

[CHAIRMEN'S PROPOSED CONFERENCE REPORT]

NOVEMBER 17, 2003

1 **TITLE XII—ELECTRICITY**

2 **SEC. 1201. SHORT TITLE.**

3 This title may be cited as the “Electric Reliability
4 Act of 2003”.

5 **Subtitle A—Reliability Standards**

6 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C 824 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 215. ELECTRIC RELIABILITY.**

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

12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
14 essary for operating an interconnected electric
15 energy transmission network (or any portion
16 thereof); and

17 “(B) electric energy from generation facili-
18 ties needed to maintain transmission system re-
19 liability.

20 The term does not include facilities used in the local
21 distribution of electric energy.

22 “(2) The terms ‘Electric Reliability Organiza-
23 tion’ and ‘ERO’ mean the organization certified by

1 the Commission under subsection (c) the purpose of
2 which is to establish and enforce reliability stand-
3 ards for the bulk-power system, subject to Commis-
4 sion review.

5 “(3) The term ‘reliability standard’ means a re-
6 quirement, approved by the Commission under this
7 section, to provide for reliable operation of the bulk-
8 power system. The term includes requirements for
9 the operation of existing bulk-power system facilities
10 and the design of planned additions or modifications
11 to such facilities to the extent necessary to provide
12 for reliable operation of the bulk-power system, but
13 the term does not include any requirement to en-
14 large such facilities or to construct new transmission
15 capacity or generation capacity.

16 “(4) The term ‘reliable operation’ means oper-
17 ating the elements of the bulk-power system within
18 equipment and electric system thermal, voltage, and
19 stability limits so that instability, uncontrolled sepa-
20 ration, or cascading failures of such system will not
21 occur as a result of a sudden disturbance or unan-
22 ticipated failure of system elements.

23 “(5) The term ‘Interconnection’ means a geo-
24 graphic area in which the operation of bulk-power
25 system components is synchronized such that the

1 failure of 1 or more of such components may ad-
2 versely affect the ability of the operators of other
3 components within the system to maintain reliable
4 operation of the facilities within their control.

5 “(6) The term ‘transmission organization’
6 means a Regional Transmission Organization, Inde-
7 pendent System Operator, independent transmission
8 provider, or other transmission organization finally
9 approved by the Commission for the operation of
10 transmission facilities.

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

14 “(b) JURISDICTION AND APPLICABILITY.—(1) The
15 Commission shall have jurisdiction, within the United
16 States, over the ERO certified by the Commission under
17 subsection (c), any regional entities, and all users, owners
18 and operators of the bulk-power system, including but not
19 limited to the entities described in section 201(f), for pur-
20 poses of approving reliability standards established under
21 this section and enforcing compliance with this section. All
22 users, owners and operators of the bulk-power system
23 shall comply with reliability standards that take effect
24 under this section.

1 “(2) The Commission shall issue a final rule to imple-
2 ment the requirements of this section not later than 180
3 days after the date of enactment of this section.

4 “(c) CERTIFICATION.—Following the issuance of a
5 Commission rule under subsection (b)(2), any person may
6 submit an application to the Commission for certification
7 as the Electric Reliability Organization. The Commission
8 may certify 1 such ERO if the Commission determines
9 that such ERO—

10 “(1) has the ability to develop and enforce, sub-
11 ject to subsection (e)(2), reliability standards that
12 provide for an adequate level of reliability of the
13 bulk-power system; and

14 “(2) has established rules that—

15 “(A) assure its independence of the users
16 and owners and operators of the bulk-power
17 system, while assuring fair stakeholder rep-
18 resentation in the selection of its directors and
19 balanced decisionmaking in any ERO com-
20 mittee or subordinate organizational structure;

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

24 “(C) provide fair and impartial procedures
25 for enforcement of reliability standards through

1 the imposition of penalties in accordance with
2 subsection (e) (including limitations on activi-
3 ties, functions, or operations, or other appro-
4 priate sanctions);

5 “(D) provide for reasonable notice and op-
6 portunity for public comment, due process,
7 openness, and balance of interests in developing
8 reliability standards and otherwise exercising its
9 duties; and

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

13 “(d) RELIABILITY STANDARDS.—(1) The Electric
14 Reliability Organization shall file each reliability standard
15 or modification to a reliability standard that it proposes
16 to be made effective under this section with the Commis-
17 sion.

18 “(2) The Commission may approve, by rule or order,
19 a proposed reliability standard or modification to a reli-
20 ability standard if it determines that the standard is just,
21 reasonable, not unduly discriminatory or preferential, and
22 in the public interest. The Commission shall give due
23 weight to the technical expertise of the Electric Reliability
24 Organization with respect to the content of a proposed
25 standard or modification to a reliability standard and to

1 the technical expertise of a regional entity organized on
2 an Interconnection-wide basis with respect to a reliability
3 standard to be applicable within that Interconnection, but
4 shall not defer with respect to the effect of a standard
5 on competition. A proposed standard or modification shall
6 take effect upon approval by the Commission.

7 “(3) The Electric Reliability Organization shall
8 rebuttably presume that a proposal from a regional entity
9 organized on an Interconnection-wide basis for a reliability
10 standard or modification to a reliability standard to be ap-
11 plicable on an Interconnection-wide basis is just, reason-
12 able, and not unduly discriminatory or preferential, and
13 in the public interest.

14 “(4) The Commission shall remand to the Electric
15 Reliability Organization for further consideration a pro-
16 posed reliability standard or a modification to a reliability
17 standard that the Commission disapproves in whole or in
18 part.

19 “(5) The Commission, upon its own motion or upon
20 complaint, may order the Electric Reliability Organization
21 to submit to the Commission a proposed reliability stand-
22 ard or a modification to a reliability standard that ad-
23 dresses a specific matter if the Commission considers such
24 a new or modified reliability standard appropriate to carry
25 out this section.

