect of a standard on competition. A proposed standard or modification
24 shall take effect upon approval by the Commission.

25 “(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an
26 Interconnection-wide basis for a reliability standard or modification to a reliability standard to be
27 applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or

1 preferential, and in the public interest.

2 “(4) The Commission shall remand to the ERO for further consideration a proposed reliability
3 standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

4 “(5) The Commission, upon its own motion or upon complaint, may order the ERO to submit
5 to the Commission a proposed reliability standard or a modification to a reliability standard that
6 addresses a specific matter if the Commission considers such a new or modified reliability standard
7 appropriate to carry out this section.

8 “(6) The final rule adopted under subsection (b) shall include fair processes for the identification
9 and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff,
10 rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a
11 transmission organization. Such transmission organization shall continue to comply with such function,
12 rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission
13 until—

14 “(A) the Commission finds a conflict exists between a reliability standard and any such
15 provision;

16 “(B) the Commission orders a change to such provision pursuant to section 206 of this
17 part; and

18 “(C) the ordered change becomes effective under this part.

19 If the Commission determines that a reliability standard needs to be changed as a result of such a
20 conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard
21 under paragraph (4) or (5) of this subsection.

22 “(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or
23 operator of the bulk-power system for a violation of a reliability standard approved by the Commission
24 under subsection (d) if the ERO, after notice and an opportunity for a hearing—

25 “(A) finds that the user or owner or operator has violated a reliability standard
26 approved by the Commission under subsection (d); and

27 “(B) files notice and the record of the proceeding with the Commission.

1 “(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after
2 the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty
3 shall be subject to review by the Commission, on its own motion or upon application by the user, owner
4 or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with
5 the Commission. Application to the Commission for review, or the initiation of review by the
6 Commission on its own motion, shall not operate as a stay of such penalty unless the Commission
7 otherwise orders upon its own motion or upon application by the user, owner or operator that is the
8 subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the
9 Commission, after notice and opportunity for hearing (which hearing may consist solely of the record
10 before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set
11 aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate,
12 remand to the ERO for further proceedings. The Commission shall implement expedited procedures for
13 such hearings.

14 “(3) On its own motion or upon complaint, the Commission may order compliance with a
15 reliability standard and may impose a penalty against a user or owner or operator of the bulk-power
16 system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or
17 operator of the bulk-power system has engaged or is about to engage in any acts or practices that
18 constitute or will constitute a violation of a reliability standard.

19 “(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement
20 to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO
21 and enforcing reliability standards under paragraph (1) if—

22 “(A) the regional entity is governed by an independent board, a balanced stakeholder
23 board, or a combination independent and balanced stakeholder board;

24 “(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2);
25 and

26 “(C) the agreement promotes effective and efficient administration of bulk-power
27 system reliability.

1 The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume
2 that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes
3 effective and efficient administration of bulk-power system reliability and should be approved. Such
4 regulation may provide that the Commission may assign the ERO's authority to enforce reliability
5 standards under paragraph (1) directly to a regional entity consistent with the requirements of this
6 paragraph.

7 “(5) The Commission may take such action as is necessary or appropriate against the ERO or a
8 regional entity to ensure compliance with a reliability standard or any Commission order affecting the
9 ERO or a regional entity.

10 “(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness
11 of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy
12 the violation in a timely manner.

13 “(f) The ERO shall file with the Commission for approval any proposed rule or proposed rule
14 change, accompanied by an explanation of its basis and purpose. The Commission, upon its own
15 motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule
16 change shall take effect upon a finding by the Commission, after notice and opportunity for comment,
17 that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and
18 satisfies the requirements of subsection (c).

19 “(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-
20 power system in North America.

21 “(h) The President is urged to negotiate international agreements with the governments of
22 Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness
23 of the ERO in the United States and Canada or Mexico.

24 “(i)(1) The ERO shall have authority to develop and enforce compliance with reliability
25 standards for only the bulk-power system.

26 “(2) This section does not authorize the ERO or the Commission to order the construction of
27 additional generation or transmission capacity or to set and enforce compliance with standards for

1 adequacy or safety of electric facilities or services.

2 “(3) Nothing in this section shall be construed to preempt any authority of any State to take
3 action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such
4 action is not inconsistent with any reliability standard.

5 “(4) Within 90 days of the application of the ERO or other affected party, and after notice and
6 opportunity for comment, the Commission shall issue a final order determining whether a State action is
7 inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

8 “(5) The Commission, after consultation with the ERO, may stay the effectiveness of any State
9 action, pending the Commission’s issuance of a final order.

10 “(j) The Commission shall establish a regional advisory body on the petition of at least two-
11 thirds of the States within a region that have more than one-half of their electric load served within the
12 region. A regional advisory body shall be composed of one member from each participating State in
13 the region, appointed by the Governor of each State, and may include representatives of agencies,
14 States, and provinces outside the United States. A regional advisory body may provide advice to the
15 ERO, a regional entity, or the Commission regarding the governance of an existing or proposed regional
16 entity within the same region, whether a standard proposed to apply within the region is just,
17 reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed
18 to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in
19 the public interest and any other responsibilities requested by the Commission. The Commission may
20 give deference to the advice of any such regional advisory body if that body is organized on an
21 Interconnection-wide basis.

22 “(k) The provisions of this section do not apply to Alaska or Hawaii.”.

23 **Subtitle B—Regional Markets**

24 **SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.**

25 The Commission’s proposed rulemaking entitled “Remedying Undue Discrimination through
26 Open Access Transmission Service and Standard Electricity Market Design” (Docket No. RM01-12-
27 000) is remanded to the Commission for reconsideration. No final rule pursuant to the proposed

1 rulemaking, including any rule or order of general applicability within the scope of the proposed
2 rulemaking, may be issued before July 1, 2005. Any final rule issued by the Commission pursuant to
3 the proposed rulemaking, including any rule or order of general applicability within the scope of the
4 proposed rulemaking, shall be preceded by a notice of proposed rulemaking issued after the date of
5 enactment of this Act and an opportunity for public comment.

6 **SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.**

7 It is the sense of Congress that, in order to promote fair, open access to electric transmission
8 service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission
9 grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential
10 transmission practices, and provide for the efficient development of transmission infrastructure needed
11 to meet the growing demands of competitive wholesale power markets, all transmitting utilities in
12 interstate commerce should voluntarily become members of independently administered Regional
13 Transmission Organizations (“RTO”) that have operational or functional control of facilities used for the
14 transmission of electric energy in interstate commerce and do not own or control generation facilities
15 used to supply electric energy for sale at wholesale.

16 **SEC. 1123 FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.**

17 (a) DEFINITIONS.—For purposes of this section:

18 (1) The term “appropriate Federal regulatory authority” means—

19 (A) with respect to a Federal power marketing agency, the Secretary of
20 Energy, except that the Secretary may designate the Administrator of a Federal power
21 marketing agency to act as the appropriate Federal regulatory authority with respect to
22 the transmission system of that Federal power marketing agency; and

23 (B) with respect to the Tennessee Valley Authority, the Board of Directors of
24 the Tennessee Valley Authority.

25 (2) The term “Federal utility” means a Federal power marketing agency or the
26 Tennessee Valley Authority.

27 (3) The term “transmission system” means electric transmission facilities owned, leased,
28 or contracted for by the United States and operated by a Federal utility.

1 (b) TRANSFER.—

2 (1) The appropriate Federal regulatory authority is authorized to enter into a contract,
3 agreement or other arrangement transferring control and use of all or part of the Federal utility's
4 transmission system to a Regional Transmission Organization ("RTO"). Such contract,
5 agreement or arrangement shall be voluntary and include—

6 (A) performance standards for operation and use of the transmission system
7 that the head of the Federal utility determines necessary or appropriate, including
8 standards that assure recovery of all the Federal utility's costs and expenses related to
9 the transmission facilities that are the subject of the contract, agreement or other
10 arrangement, consistency with existing contracts and third-party financing arrangements,
11 and consistency with said Federal utility's statutory authorities, obligations, and
12 limitations;

13 (B) provisions for monitoring and oversight by the Federal utility of the RTO
14 fulfillment of the terms and conditions of the contract, agreement or other arrangement,
15 including a provision that may provide for the resolution of disputes through arbitration
16 or other means with the RTO or with other participants, notwithstanding the obligations
17 and limitations of any other law regarding arbitration; and

18 (C) a provision that allows the Federal utility to withdraw from the RTO and
19 terminate the contract, agreement or other arrangement in accordance with its terms.

20 (2) Neither this section, actions taken pursuant to it, nor any other transaction of a
21 Federal utility using an RTO shall serve to confer upon the Commission jurisdiction or authority
22 over the Federal utility's electric generation assets, electric capacity or energy that the Federal
23 utility is authorized by law to market, or the Federal utility's power sales activities.

24 (c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

25 (1) Any statutory provision requiring or authorizing a Federal utility to transmit electric
26 power, or to construct, operate or maintain its transmission system shall not be construed to
27 prohibit a transfer of control and use of its transmission system pursuant to, and subject to all

1 requirements of paragraph (2).

2 (2) This subsection shall not be construed to—

3 (A) suspend, or exempt any Federal utility from any provision of existing
4 Federal law, including but not limited to any requirement or direction relating to the use
5 of the Federal utility's transmission system, environmental protection, fish and wildlife
6 protection, flood control, navigation, water delivery, or recreation; or

7 (B) authorize abrogation of any contract or treaty obligation.

8 **SEC. 1124. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.**

9 (a) STATE REGULATORY COMMISSIONS.—Not later than 90 days after the date of enactment
10 of this Act, the Commission shall convene regional discussions with State regulatory commissions, as
11 defined in section 3(21) of the Federal Power Act. The regional discussions should address whether
12 wholesale electric markets in each region are working effectively to provide reliable service to electric
13 consumers in the region at the lowest reasonable cost. Priority should be given to discussions in regions
14 that do not have, as of the date of enactment of this Act, a Regional Transmission Organization
15 “(RTO)”. The regional discussions shall consider—

16 (1) the need for an RTO or other organizations in the region to provide non-
17 discriminatory transmission access and generation interconnection;

18 (2) a process for regional planning of transmission facilities with State regulatory
19 authority participation and for consideration of multi-state projects;

20 (3) a means for ensuring that costs for all electric consumers, as defined in section 3(5)
21 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of
22 wholesale energy or capacity are reasonable and economically efficient;

23 (4) a means for ensuring that all electric consumers, as defined in section 3(5) of the
24 Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), within the region maintain
25 their ability to use the existing transmission system without incurring unreasonable additional
26 costs in order to expand the transmission system for new customers;

27 (5) whether the integrated transmission and electric power supply system can and
28 should be operated in a manner that schedules and economically prioritizes all available electric

1 generation resources, so as to minimize the costs of electric energy to all consumers (“economic
2 dispatch”) and maintaining system reliability;