1 “(6) The final rule adopted under subsection (b)(2)
2 shall include fair processes for the identification and time-
3 ly resolution of any conflict between a reliability standard
4 and any function, rule, order, tariff, rate schedule, or
5 agreement accepted, approved, or ordered by the Commis-
6 sion applicable to a transmission organization. Such trans-
7 mission organization shall continue to comply with such
8 function, rule, order, tariff, rate schedule or agreement ac-
9 cepted approved, or ordered by the Commission until—

10 “(A) the Commission finds a conflict exists be-
11 tween a reliability standard and any such provision;

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

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

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

21 “(e) ENFORCEMENT.—(1) The ERO may impose,
22 subject to paragraph (2), a penalty on a user or owner
23 or operator of the bulk-power system for a violation of a
24 reliability standard approved by the Commission under

1 subsection (d) if the ERO, after notice and an opportunity
2 for a hearing—

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

6 “(B) files notice and the record of the pro-
7 ceeding with the Commission.

8 “(2) A penalty imposed under paragraph (1) may
9 take effect not earlier than the 31st day after the ERO
10 files with the Commission notice of the penalty and the
11 record of proceedings. Such penalty shall be subject to re-
12 view by the Commission, on its own motion or upon appli-
13 cation by the user, owner or operator that is the subject
14 of the penalty filed within 30 days after the date such
15 notice is filed with the Commission. Application to the
16 Commission for review, or the initiation of review by the
17 Commission on its own motion, shall not operate as a stay
18 of such penalty unless the Commission otherwise orders
19 upon its own motion or upon application by the user,
20 owner or operator that is the subject of such penalty. In
21 any proceeding to review a penalty imposed under para-
22 graph (1), the Commission, after notice and opportunity
23 for hearing (which hearing may consist solely of the record
24 before the ERO and opportunity for the presentation of
25 supporting reasons to affirm, modify, or set aside the pen-

1 alty), shall by order affirm, set aside, reinstate, or modify
2 the penalty, and, if appropriate, remand to the ERO for
3 further proceedings. The Commission shall implement ex-
4 pedited procedures for such hearings.

5 “(3) On its own motion or upon complaint, the Com-
6 mission may order compliance with a reliability standard
7 and may impose a penalty against a user or owner or oper-
8 ator of the bulk-power system if the Commission finds,
9 after notice and opportunity for a hearing, that the user
10 or owner or operator of the bulk-power system has en-
11 gaged or is about to engage in any acts or practices that
12 constitute or will constitute a violation of a reliability
13 standard.

14 “(4) The Commission shall issue regulations author-
15 izing the ERO to enter into an agreement to delegate au-
16 thority to a regional entity for the purpose of proposing
17 reliability standards to the ERO and enforcing reliability
18 standards under paragraph (1) if—

19 “(A) the regional entity is governed by—

20 “(i) an independent board;

21 “(ii) a balanced stakeholder board; or

22 “(iii) a combination independent and bal-
23 anced stakeholder board.

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

1 “(C) the agreement promotes effective and effi-
2 cient administration of bulk-power system reliability.
3 The Commission may modify such delegation. The ERO
4 and the Commission shall rebuttably presume that a pro-
5 posal for delegation to a regional entity organized on an
6 Interconnection-wide basis promotes effective and efficient
7 administration of bulk-power system reliability and should
8 be approved. Such regulation may provide that the Com-
9 mission may assign the ERO’s authority to enforce reli-
10 ability standards under paragraph (1) directly to a re-
11 gional entity consistent with the requirements of this para-
12 graph.

13 “(5) The Commission may take such action as is nec-
14 essary or appropriate against the ERO or a regional entity
15 to ensure compliance with a reliability standard or any
16 Commission order affecting the ERO or a regional entity.

17 “(6) Any penalty imposed under this section shall
18 bear a reasonable relation to the seriousness of the viola-
19 tion and shall take into consideration the efforts of such
20 user, owner, or operator to remedy the violation in a time-
21 ly manner.

22 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
23 TION RULES.—The Electric Reliability Organization shall
24 file with the Commission for approval any proposed rule
25 or proposed rule change, accompanied by an explanation

1 of its basis and purpose. The Commission, upon its own
2 motion or complaint, may propose a change to the rules
3 of the ERO. A proposed rule or proposed rule change shall
4 take effect upon a finding by the Commission, after notice
5 and opportunity for comment, that the change is just, rea-
6 sonable, not unduly discriminatory or preferential, is in
7 the public interest, and satisfies the requirements of sub-
8 section (c).

9 “(g) RELIABILITY REPORTS.—The ERO shall con-
10 duct periodic assessments of the reliability and adequacy
11 of the bulk-power system in North America.

12 “(h) COORDINATION WITH CANADA AND MEXICO.—
13 The President is urged to negotiate international agree-
14 ments with the governments of Canada and Mexico to pro-
15 vide for effective compliance with reliability standards and
16 the effectiveness of the ERO in the United States and
17 Canada or Mexico.

18 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
19 authority to develop and enforce compliance with reli-
20 ability standards for only the bulk-power system.

21 “(2) This section does not authorize the ERO or the
22 Commission to order the construction of additional gen-
23 eration or transmission capacity or to set and enforce com-
24 pliance with standards for adequacy or safety of electric
25 facilities or services.

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

6 “(4) Within 90 days of the application of the Electric
7 Reliability Organization or other affected party, and after
8 notice and opportunity for comment, the Commission shall
9 issue a final order determining whether a State action is
10 inconsistent with a reliability standard, taking into consid-
11 eration any recommendation of the ERO.

12 “(5) The Commission, after consultation with the
13 ERO and the State taking action, may stay the effective-
14 ness of any State action, pending the Commission’s
15 issuance of a final order.

16 “(j) REGIONAL ADVISORY BODIES.—The Commis-
17 sion shall establish a regional advisory body on the petition
18 of at least $\frac{2}{3}$ of the States within a region that have more
19 than $\frac{1}{2}$ of their electric load served within the region. A
20 regional advisory body shall be composed of 1 member
21 from each participating State in the region, appointed by
22 the Governor of each State, and may include representa-
23 tives of agencies, States, and provinces outside the United
24 States. A regional advisory body may provide advice to the
25 Electric Reliability Organization, a regional entity, or the

1 Commission regarding the governance of an existing or
2 proposed regional entity within the same region, whether
3 a standard proposed to apply within the region is just,
4 reasonable, not unduly discriminatory or preferential, and
5 in the public interest, whether fees proposed to be assessed
6 within the region are just, reasonable, not unduly discrimi-
7 natory or preferential, and in the public interest and any
8 other responsibilities requested by the Commission. The
9 Commission may give deference to the advice of any such
10 regional advisory body if that body is organized on an
11 Interconnection-wide basis.