3 (6) a means to provide transparent price signals to ensure efficient expansion of the
4 electric system and efficiently manage transmission congestion;

5 (7) eliminating in a reasonable manner, consistent with applicable State and Federal
6 law, multiple, cumulative charges for transmission service across successive locations within a
7 region (“pancaked rates”);

8 (8) resolution of seams issues with neighboring regions and inter-regional coordination;

9 (9) a means of providing information electronically to potential users of the transmission
10 system;

11 (10) implementation of a market monitor for the region with State regulatory authority
12 and Commission oversight and establishment of rules and procedures that ensure that State
13 regulatory authorities are provided access to market information and that provides for
14 expedited consideration by the Commission of any complaints concerning exercise of market
15 power and the operation of wholesale markets;

16 (11) a process by which to phase-in any proposed RTO or other organization
17 designated to provide non-discriminatory transmission access so as to best meet the needs of a
18 region, and, if relevant, shall take into account the special circumstances that may be found in
19 the Western Interconnection related to the existence of transmission congestion, the existence
20 of significant hydroelectric capacity, the participation of unregulated transmitting utilities, and the
21 distances between generation and load; and,

22 (12) a timetable to meet the objectives of this section.

23 (b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission
24 shall report to Congress on the progress made in addressing the issues in subsection (a) of this section
25 in discussions with the States.

26 (c) SAVINGS.—Nothing in this section shall affect any discussions between the Commission and
27 State or other retail regulatory authorities that are on-going prior to enactment of this Act.

1 “(c) Nothing in this Act shall relieve a load-serving entity from any obligation under State or
2 local law to build transmission or distribution facilities adequate to meet its service obligations.”

3 “(d) Nothing in this section shall provide a basis for abrogating any contract or service
4 agreement for firm transmission service or rights in effect as of the date of the enactment of this
5 subsection.

6 “(e) For purposes of this section:

7 “(1) The term ‘distribution utility’ means an electric utility that has a service obligation to
8 end-users.

9 “(2) The term ‘load-serving entity’ means a distribution utility or an electric utility
10 (including an entity described in section 201(f) or a rural cooperative) that has a service obligation to
11 end-users or a distribution utility.

12 “(3) The term ‘service obligation’ means a requirement applicable to, or the exercise of
13 authority granted to, an electric utility (including an entity described in section 201(f) or a rural
14 cooperative) under Federal, State or local law or under long-term contracts to provide electric
15 service to end-users or to a distribution utility.”

16 “(f) Nothing in the section shall apply to an entity located in an area referred to in section
17 212(k)(2)(A).”

18 **SEC. 1132. OPEN NON-DISCRIMINATORY ACCESS.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section
20 211 the following:

21 “OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

22 “SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an
23 unregulated transmitting utility to provide transmission services—

24 “(1) at rates that are comparable to those that the unregulated transmitting utility
25 charges itself; and

26 “(2) on terms and conditions (not relating to rates) that are comparable to those under
27 which such unregulated transmitting utility provides transmission services to itself and that are
28 not unduly discriminatory or preferential.

1 “(b) The Commission shall exempt from any rule or order under this subsection any unregulated
2 transmitting utility that—

3 “(1) is a distribution utility that a sells no more than 4,000,000 megawatt hours of
4 electricity per year; or

5 “(2) does not own or operate any transmission facilities that are necessary for operating
6 an interconnected transmission system (or any portion thereof); or

7 “(3) meets other criteria the Commission determines to be in the public interest.

8 “(c) Whenever the Commission, after a hearing held upon a complaint, finds any exemption
9 granted pursuant to subsection (b) adversely affects the reliable and efficient operation of an
10 interconnected transmission system, it may revoke the exemption.

11 “(d) The rate changing procedures applicable to public utilities under subsections (c) and (d) of
12 section 205 are applicable to unregulated transmitting utilities for purposes of this section.

13 “(e) In exercising its authority under paragraph (1) of subsection (a), the Commission may
14 remand transmission rates to an unregulated transmitting utility for review and revision where necessary
15 to meet the requirements of subsection (a).

16 “(f) The provision of transmission services under subsection (a) does not preclude a request for
17 transmission services under section 211.

18 “(g) The Commission may not require a State or municipality to take action under this section
19 that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of
20 1986 (26 U.S.C. 141).

21 “(h) Nothing in this Act authorizes the Commission to require an unregulated transmitting utility
22 to transfer control or operational control of its transmitting facilities to an RTO or any other
23 Commission-approved organization designated to provide non-discriminatory transmission access.”.

24 **SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

25 Part II of the Federal Power Act is amended by adding the following:

26 “SUSTAINABLE TRANSMISSION NETWORKS RULEMAKING

27 “SEC. 221. Within six months of enactment of this section, the Commission shall issue a final
28 rule establishing transmission pricing policies applicable to all public utilities and policies for the

1 allocation of costs associated with the expansion, modification or upgrade of existing interstate
 2 transmission facilities and for the interconnection of new transmission facilities for utilities and facilities
 3 which are not included within a Commission approved RTO. Consistent with section 205 of this Act,
 4 such rule shall, to the maximum extent practicable:

5 “(1) promote capital investment in the economically efficient transmission systems;

6 “(2) encourage the construction of transmission and generation facilities in a manner
 7 which provides the lowest overall risk and cost to consumers;

8 “(3) encourage improved operation of transmission facilities and deployment of
 9 transmission technologies designed to increase capacity and efficiency of existing networks;

10 “(4) ensure that the costs of any transmission expansion or interconnection be allocated
 11 in such a way that all users of the affected transmission system bear the appropriate share of
 12 costs; and

13 “(5) ensure that parties who pay for facilities necessary for transmission expansion or
 14 interconnection receive appropriate compensation for those facilities.”.

15 **Subtitle D—Amendments to the Public Utility Regulatory** 16 **Policies Act of 1978**

17 **SEC. 1141. NET METERING.**

18 (a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of
 19 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

20 “(11) NET METERING.—

21 “(A) Each electric utility shall make available upon request net metering service
 22 to any electric consumer that the electric utility serves.

23 “(B) For purposes of implementing this paragraph, any reference contained in
 24 this section to the date of enactment of the Public Utility Regulatory Policies Act of
 25 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

26 “(C) Notwithstanding subsections (b) and (c) of section 112, each State
 27 regulatory authority shall consider and make a determination concerning whether it is

1 appropriate to implement the standard set out in subparagraph (A) not later than 1 year
2 after the date of enactment of this paragraph.”.

3 (b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies
4 Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

5 “(i) NET METERING.—In undertaking the consideration and making the determination under
6 section 111 with respect to the standard concerning net metering established by section 111(d)(13), the
7 term net metering service shall mean a service provided in accordance with the following standards:

8 “(1) An electric utility—

9 “(A) shall charge the owner or operator of an on-site generating facility rates
10 and charges that are identical to those that would be charged other electric consumers
11 of the electric utility in the same rate class; and

12 “(B) shall not charge the owner or operator of an on-site generating facility any
13 additional standby, capacity, interconnection, or other rate or charge.

14 “(2) An electric utility that sells electric energy to the owner or operator of an on-site
15 generating facility shall measure the quantity of electric energy produced by the on-site facility
16 and the quantity of electric energy consumed by the owner or operator of an on-site generating
17 facility during a billing period in accordance with reasonable metering practices.

18 “(3) If the quantity of electric energy sold by the electric utility to an on-site generating
19 facility exceeds the quantity of electric energy supplied by the on-site generating facility to the
20 electric utility during the billing period, the electric utility may bill the owner or operator for the
21 net quantity of electric energy sold, in accordance with reasonable metering practices.

22 “(4) If the quantity of electric energy supplied by the on-site generating facility to the
23 electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site
24 generating facility during the billing period—

25 “(A) the electric utility may bill the owner or operator of the on-site generating
26 facility for the appropriate charges for the billing period in accordance with paragraph
27 (2); and

1 “(B) the owner or operator of the on-site generating facility shall be credited for
2 the excess kilowatt-hours generated during the billing period, with the kilowatt-hour
3 credit appearing on the bill for the following billing period.

4 “(5) An eligible on-site generating facility and net metering system used by an electric
5 consumer shall meet all applicable safety, performance, reliability, and interconnection
6 standards established by the National Electrical Code, the Institute of Electrical and Electronics
7 Engineers, and Underwriters Laboratories.

8 “(6) The Commission, after consultation with State regulatory authorities and
9 unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule,
10 additional control and testing requirements for on-site generating facilities and net metering
11 systems that the Commission determines are necessary to protect public safety and system
12 reliability.

13 “(7) For purposes of this subsection—

14 “(A) The term ‘eligible on-site generating facility’ means a facility on the site of
15 a residential electric consumer with a maximum generating capacity of 10 kilowatts or
16 less that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a
17 commercial electric consumer with a maximum generating capacity of 500 kilowatts or
18 less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency
19 system.

20 “(B) The term ‘renewable energy resource’ means solar, wind, biomass, or
21 geothermal energy.

22 “(C) The term ‘high efficiency system’ means fuel cells or combined heat and
23 power.

24 “(D) The term ‘net metering service’ means service to an electric consumer
25 under which electric energy generated by that electric consumer from an eligible on-site
26 generating facility and delivered to the local distribution facilities may be used to offset
27 electric energy provided by the electric utility to the electric consumer during the

1 applicable billing period.”.

2 **SEC. 1142. SMART METERING.**

3 (a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16
4 U.S.C. 2621(d)) is amended by adding at the end the following:

5 “(12) TIME-BASED METERING AND COMMUNICATIONS.—

6 “(A) Each electric utility shall offer each of its customer classes, and provide
7 individual customers upon customer request, a time-based rate schedule under which
8 the rate charged by the electric utility varies during different time periods and reflects
9 the variance in the costs of generating and purchasing electricity at the wholesale level.
10 The time-based rate schedule shall enable the electric consumer to manage energy use
11 and cost through advanced metering and communications technology.

12 “(B) The types of time-based rate schedules that may be offered under the
13 schedule referred to in subparagraph (A) include, among others—

14 “(i) time-of-use pricing whereby electricity prices are set for a specific
15 time period on an advance or forward basis, typically not changing more often
16 than twice a year. Prices paid for energy consumed during these periods shall
17 be pre-established and known to consumers in advance of such consumption,
18 allowing them to vary their demand and usage in response to such prices and
19 manage their energy costs by shifting usage to a lower cost period or reducing
20 their consumption overall;

21 “(ii) critical peak pricing whereby time-of-use prices are in effect except
22 for certain peak days, when prices may reflect the costs of generating and
23 purchasing electricity at the wholesale level and when consumers may receive
24 additional discounts for reducing peak period energy consumption; and

25 “(iii) real-time pricing whereby electricity prices are set for a specific
26 time period on an advanced or forward basis and may change as often as
27 hourly.