12 “(k) ALASKA AND HAWAII.—The provisions of this
13 section do not apply to Alaska or Hawaii.”

14 (b) STATUS OF ERO.—The Electric Reliability Orga-
15 nization certified by the Federal Energy Regulatory Com-
16 mission under section 215(c) of the Federal Power Act
17 and any regional entity delegated enforcement authority
18 pursuant to section 215(e)(4) of that Act are not depart-
19 ments, agencies, or instrumentalities of the United States
20 Government.

1 **Subtitle B—Transmission**
2 **Infrastructure Modernization**

3 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
4 **MISSION FACILITIES.**

5 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
6 II of the Federal Power Act is amended by adding at the
7 end the following:

8 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
9 **MISSION FACILITIES.**

10 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
11 TRIC TRANSMISSION CORRIDORS.—

12 “(1) TRANSMISSION CONGESTION STUDY.—

13 Within 1 year after the enactment of this section,
14 and every 3 years thereafter, the Secretary of En-
15 ergy, in consultation with affected States, shall con-
16 duct a study of electric transmission congestion.
17 After considering alternatives and recommendations
18 from interested parties, including an opportunity for
19 comment from affected States, the Secretary shall
20 issue a report, based on such study, which may des-
21 ignate any geographic area experiencing electric en-
22 ergy transmission capacity constraints or congestion
23 that adversely affects consumers as a national inter-
24 est electric transmission corridor. The Secretary
25 shall conduct the study and issue the report in con-

1 sultation with any appropriate regional entity referred in section 215 of this Act.

3 “(2) CONSIDERATIONS.—In determining whether to designate a national interest electric transmission corridor referred to in paragraph (1) under this section, the Secretary may consider whether—

7 “(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

11 “(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

15 “(ii) a diversification of supply is warranted;

17 “(C) the energy independence of the United States would be served by the designation;

21 “(D) the designation would be in the interest of national energy policy; and

23 “(E) the designation would enhance national defense and homeland security.

24 “(b) CONSTRUCTION PERMIT.—Except as provided in subsection (i), the Commission is authorized, after no-

1 tice and an opportunity for hearing, to issue a permit or
2 permits for the construction or modification of electric
3 transmission facilities in a national interest electric trans-
4 mission corridor designated by the Secretary under sub-
5 section (a) if the Commission finds that—

6 “(1)(A) a State in which the transmission fa-
7 cilities are to be constructed or modified is without
8 authority to—

9 “(i) approve the siting of the facilities; or

10 “(ii) consider the interstate benefits ex-
11 pected to be achieved by the proposed construc-
12 tion or modification of transmission facilities in
13 the State;

14 “(B) the applicant for a permit is a transmit-
15 ting utility under this Act but does not qualify to
16 apply for a permit or siting approval for the pro-
17 posed project in a State because the applicant does
18 not serve end-use customers in the State; or

19 “(C) a State commission or other entity that
20 has authority to approve the siting of the facilities
21 has—

22 “(i) withheld approval for more than 1
23 year after the filing of an application pursuant
24 to applicable law seeking approval or 1 year
25 after the designation of the relevant national in-

1 terest electric transmission corridor, whichever
2 is later; or

3 “(ii) conditioned its approval in such a
4 manner that the proposed construction or modi-
5 fication will not significantly reduce trans-
6 mission congestion in interstate commerce or is
7 not economically feasible;

8 “(2) the facilities to be authorized by the per-
9 mit will be used for the transmission of electric en-
10 ergy in interstate commerce;

11 “(3) the proposed construction or modification
12 is consistent with the public interest;

13 “(4) the proposed construction or modification
14 will significantly reduce transmission congestion in
15 interstate commerce and protects or benefits con-
16 sumers; and

17 “(5) the proposed construction or modification
18 is consistent with sound national energy policy and
19 will enhance energy independence.

20 “(c) PERMIT APPLICATIONS.—Permit applications
21 under subsection (b) shall be made in writing to the Com-
22 mission. The Commission shall issue rules setting forth
23 the form of the application, the information to be con-
24 tained in the application, and the manner of service of no-
25 tice of the permit application upon interested persons.

1 “(d) COMMENTS.—In any proceeding before the
2 Commission under subsection (b), the Commission shall
3 afford each State in which a transmission facility covered
4 by the permit is or will be located, each affected Federal
5 agency and Indian tribe, private property owners, and
6 other interested persons, a reasonable opportunity to
7 present their views and recommendations with respect to
8 the need for and impact of a facility covered by the permit.

9 “(e) RIGHTS-OF-WAY.—In the case of a permit under
10 subsection (b) for electric transmission facilities to be lo-
11 cated on property other than property owned by the
12 United States or a State, if the permit holder cannot ac-
13 quire by contract, or is unable to agree with the owner
14 of the property to the compensation to be paid for, the
15 necessary right-of-way to construct or modify such trans-
16 mission facilities, the permit holder may acquire the right-
17 of-way by the exercise of the right of eminent domain in
18 the district court of the United States for the district in
19 which the property concerned is located, or in the appro-
20 priate court of the State in which the property is located.
21 The practice and procedure in any action or proceeding
22 for that purpose in the district court of the United States
23 shall conform as nearly as may be with the practice and
24 procedure in similar action or proceeding in the courts of
25 the State where the property is situated.

1 “(f) STATE LAW.—Nothing in this section shall pre-
2 clude any person from constructing or modifying any
3 transmission facility pursuant to State law.

4 “(g) COMPENSATION.—Any exercise of eminent do-
5 main authority pursuant to this section shall be considered
6 a taking of private property for which just compensation
7 is due. Just compensation shall be an amount equal to
8 the full fair market value of the property taken on the
9 date of the exercise of eminent domain authority, except
10 that the compensation shall exceed fair market value if
11 necessary to make the landowner whole for decreases in
12 the value of any portion of the land not subject to eminent
13 domain. Any parcel of land acquired by eminent domain
14 under this subsection shall be transferred back to the
15 owner from whom it was acquired (or his heirs or assigns)
16 if the land is not used for the construction or modification
17 of electric transmission facilities within a reasonable pe-
18 riod of time after the acquisition. Other than construction,
19 modification, operation, or maintenance of electric trans-
20 mission facilities and related facilities, property acquired
21 under subsection (e) may not be used for any purpose (in-
22 cluding use for any heritage area, recreational trail, or
23 park) without the consent of the owner of the parcel from
24 whom the property was acquired (or the owner’s heirs or
25 assigns).