28 “(C) Each electric utility subject to subparagraph (A) shall provide each

1 customer requesting a time-based rate with a time-based meter capable of enabling the
2 utility and customer to offer and receive such rate, respectively.

3 “(D) For purposes of implementing this paragraph, any reference contained in
4 this section to the date of enactment of the Public Utility Regulatory Policies Act of
5 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

6 “(E) In a State that permits third-party marketers to sell electric energy to retail
7 electric consumers, such consumers shall be entitled to receive that same time-based
8 metering and communications device and service as a retail electric consumer of the
9 electric utility.

10 “(F) Notwithstanding subsections (b) and (c) of section 112, each State
11 regulatory authority shall, not later than twelve (12) months after enactment of this
12 paragraph conduct an investigation in accordance with section 115(i) and issue a
13 decision whether it is appropriate to implement the standards set out in subparagraphs
14 (A) and (C).”.

15 (b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section
16 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the
17 at the end the following:

18 “(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall
19 conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to
20 provide and install time-based meters and communications devices for each of their customers which
21 enable such customers to participate in time-based pricing rate schedules and other demand response
22 programs.”.

23 (c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility
24 Regulatory Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by striking “and” at the end of
25 paragraph (3), striking the period at the end of paragraph (4) and inserting “; and”, and by adding the
26 following at the end thereof:

27 “(5) technologies, techniques and rate-making methods related to advanced metering

1 and communications and the use of these technologies, techniques and methods in demand
2 response programs.”.

3 (d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978
4 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

5 “(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

6 “(1) educating consumers on the availability, advantages and benefits of advanced
7 metering and communications technologies, including the funding of demonstration or pilot
8 projects;

9 “(2) working with States, utilities, other energy providers and advanced metering and
10 communications experts to identify and address barriers to the adoption of demand response
11 programs; and

12 “(3) not later than 180 days after the date of enactment of the Energy Policy Act of
13 2003, providing the Congress with a report that identifies and quantifies the national benefits of
14 demand response and makes a recommendation on achieving specific levels of such benefits by
15 January 1, 2005.”.

16 (e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

17 (1) It is the policy of the United States to encourage States to coordinate, on a regional
18 basis, State energy policies to provide reliable and affordable demand response services to the
19 public.

20 (2) The Secretary of Energy shall provide technical assistance to States and regional
21 organizations formed by two or more States to assist them in—

22 (A) identifying the areas with the greatest demand response potential;

23 (B) identifying and resolving problems in transmission and distribution networks,
24 including through the use of demand response; and

25 (C) developing plans and programs to use demand response to respond to
26 peak demand or emergency needs.

27 (3) Not later than 1 year after the date of enactment of this Act, the Commission shall

1 prepare and publish an annual report, by appropriate region, that assesses demand response
2 resources, including those available from all consumer classes, and which identifies and
3 reviews—

4 (A) saturation and penetration rate of advanced meters and communications
5 technologies, devices and systems;

6 (B) existing demand response programs and time-based rate programs;

7 (C) the annual resource contribution of demand resources;

8 (D) the potential for demand response as a quantifiable, reliable resource for
9 regional planning purposes; and

10 (E) steps taken to ensure that, in regional transmission planning and operations,
11 demand resources are provided equitable treatment as a quantifiable, reliable resource
12 relative to the resource obligations of any load-serving entity, transmission provider, or
13 transmitting party.

14 (f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the
15 United States that time-based pricing and other forms of demand response, whereby electricity
16 customers are provided with electricity price signals and the ability to benefit by responding to them,
17 shall be encouraged and the deployment of such technology and devices that enable electricity
18 customers to participate in such pricing and demand response systems shall be facilitated.

19 **SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.**

20 (a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act
21 of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

22 “(6) Each electric utility shall provide distributed generation, combined heat and power,
23 and district heating and cooling systems competitive access to the local distribution grid and
24 competitive pricing of service, and shall use simplified standard contracts for the interconnection
25 of generating facilities that have a power production capacity of 250 kilowatts or less.

26 “(7) No electric utility may refuse to interconnect a generating facility with the
27 distribution facilities of the electric utility if the owner or operator of the generating facility
28 complies with technical standards adopted by the State regulatory authority and agrees to pay

1 the costs established by such State regulatory authority.

2 “(8) Each electric utility shall develop a plan to minimize dependence on one fuel source
3 and to ensure that the electric energy it sells to consumers is generated using a diverse range of
4 fuels and technologies, including renewable technologies.

5 “(9) Each electric utility shall develop and implement a ten-year plan to increase the
6 efficiency of its fossil fuel generation.”.

7 (b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies
8 Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

9 “(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of
10 subsection (b), any reference contained in this section to the date of enactment of the Public Utility
11 Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this
12 subsection.”.

13 **SEC. 1144. TECHNICAL ASSISTANCE.**

14 Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is
15 amended to read as follows:

16 “(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide
17 such technical assistance as determined appropriate to assist State regulatory authorities and electric
18 utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and
19 (9) of section 113(b).”.

20 **SEC. 1145. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.**

21 (a) NEW CONTRACTS.—No electric utility shall be required to enter into a new contract or
22 obligation to purchase or to sell electricity or capacity under section 210 of the Public Utility Regulatory
23 Policies Act of 1978 (16 U.S.C. 824a–3).