1 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
2 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

3 “(1) LEAD AGENCY.—If an applicant, or pro-
4 spective applicant, for a Federal authorization re-
5 lated to an electric transmission or distribution facil-
6 ity so requests, the Department of Energy (DOE)
7 shall act as the lead agency for purposes of coordi-
8 nating all applicable Federal authorizations and re-
9 lated environmental reviews of the facility. For pur-
10 poses of this subsection, the term ‘Federal author-
11 ization’ means any authorization required under
12 Federal law in order to site a transmission or dis-
13 tribution facility, including but not limited to such
14 permits, special use authorizations, certifications,
15 opinions, or other approvals as may be required,
16 whether issued by a Federal or a State agency. To
17 the maximum extent practicable under applicable
18 Federal law, the Secretary of Energy shall coordi-
19 nate this Federal authorization and review process
20 with any Indian tribes, multi-State entities, and
21 State agencies that are responsible for conducting
22 any separate permitting and environmental reviews
23 of the facility, to ensure timely and efficient review
24 and permit decisions.

1 “(2) AUTHORITY TO SET DEADLINES.—As lead
2 agency, the Department of Energy, in consultation
3 with agencies responsible for Federal authorizations
4 and, as appropriate, with Indian tribes, multi-State
5 entities, and State agencies that are willing to co-
6 ordinate their own separate permitting and environ-
7 mental reviews with the Federal authorization and
8 environmental reviews, shall establish prompt and
9 binding intermediate milestones and ultimate dead-
10 lines for the review of, and Federal authorization de-
11 cisions relating to, the proposed facility. The Sec-
12 retary of Energy shall ensure that once an applica-
13 tion has been submitted with such data as the Sec-
14 retary considers necessary, all permit decisions and
15 related environmental reviews under all applicable
16 Federal laws shall be completed within 1 year or, if
17 a requirement of another provision of Federal law
18 makes this impossible, as soon thereafter as is prac-
19 ticable. The Secretary of Energy also shall provide
20 an expeditious pre-application mechanism for pro-
21 spective applicants to confer with the agencies in-
22 volved to have each such agency determine and com-
23 municate to the prospective applicant within 60 days
24 of when the prospective applicant submits a request
25 for such information concerning—

1 “(A) the likelihood of approval for a poten-
2 tial facility; and

3 “(B) key issues of concern to the agencies
4 and public.

5 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
6 AND RECORD OF DECISION.—As lead agency head,
7 the Secretary of Energy, in consultation with the af-
8 fected agencies, shall prepare a single environmental
9 review document, which shall be used as the basis
10 for all decisions on the proposed project under Fed-
11 eral law. The document may be an environmental as-
12 sessment or environmental impact statement under
13 the National Environmental Policy Act of 1969 if
14 warranted, or such other form of analysis as may be
15 warranted. The Secretary of Energy and the heads
16 of other agencies shall streamline the review and
17 permitting of transmission and distribution facilities
18 within corridors designated under section 503 of the
19 Federal Land Policy and Management Act (43
20 U.S.C. 1763) by fully taking into account prior anal-
21 yses and decisions relating to the corridors. Such
22 document shall include consideration by the relevant
23 agencies of any applicable criteria or other matters
24 as required under applicable laws.

1 “(4) APPEALS.—In the event that any agency
2 has denied a Federal authorization required for a
3 transmission or distribution facility, or has failed to
4 act by the deadline established by the Secretary pur-
5 suant to this section for deciding whether to issue
6 the authorization, the applicant or any State in
7 which the facility would be located may file an ap-
8 peal with the Secretary, who shall, in consultation
9 with the affected agency, review the denial or take
10 action on the pending application. Based on the
11 overall record and in consultation with the affected
12 agency, the Secretary may then either issue the nec-
13 essary authorization with any appropriate condi-
14 tions, or deny the application. The Secretary shall
15 issue a decision within 90 days of the filing of the
16 appeal. In making a decision under this paragraph,
17 the Secretary shall comply with applicable require-
18 ments of Federal law, including any requirements of
19 the Endangered Species Act, the Clean Water Act,
20 the National Forest Management Act, the National
21 Environmental Policy Act of 1969, and the Federal
22 Land Policy and Management Act.

23 “(5) CONFORMING REGULATIONS AND MEMO-
24 RANDA OF UNDERSTANDING.—Not later than 18
25 months after the date of enactment of this section,

1 the Secretary of Energy shall issue any regulations
2 necessary to implement this subsection. Not later
3 than 1 year after the date of enactment of this sec-
4 tion, the Secretary and the heads of all Federal
5 agencies with authority to issue Federal authoriza-
6 tions shall enter into Memoranda of Understanding
7 to ensure the timely and coordinated review and per-
8 mitting of electricity transmission and distribution
9 facilities. The head of each Federal agency with au-
10 thority to issue a Federal authorization shall des-
11 ignate a senior official responsible for, and dedicate
12 sufficient other staff and resources to ensure, full
13 implementation of the DOE regulations and any
14 Memoranda. Interested Indian tribes, multi-State
15 entities, and State agencies may enter such Memo-
16 randa of Understanding.

17 “(6) DURATION AND RENEWAL.—Each Federal
18 land use authorization for an electricity transmission
19 or distribution facility shall be issued—

20 “(A) for a duration, as determined by the
21 Secretary of Energy, commensurate with the
22 anticipated use of the facility, and

23 “(B) with appropriate authority to manage
24 the right-of-way for reliability and environ-
25 mental protection.

1 Upon the expiration of any such authorization (in-
2 cluding an authorization issued prior to enactment
3 of this section), the authorization shall be reviewed
4 for renewal taking fully into account reliance on
5 such electricity infrastructure, recognizing its impor-
6 tance for public health, safety and economic welfare
7 and as a legitimate use of Federal lands.

8 “(7) MAINTAINING AND ENHANCING THE
9 TRANSMISSION INFRASTRUCTURE.—In exercising the
10 responsibilities under this section, the Secretary of
11 Energy shall consult regularly with the Federal En-
12 ergy Regulatory Commission (FERC), FERC-ap-
13 proved electric reliability organizations (including re-
14 lated regional entities), and FERC-approved Re-
15 gional Transmission Organizations and Independent
16 System Operators.

17 “(i) INTERSTATE COMPACTS.—The consent of Con-
18 gress is hereby given for States to enter into interstate
19 compacts establishing regional transmission siting agen-
20 cies to facilitate siting of future electric energy trans-
21 mission facilities within such States and to carry out the
22 electric energy transmission siting responsibilities of such
23 States. The Secretary of Energy may provide technical as-
24 sistance to regional transmission siting agencies estab-
25 lished under this subsection. Such regional transmission

1 siting agencies shall have the authority to review, certify,
2 and permit siting of transmission facilities, including fa-
3 cilities in national interest electric transmission corridors
4 (other than facilities on property owned by the United
5 States). The Commission shall have no authority to issue
6 a permit for the construction or modification of electric
7 transmission facilities within a State that is a party to
8 a compact, unless the Secretary makes, after notice and
9 an opportunity for a hearing, the finding described in sec-
10 tion (b)(1)(C).

11 “(j) SAVINGS CLAUSE.—Nothing in this section shall
12 be construed to affect any requirement of the environ-
13 mental laws of the United States, including, but not lim-
14 ited to, the National Environmental Policy Act of 1969.
15 Subsection (h)(4) of this section shall not apply to any
16 Congressionally-designated components of the National
17 Wilderness Preservation System, the National Wild and
18 Scenic Rivers System, or the National Park system (in-
19 cluding National Monuments therein).

20 “(k) ERCOT.—This section shall not apply within
21 the area referred to in section 212(k)(2)(A).”.

22 (b) REPORTS TO CONGRESS ON CORRIDORS AND
23 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of
24 the Interior, the Secretary of Energy, the Secretary of Ag-
25 riculture, and the Chairman of the Council on Environ-

1 mental Quality shall, within 90 days of the date of enact-
2 ment of this subsection, submit a joint report to Congress
3 identifying each of the following:

4 (1) All existing designated transmission and
5 distribution corridors on Federal land and the status
6 of work related to proposed transmission and dis-
7 tribution corridor designations under Title V of the
8 Federal Land Policy and Management Act (43
9 U.S.C. 1761 et. Seq.), the schedule for completing
10 such work, any impediments to completing the work,
11 and steps that Congress could take to expedite the
12 process.

13 (2) The number of pending applications to lo-
14 cate transmission and distribution facilities on Fed-
15 eral lands, key information relating to each such fa-
16 cility, how long each application has been pending,
17 the schedule for issuing a timely decision as to each
18 facility, and progress in incorporating existing and
19 new such rights-of-way into relevant land use and
20 resource management plans or their equivalent.

21 (3) The number of existing transmission and
22 distribution rights-of-way on Federal lands that will
23 come up for renewal within the following 5, 10, and
24 15 year periods, and a description of how the Secre-
25 taries plan to manage such renewals.

1 **SEC. 1222. THIRD-PARTY FINANCE.**

2 (a) EXISTING FACILITIES.—The Secretary of Energy
3 (hereinafter in this section referred to as the “Secretary”),
4 acting through the Administrator of the Western Area
5 Power Administration (hereinafter in this section referred
6 to as “WAPA”), or through the Administrator of the
7 Southwestern Power Administration (hereinafter in this
8 section referred to as “SWPA”), or both, may design, de-
9 velop, construct, operate, maintain, or own, or participate
10 with other entities in designing, developing, constructing,
11 operating, maintaining, or owning, an electric power
12 transmission facility and related facilities (“Project”)
13 needed to upgrade existing transmission facilities owned
14 by SWPA or WAPA if the Secretary of Energy, in con-
15 sultation with the applicable Administrator, determines
16 that the proposed Project—

17 (1)(A) is located in a national interest electric
18 transmission corridor designated under section
19 216(a) of the Federal Power Act and will reduce
20 congestion of electric transmission in interstate com-
21 merce; or

22 (B) is necessary to accommodate an actual or
23 projected increase in demand for electric trans-
24 mission capacity;

25 (2) is consistent with—

1 (A) transmission needs identified, in a
2 transmission expansion plan or otherwise, by
3 the appropriate Regional Transmission Organi-
4 zation or Independent System Operator (as de-
5 fined in the Federal Power Act), if any, or ap-
6 proved regional reliability organization; and

7 (B) efficient and reliable operation of the
8 transmission grid; and

9 (3) would be operated in conformance with pru-
10 dent utility practice.

11 (b) NEW FACILITIES.—The Secretary, acting
12 through WAPA or SWPA, or both, may design, develop,
13 construct, operate, maintain, or own, or participate with
14 other entities in designing, developing, constructing, oper-
15 ating, maintaining, or owning, a new electric power trans-
16 mission facility and related facilities (“Project”) located
17 within any State in which WAPA or SWPA operates if
18 the Secretary, in consultation with the applicable Adminis-
19 trator, determines that the proposed Project—

20 (1)(A) is located in an area designated under
21 section 216(a) of the Federal Power Act and will re-
22 duce congestion of electric transmission in interstate
23 commerce; or

1 (B) is necessary to accommodate an actual or
2 projected increase in demand for electric trans-
3 mission capacity;

4 (2) is consistent with—

5 (A) transmission needs identified, in a
6 transmission expansion plan or otherwise, by
7 the appropriate Regional Transmission Organi-
8 zation or Independent System Operator, if any,
9 or approved regional reliability organization;
10 and

11 (B) efficient and reliable operation of the
12 transmission grid;

13 (3) will be operated in conformance with pru-
14 dent utility practice;

15 (4) will be operated by, or in conformance with
16 the rules of, the appropriate (A) Regional Trans-
17 mission Organization or Independent System Oper-
18 ator, if any, or (B) if such an organization does not
19 exist, regional reliability organization; and

20 (5) will not duplicate the functions of existing
21 transmission facilities or proposed facilities which
22 are the subject of ongoing or approved siting and re-
23 lated permitting proceedings.