24 (b) EXISTING RIGHTS AND REMEDIES.—Nothing in this section affects the rights or remedies of
25 any party with respect to the purchase or sale of electricity or capacity from or to a facility determined
26 to be a qualifying small power production facility or a qualifying cogeneration facility under section 210
27 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) under any contract or
28 obligation to purchase or to sell electricity or capacity in effect on the date of enactment of this Act,

1 including the right to recover the costs of purchasing the electricity or capacity.

2 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Nothing in this Act implies congressional
3 ratification of any interpretation of, or any action taken under, section 210 of the Public Utility
4 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3).

5 **SEC. 1146. RECOVERY OF COSTS.**

6 (a) REGULATION.—To ensure recovery by any electric utility that purchases electricity or
7 capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed
8 under section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) before the
9 date of enactment of this Act of all costs associated with the purchases, the Commission shall
10 promulgate and enforce such regulations as are required to ensure that no utility shall be required
11 directly or indirectly to absorb the costs associated with the purchases.

12 (b) TREATMENT.—A regulation under subsection (a) shall be treated as a rule enforceable
13 under the Federal Power Act (16 U.S.C. 791a et seq.).

14 **Subtitle E—Provisions Regarding the Public Utility Holding**
15 **Company Act of 1935**

16 **SEC. 1151. DEFINITIONS.**

17 For the purposes of this subtitle:

18 (1) The term “affiliate” of a company means any company 5 percent or more of the outstanding
19 voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by
20 such company.

21 (2) The term “associate company” of a company means any company in the same holding
22 company system with such company.

23 (3) The term “Commission” means the Federal Energy Regulatory Commission.

24 (4) The term “company” means a corporation, partnership, association, joint stock company,
25 business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee,
26 or other liquidating agent of any of the foregoing.

27 (5) The term “electric utility company” means any company that owns or operates facilities

1 used for the generation, transmission, or distribution of electric energy for sale.

2 (6) The terms “exempt wholesale generator” and “foreign utility company” have the same
3 meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15
4 U.S.C. 79z-5, 79z-5b), as those sections existed on the day before the effective date of this subtitle.

5 (7) The term “gas utility company” means any company that owns or operates facilities used
6 for distribution at retail (other than the distribution only in enclosed portable containers or distribution to
7 tenants or employees of the company operating such facilities for their own use and not for resale) of
8 natural or manufactured gas for heat, light, or power.

9 (8) the term “holding company” means—

10 (A) any company that directly or indirectly owns, controls, or holds, with power to
11 vote, 10 percent or more of the outstanding voting securities of a public utility company or of a
12 holding company of any public utility company; and

13 (B) any person, determined by the Commission, after notice and opportunity for
14 hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or
15 understanding with one or more persons) such a controlling influence over the management or
16 policies of any public utility company or holding company as to make it necessary or
17 appropriate for the rate protection of utility customers with respect to rates that such person be
18 subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

19 (9) The term “holding company system” means a holding company, together with its
20 subsidiary companies.

21 (10) The term “jurisdictional rates” means rates established by the Commission for the
22 transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in
23 interstate commerce, the transportation of natural gas in interstate commerce, and the sale in
24 interstate commerce of natural gas for resale for ultimate public consumption for domestic,
25 commercial, industrial, or any other use.

26 (11) The term “natural gas company” means a person engaged in the transportation of
27 natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

1 (12) The term “person” means an individual or company.

2 (13) The term “public utility” means any person who owns or operates facilities used
3 for transmission of electric energy in interstate commerce or sales of electric energy at
4 wholesale in interstate commerce.

5 (14) The term “public utility company” means an electric utility company or a gas utility
6 company.

7 (15) The term “State commission” means any commission, board, agency, or officer,
8 by whatever name designated, of a State, municipality, or other political subdivision of a State
9 that, under the laws of such State, has jurisdiction to regulate public utility companies.

10 (16) The term “subsidiary company” of a holding company means—

11 (A) any company, 10 percent or more of the outstanding voting securities of
12 which are directly or indirectly owned, controlled, or held with power to vote, by such
13 holding company; and

14 (B) any person, the management or policies of which the Commission, after
15 notice and opportunity for hearing, determines to be subject to a controlling influence,
16 directly or indirectly, by such holding company (either alone or pursuant to an
17 arrangement or understanding with one or more other persons) so as to make it
18 necessary for the rate protection of utility customers with respect to rates that such
19 person be subject to the obligations, duties, and liabilities imposed by this subtitle upon
20 subsidiary companies of holding companies.

21 (17) The term “voting security” means any security presently entitling the owner or
22 holder thereof to vote in the direction or management of the affairs of a company.

23 **SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

24 The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective
25 12 months after the date of enactment of this Act.

26 **SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.**

27 (a) IN GENERAL.—Each holding company and each associate company thereof shall maintain,
28 and shall make available to the Commission, such books, accounts, memoranda, and other records as

1 the Commission determines are relevant to costs incurred by a public utility or natural gas company that
2 is an associate company of such holding company and necessary or appropriate for the protection of
3 utility customers with respect to jurisdictional rates.

4 (b) **AFFILIATE COMPANIES.**—Each affiliate of a holding company or of any subsidiary
5 company of a holding company shall maintain, and make available to the Commission, such books,
6 accounts, memoranda, and other records with respect to any transaction with another affiliate, as the
7 Commission determines are relevant to costs incurred by a public utility or natural gas company that is
8 an associate company of such holding company and necessary or appropriate for the protection of
9 utility customers with respect to jurisdictional rates.