24 (c) OTHER FUNDS.—

1 (1) IN GENERAL.—In carrying out a Project
2 under subsection (a) or (b), the Secretary may ac-
3 cept and use funds contributed by another entity for
4 the purpose of carrying out the Project.

5 (2) AVAILABILITY.—The contributed funds
6 shall be available for expenditure for the purpose of
7 carrying out the Project—

8 (A) without fiscal year limitation; and

9 (B) as if the funds had been appropriated
10 specifically for that Project.

11 (3) ALLOCATION OF COSTS.—In carrying out a
12 Project under subsection (a) or (b), any costs of the
13 Project not paid for by contributions from another
14 entity shall be collected through rates charged to
15 customers using the new transmission capability pro-
16 vided by the Project and allocated equitably among
17 these project beneficiaries using the new trans-
18 mission capability.

19 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
20 this section affects any requirement of—

21 (1) any Federal environmental law, including
22 the National Environmental Policy Act of 1969 (42
23 U.S.C. 4321 et seq.);

24 (2) any Federal or State law relating to the
25 siting of energy facilities; or

1 (3) any existing authorizing statutes.

2 (e) SAVINGS CLAUSE.—Nothing in this section shall
3 constrain or restrict an Administrator in the utilization
4 of other authority delegated to the Administrator of
5 WAPA or SWPA.

6 (f) SECRETARIAL DETERMINATIONS.—Any deter-
7 mination made pursuant to subsections (a) or (b) shall
8 be based on findings by the Secretary using the best avail-
9 able data.

10 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
11 shall not accept and use more than \$100,000,000 under
12 subsection (c)(1) for the period encompassing fiscal years
13 2004 through 2013.

14 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

15 Within 6 months after the date of enactment of this
16 Act, the Secretary of Energy and the Federal Energy Reg-
17 ulatory Commission shall study and report to Congress on
18 the steps which must be taken to establish a system to
19 make available to all transmission system owners and Re-
20 gional Transmission Organizations (as defined in the Fed-
21 eral Power Act) within the Eastern and Western Inter-
22 connections real-time information on the functional status
23 of all transmission lines within such Interconnections. In
24 such study, the Commission shall assess technical means
25 for implementing such transmission information system

1 and identify the steps the Commission or Congress must
2 take to require the implementation of such system.

3 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

4 (a) **AUTHORITY.**—The Federal Energy Regulatory
5 Commission, in the exercise of its authorities under the
6 Federal Power Act and the Public Utility Regulatory Poli-
7 cies Act of 1978, shall encourage the deployment of ad-
8 vanced transmission technologies.

9 (b) **DEFINITION.**—For the purposes of this section,
10 the term “advanced transmission technologies” means
11 technologies that increase the capacity, efficiency, or reli-
12 ability of existing or new transmission facilities, including,
13 but not limited to—

14 (1) high-temperature lines (including super-
15 conducting cables);

16 (2) underground cables;

17 (3) advanced conductor technology (including
18 advanced composite conductors, high-temperature
19 low-sag conductors, and fiber optic temperature
20 sensing conductors);

21 (4) high-capacity ceramic electric wire, connec-
22 tors, and insulators;

23 (5) optimized transmission line configurations
24 (including multiple phased transmission lines);

25 (6) modular equipment;

- 1 (7) wireless power transmission;
- 2 (8) ultra-high voltage lines;
- 3 (9) high-voltage DC technology;
- 4 (10) flexible AC transmission systems;
- 5 (11) energy storage devices (including pumped
- 6 hydro, compressed air, superconducting magnetic en-
- 7 ergy storage, flywheels, and batteries);
- 8 (12) controllable load;
- 9 (13) distributed generation (including PV, fuel
- 10 cells, microturbines);
- 11 (14) enhanced power device monitoring;
- 12 (15) direct system state sensors;
- 13 (16) fiber optic technologies;
- 14 (17) power electronics and related software (in-
- 15 cluding real time monitoring and analytical soft-
- 16 ware); and
- 17 (18) any other technologies the Commission
- 18 considers appropriate.

19 (c) OBSOLETE OR IMPRACTICABLE TECH-
20 NOLOGIES.—The Commission is authorized to cease en-
21 couraging the deployment of any technology described in
22 this section on a finding that such technology has been
23 rendered obsolete or otherwise impracticable to deploy.

1 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
2 **PROGRAMS.**

3 (a) ELECTRIC TRANSMISSION AND DISTRIBUTION
4 PROGRAM.—The Secretary of Energy (hereinafter in this
5 section referred to as the “Secretary”) acting through the
6 Director of the Office of Electric Transmission and Dis-
7 tribution shall establish a comprehensive research, devel-
8 opment, demonstration and commercial application pro-
9 gram to promote improved reliability and efficiency of
10 electrical transmission and distribution systems. This pro-
11 gram shall include—

12 (1) advanced energy delivery and storage tech-
13 nologies, materials, and systems, including new
14 transmission technologies, such as flexible alter-
15 nating current transmission systems, composite con-
16 ductor materials and other technologies that enhance
17 reliability, operational flexibility, or power-carrying
18 capability;

19 (2) advanced grid reliability and efficiency tech-
20 nology development;

21 (3) technologies contributing to significant load
22 reductions;

23 (4) advanced metering, load management, and
24 control technologies;

25 (5) technologies to enhance existing grid compo-
26 nents;

1 (6) the development and use of high-tempera-
2 ture superconductors to—

3 (A) enhance the reliability, operational
4 flexibility, or power-carrying capability of elec-
5 tric transmission or distribution systems; or

6 (B) increase the efficiency of electric en-
7 ergy generation, transmission, distribution, or
8 storage systems;

9 (7) integration of power systems, including sys-
10 tems to deliver high-quality electric power, electric
11 power reliability, and combined heat and power;

12 (8) supply of electricity to the power grid by
13 small scale, distributed and residential-based power
14 generators;

15 (9) the development and use of advanced grid
16 design, operation and planning tools;

17 (10) any other infrastructure technologies, as
18 appropriate; and

19 (11) technology transfer and education.

20 (b) PROGRAM PLAN.—Not later than 1 year after the
21 date of the enactment of this legislation, the Secretary,
22 in consultation with other appropriate Federal agencies,
23 shall prepare and transmit to Congress a 5-year program
24 plan to guide activities under this section. In preparing
25 the program plan, the Secretary may consult with utilities,

1 energy services providers, manufacturers, institutions of
2 higher education, other appropriate State and local agen-
3 cies, environmental organizations, professional and tech-
4 nical societies, and any other persons the Secretary con-
5 siders appropriate.

6 (c) IMPLEMENTATION.—The Secretary shall consider
7 implementing this program using a consortium of indus-
8 try, university and national laboratory participants.

9 (d) REPORT.—Not later than 2 years after the trans-
10 mittal of the plan under subsection (b), the Secretary shall
11 transmit a report to Congress describing the progress
12 made under this section and identifying any additional re-
13 sources needed to continue the development and commer-
14 cial application of transmission and distribution infra-
15 structure technologies.

16 (e) POWER DELIVERY RESEARCH INITIATIVE.—

17 (1) IN GENERAL.—The Secretary shall establish
18 a research, development, demonstration, and com-
19 mercial application initiative specifically focused on
20 power delivery utilizing components incorporating
21 high temperature superconductivity.

22 (2) GOALS.—The goals of this initiative shall be
23 to—

1 (A) establish facilities to develop high tem-
2 perature superconductivity power applications
3 in partnership with manufacturers and utilities;

4 (B) provide technical leadership for estab-
5 lishing reliability for high temperature super-
6 conductivity power applications including suit-
7 able modeling and analysis;

8 (C) facilitate commercial transition toward
9 direct current power transmission, storage, and
10 use for high power systems utilizing high tem-
11 perature superconductivity; and

12 (D) facilitate the integration of very low
13 impedance high temperature superconducting
14 wires and cables in existing electric networks to
15 improve system performance, power flow control
16 and reliability.

17 (3) REQUIREMENTS.—The initiative shall
18 include—

19 (A) feasibility analysis, planning, research,
20 and design to construct demonstrations of
21 superconducting links in high power, direct cur-
22 rent and controllable alternating current trans-
23 mission systems;

24 (B) public-private partnerships to dem-
25 onstrate deployment of high temperature super-

1 conducting cable into testbeds simulating a re-
2 alistic transmission grid and under varying
3 transmission conditions, including actual grid
4 insertions; and

5 (C) testbeds developed in cooperation with
6 national laboratories, industries, and univer-
7 sities to demonstrate these technologies, pre-
8 pare the technologies for commercial introduc-
9 tion, and address cost or performance road-
10 blocks to successful commercial use.

11 (4) AUTHORIZATION OF APPROPRIATIONS.—For
12 purposes of carrying out this subsection, there are
13 authorized to be appropriated—

14 (A) for fiscal year 2004, \$15,000,000;

15 (B) for fiscal year 2005, \$20,000,000;

16 (C) for fiscal year 2006, \$30,000,000;

17 (D) for fiscal year 2007, \$35,000,000; and

18 (E) for fiscal year 2008, \$40,000,000.

19 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
20 **CENTIVE PROGRAM.**

21 (a) PROGRAM.—The Secretary of Energy is author-
22 ized to establish an Advanced Power System Technology
23 Incentive Program to support the deployment of certain
24 advanced power system technologies and to improve and
25 protect certain critical governmental, industrial, and com-

1 mercial processes. Funds provided under this section shall
2 be used by the Secretary to make incentive payments to
3 eligible owners or operators of advanced power system
4 technologies to increase power generation through en-
5 hanced operational, economic, and environmental perform-
6 ance. Payments under this section may only be made upon
7 receipt by the Secretary of an incentive payment applica-
8 tion establishing an applicant as either—

9 (1) a qualifying advanced power system tech-
10 nology facility; or

11 (2) a qualifying security and assured power fa-
12 cility.

13 (b) INCENTIVES.—Subject to availability of funds, a
14 payment of 1.8 cents per kilowatt-hour shall be paid to
15 the owner or operator of a qualifying advanced power sys-
16 tem technology facility under this section for electricity
17 generated at such facility. An additional 0.7 cents per kilo-
18 watt-hour shall be paid to the owner or operator of a quali-
19 fying security and assured power facility for electricity
20 generated at such facility. Any facility qualifying under
21 this section shall be eligible for an incentive payment for
22 up to, but not more than, the first 10,000,000 kilowatt-
23 hours produced in any fiscal year.

24 (c) ELIGIBILITY.—For purposes of this section:

1 serting the following after section 217, as added by title
2 V of this Act:

3 **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
4 **TRIBUTION.**

5 “(a) ESTABLISHMENT.—There is established within
6 the Department an Office of Electric Transmission and
7 Distribution. This Office shall be headed by a Director,
8 subject to the authority of the Secretary. The Director
9 shall be appointed by the Secretary. The Director shall
10 be compensated at the annual rate prescribed for level IV
11 of the Executive Schedule under section 5315 of title 5,
12 United States Code.

13 “(b) DIRECTOR.—The Director shall—

14 “(1) coordinate and develop a comprehensive,
15 multi-year strategy to improve the Nation’s elec-
16 tricity transmission and distribution;

17 “(2) implement or, where appropriate, coordi-
18 nate the implementation of, the recommendations
19 made in the Secretary’s May 2002 National Trans-
20 mission Grid Study;

21 “(3) oversee research, development, and dem-
22 onstration to support Federal energy policy related
23 to electricity transmission and distribution;

1 “(4) grant authorizations for electricity import
2 and export pursuant to section 202(c), (d), (e), and
3 (f) of the Federal Power Act (16 U.S.C. 824a);

4 “(5) perform other functions, assigned by the
5 Secretary, related to electricity transmission and dis-
6 tribution; and

7 “(6) develop programs for workforce training in
8 power and transmission engineering.”.

9 (b) CONFORMING AMENDMENTS.—(1) The table of
10 contents of the Department of Energy Organization Act
11 (42 U.S.C. 7101 note) is amended by inserting after the
12 item relating to section 217 the following new item:

 “Sec. 218. Office of Electric Transmission and Distribution.”.

13 (2) Section 5315 of title 5, United States Code, is
14 amended by inserting after the item relating to “Inspector
15 General, Department of Energy.” the following:

16 “Director, Office of Electric Transmission and
17 Distribution, Department of Energy.”.