10 (c) **HOLDING COMPANY SYSTEMS.**—The Commission may examine the books, accounts,
11 memoranda, and other records of any company in a holding company system, or any affiliate thereof, as
12 the Commission determines are relevant to costs incurred by a public utility or natural gas company
13 within such holding company system and necessary or appropriate for the protection of utility customers
14 with respect to jurisdictional rates.

15 (d) **CONFIDENTIALITY.**—No member, officer, or employee of the Commission shall divulge
16 any fact or information that may come to his or her knowledge during the course of examination of
17 books, accounts, memoranda, or other records as provided in this section, except as may be directed
18 by the Commission or by a court of competent jurisdiction.

19 **SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.**

20 (a) **IN GENERAL.**—Upon the written request of a State commission having jurisdiction to
21 regulate a public utility company in a holding company system, and subject to such terms and conditions
22 as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any
23 trade secrets or sensitive commercial information, a holding company or any associate company or
24 affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other
25 records that—

26 (1) have been identified in reasonable detail in a proceeding before the State
27 commission;

28 (2) the State commission determines are relevant to costs incurred by such public utility

1 company; and

2 (3) are necessary for the effective discharge of the responsibilities of the State
3 commission with respect to such proceeding.

4 (b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law
5 concerning the provision of books, accounts, memoranda, or other records, or in any way limit the
6 rights of any State to obtain books, accounts, memoranda, or other records, under Federal law,
7 contract, or otherwise.

8 (c) COURT JURISDICTION.—Any United States district court located in the State in which the
9 State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance
10 with this section.

11 **SEC. 1155. EXEMPTION AUTHORITY.**

12 (a) RULEMAKING.—Not later than 90 days after the date of enactment of this title, the
13 Commission shall promulgate a final rule to exempt from the requirements of section 203 any person
14 that is a holding company, solely with respect to one or more—

15 (1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

16 (2) exempt wholesale generators; or

17 (3) foreign utility companies.

18 (b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds
19 that the books, accounts, memoranda, and other records of any person are not relevant to the
20 jurisdictional rates of a public utility company or natural gas company, or if the Commission finds that
21 any class of transactions is not relevant to the jurisdictional rates of a public utility company, the
22 Commission shall exempt such person or transaction from the requirements of section 203.

23 **SEC. 1156. AFFILIATE TRANSACTIONS.**

24 Nothing in this subtitle shall preclude the Commission or a State commission from exercising its
25 jurisdiction under otherwise applicable law to determine whether a public utility company, public utility,
26 or natural gas company may recover in rates any costs of an activity performed by an associate
27 company, or any costs of goods or services acquired by such public utility company, public utility, or
28 natural gas company from an associate company.

1 **SEC. 1157. APPLICABILITY.**

2 No provision of this subtitle shall apply to, or be deemed to include—

3 (1) the United States;

4 (2) a State or any political subdivision of a State;

5 (3) any foreign governmental authority not operating in the United States;

6 (4) any agency, authority, or instrumentality of any entity referred to in paragraph (1),
7 (2), or (3); or

8 (5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or

9 (3) acting as such in the course of such officer, agent, or employee's official duty.

10 **SEC. 1158. EFFECT ON OTHER REGULATIONS.**

11 Nothing in this subtitle precludes the Commission or a State commission from exercising its
12 jurisdiction under otherwise applicable law to protect utility customers.

13 **SEC. 1159. ENFORCEMENT.**

14 The Commission shall have the same powers as set forth in sections 306 through 317 of the
15 Federal Power Act (16 U.S.C. 825e-825p) to enforce the provisions of this subtitle.

16 **SEC. 1160. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to
18 engage in activities or transactions in which it is legally engaged or authorized to engage on the date of
19 enactment of this Act, if that person continues to comply with the terms of any such authorization,
20 whether by rule or by order.

21 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority
22 of the Commission under the Federal Power Act (16 U.S.C. 791a and following) (including section
23 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 and following) (including section 8 of that
24 Act).

25 **SEC. 1161. IMPLEMENTATION.**

26 Not later than 12 months after the date of enactment of this title, the Commission shall—

27 (1) promulgate such regulations as may be necessary or appropriate to implement this
28 subtitle; and

1 (2) submit to Congress detailed recommendations on technical and conforming
2 amendments to Federal law necessary to carry out this subtitle and the amendments made by
3 this subtitle.

4 **SEC. 1162. TRANSFER OF RESOURCES.**

5 All books and records that relate primarily to the functions transferred to the Commission under
6 this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

7 **SEC. 1163. EFFECTIVE DATE.**

8 This subtitle shall take effect 12 months after the date of enactment of this title.

9 **SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.**

10 Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

11 **Subtitle F—Market Transparency, Anti-Manipulation And**
12 **Enforcement**

13 **SEC. 1171. MARKET TRANSPARENCY RULES.**

14 Part II of the Federal Power Act is amended by adding:

15 “MARKET TRANSPARENCY RULES

16 “SEC. 222. (a) Not later than 180 days after the date of enactment of this section, the
17 Commission shall issue rules establishing an electronic information system to provide the Commission
18 and the public with access to such information as is necessary or appropriate to facilitate price
19 transparency and participation in markets subject to the Commission’s jurisdiction. Such systems shall
20 provide information about the availability and market price of wholesale electric energy and
21 transmission services to the Commission, State commissions, buyers and sellers of wholesale electric
22 energy, users of transmission services, and the public. The Commission shall have authority to obtain
23 such information from any electric and transmitting utility, including any entity described in section
24 201(f).

25 “(b) The Commission shall exempt from disclosure information it determines would, if disclosed,
26 be detrimental to the operation of an effective market or jeopardize system security. This section shall
27 not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or
28 sale of wholesale electric energy and transmission services within the area described in section

1 212(k)(2)(A).”.

2 **SEC. 1172. MARKET MANIPULATION.**

3 Part II of the Federal Power Act is amended by the following:

4 “PROHIBITION ON FILING FALSE INFORMATION

5 “SEC. 223. It shall be a violation of this Act for any person or any other entity (including entities
6 described in section 201(f)) willfully and knowingly to report any information relating to the price of
7 electricity sold at wholesale, which information the person or any other entity knew to be false at the
8 time of the reporting, to any governmental entity with the intent to manipulate the data being compiled
9 by such governmental entity.

10 “PROHIBITION ON ROUND TRIP TRADING

11 “SEC. 224. (a) It shall be a violation of this Act for any person or any other entity (including
12 entities described in section 201(f)) willfully and knowingly to enter into any contract or other
13 arrangement to execute a ‘round-trip trade’ for the purchase or sale of electric energy at wholesale.

14 “(b) For the purposes of this section, the term ‘round trip trade’ means a transaction, or
15 combination of transactions, in which a person or any other entity—

16 “(1) enters into a contract or other arrangement to purchase from, or sell to, any other
17 person or other entity electric energy at wholesale;

18 “(2) simultaneously with entering into the contract or arrangement described in
19 paragraph (1), arranges a financially offsetting trade with such other person or entity for the
20 same such electric energy, at the same location, price, quantity and terms so that, collectively,
21 the purchase and sale transactions in themselves result in no financial gain or loss; and

22 “(3) enters into the contract or arrangement with the intent to deceptively affect
23 reported revenues, trading volumes, or prices.”.

24 **SEC. 1173. ENFORCEMENT.**

25 (a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended
26 by—

27 (1) inserting “electric utility (including entities described in section 201(f) and rural
28 cooperative entities),” after “Any person,”; and

1 (2) inserting “transmitting utility,” after “licensee” each place it appears.

2 (b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is
3 amended by inserting “or transmitting utility” after “any person” in the first sentence.

4 (c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C.
5 8251) is amended by inserting “electric utility,” after “Any person,” in the first sentence.

6 (d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is
7 amended—

8 (1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking
9 “two years” and inserting “five years”;

10 (2) in subsection (b), by striking “\$500” and inserting “\$25,000”; and

11 (3) by striking subsection (c).

12 (e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o-1) is
13 amended—

14 (1) in subsections (a) and (b), by striking “section 211, 212, 213, or 214” each place it
15 appears and inserting “Part II”; and

16 (2) in subsection (b), by striking “\$10,000” and inserting “\$1,000,000”.

17 (f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

18 (1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking
19 “two years” and inserting “five years”; and

20 (2) in subsection (b), by striking “\$500” and inserting “\$50,000”.

21 **SEC. 1174. REFUND EFFECTIVE DATE.**

22 Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

23 (1) striking “the date 60 days after the filing of such complaint nor later than 5 months
24 after the expiration of such 60-day period” in the second sentence and inserting “the date of the
25 filing of such complaint nor later than 5 months after the filing of such complaint”;

26 (2) striking “60 days after” in the third sentence and inserting “of”;

27 (3) striking “expiration of such 60-day period” in the third sentence and inserting
28 “publication date”; and

1 (4) striking the fifth sentence and inserting: “If no final decision is rendered by the
2 conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this
3 section, the Commission shall state the reasons why it has failed to do so and shall state its best
4 estimate as to when it reasonably expects to make such decision.”.

5 **Subtitle G—Consumer Protections**

6 **SEC. 1181. CONSUMER PRIVACY.**

7 The Federal Trade Commission shall issue rules protecting the privacy of electric consumers
8 from the disclosure of consumer information in connection with the sale or delivery of electric energy to
9 a retail electric consumer. If the Federal Trade Commission determines that a State’s regulations
10 provide equivalent or greater protection than the provisions of this section, such State regulations shall
11 apply in that State in lieu of the regulations issued by the Commission under this section.

12 **SEC. 1182. UNFAIR TRADE PRACTICES.**

13 (a) **SLAMMING.**—The Federal Trade Commission shall issue rules prohibiting the change of
14 selection of an electric utility except with the informed consent of the electric consumer or if determined
15 by the appropriate State regulatory authority to be necessary to prevent loss of service.

16 (b) **CRAMMING.**—The Federal Trade Commission shall issue rules prohibiting the sale of
17 goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

18 (c) **STATE AUTHORITY.**—If the Federal Trade Commission determines that a State’s
19 regulations provide equivalent or greater protection than the provisions of this section, such State
20 regulations shall apply in that State in lieu of the regulations issued by the Commission under this
21 section.

22 **SEC. 1183. DEFINITIONS.**

23 For purposes of this subtitle—

24 (1) “State regulatory authority ” has the meaning given that term in section 3(21) of the
25 Federal Power Act (16 U.S.C. 796(21)).

26 (2) “electric consumer” and “electric utility” have the meanings given those terms in
27 section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Technical Amendments

SEC. 1191. TECHNICAL AMENDMENTS.

(a) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

(1) striking “(2)”;

(2) striking “(A)” and inserting “(1)”

(3) striking “(B)” and inserting “(2)”; and

(4) striking “termination of modification” and inserting “termination or modification”.

(b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking “electric utility” the second time it appears and inserting “transmitting utility”.

(c) Section 315 of the Federal Power Act (16 U.S.C. 825n) is amended by striking “subsection” and inserting “section”.