18 **Subtitle C—Transmission**
19 **Operation Improvements**

20 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

21 Part II of the Federal Power Act (16 U.S.C. 824 et
22 seq.) is amended by inserting after section 211 the fol-
23 lowing new section:

1 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
2 **TING UTILITIES.**

3 “(a) TRANSMISSION SERVICES.—Subject to section
4 212(h), the Commission may, by rule or order, require an
5 unregulated transmitting utility to provide transmission
6 services—

7 “(1) at rates that are comparable to those that
8 the unregulated transmitting utility charges itself;
9 and

10 “(2) on terms and conditions (not relating to
11 rates) that are comparable to those under which
12 such unregulated transmitting utility provides trans-
13 mission services to itself and that are not unduly
14 discriminatory or preferential.

15 “(b) EXEMPTION.—The Commission shall exempt
16 from any rule or order under this section any unregulated
17 transmitting utility that—

18 “(1) sells no more than 4,000,000 megawatt
19 hours of electricity per year; or

20 “(2) does not own or operate any transmission
21 facilities that are necessary for operating an inter-
22 connected transmission system (or any portion
23 thereof); or

24 “(3) meets other criteria the Commission deter-
25 mines to be in the public interest.

1 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
2 quirements of subsection (a) shall not apply to facilities
3 used in local distribution.

4 “(d) EXEMPTION TERMINATION.—Whenever the
5 Commission, after an evidentiary hearing held upon a
6 complaint and after giving consideration to reliability
7 standards established under section 215, finds on the
8 basis of a preponderance of the evidence that any exemp-
9 tion granted pursuant to subsection (b) unreasonably im-
10 pairs the continued reliability of an interconnected trans-
11 mission system, it shall revoke the exemption granted to
12 that transmitting utility.

13 “(e) APPLICATION TO UNREGULATED TRANSMIT-
14 TING UTILITIES.—The rate changing procedures applica-
15 ble to public utilities under subsections (c) and (d) of sec-
16 tion 205 are applicable to unregulated transmitting utili-
17 ties for purposes of this section.

18 “(f) REMAND.—In exercising its authority under
19 paragraph (1) of subsection (a), the Commission may re-
20 mand transmission rates to an unregulated transmitting
21 utility for review and revision where necessary to meet the
22 requirements of subsection (a).

23 “(g) OTHER REQUESTS.—The provision of trans-
24 mission services under subsection (a) does not preclude a
25 request for transmission services under section 211.

1 “(h) LIMITATION.—The Commission may not require
2 a State or municipality to take action under this section
3 that would violate a private activity bond rule for purposes
4 of section 141 of the Internal Revenue Code of 1986 (26
5 U.S.C. 141).

6 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
7 CILITIES.—Nothing in this section authorizes the Commis-
8 sion to require an unregulated transmitting utility to
9 transfer control or operational control of its transmitting
10 facilities to an RTO or any other Commission-approved
11 independent transmission organization designated to pro-
12 vide nondiscriminatory transmission access.

13 “(j) DEFINITION.—For purposes of this section, the
14 term ‘unregulated transmitting utility’ means an entity
15 that—

16 “(1) owns or operates facilities used for the
17 transmission of electric energy in interstate com-
18 merce; and

19 “(2) is an entity described in section 201(f).”.

20 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
21 **MISSION ORGANIZATIONS.**

22 It is the sense of Congress that, in order to promote
23 fair, open access to electric transmission service, benefit
24 retail consumers, facilitate wholesale competition, improve
25 efficiencies in transmission grid management, promote

1 grid reliability, remove opportunities for unduly discrimi-
2 natory or preferential transmission practices, and provide
3 for the efficient development of transmission infrastruc-
4 ture needed to meet the growing demands of competitive
5 wholesale power markets, all transmitting utilities in inter-
6 state commerce should voluntarily become members of Re-
7 gional Transmission Organizations as defined in section
8 3 of the Federal Power Act.

9 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
10 **PLICATIONS PROGRESS REPORT.**

11 Not later than 120 days after the date of enactment
12 of this section, the Federal Energy Regulatory Commis-
13 sion shall submit to Congress a report containing each of
14 the following:

15 (1) A list of all regional transmission organiza-
16 tion applications filed at the Commission pursuant
17 to subpart F of part 35 of title 18, Code of Federal
18 Regulations (in this section referred to as “Order
19 No. 2000”), including an identification of each pub-
20 lic utility and other entity included within the pro-
21 posed membership of the regional transmission orga-
22 nization.

23 (2) A brief description of the status of each
24 pending regional transmission organization applica-
25 tion, including a precise explanation of how each

1 fails to comply with the minimal requirements of
2 Order No. 2000 and what steps need to be taken to
3 bring each application into such compliance.

4 (3) For any application that has not been fi-
5 nally approved by the Commission, a detailed de-
6 scription of every aspect of the application that the
7 Commission has determined does not conform to the
8 requirements of Order No. 2000.

9 (4) For any application that has not been fi-
10 nally approved by the Commission, an explanation
11 by the Commission of why the items described pur-
12 suant to paragraph (3) constitute material non-
13 compliance with the requirements of the Commis-
14 sion's Order No. 2000 sufficient to justify denial of
15 approval by the Commission.

16 (5) For all regional transmission organization
17 applications filed pursuant to the Commission's
18 Order No. 2000, whether finally approved or not—

19 (A) a discussion of that regional trans-
20 mission organization's efforts to minimize rate
21 seams between itself and—

22 (i) other regional transmission organi-
23 zations; and

24 (ii) entities not participating in a re-
25 gional transmission organization;

1 (B) a discussion of the impact of such
2 seams on consumers and wholesale competition;
3 and

4 (C) a discussion of minimizing cost-shifting
5 on consumers.

6 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
7 **TRANSMISSION ORGANIZATIONS.**

8 (a) DEFINITIONS.—For purposes of this section—

9 (1) APPROPRIATE FEDERAL REGULATORY AU-
10 THORITY.—The term “appropriate Federal regu-
11 latory authority” means—

12 (A) with respect to a Federal power mar-
13 keting agency (as defined in the Federal Power
14 Act), the Secretary of Energy, except that the
15 Secretary may designate the Administrator of a
16 Federal power marketing agency to act as the
17 appropriate Federal regulatory authority with
18 respect to the transmission system of that Fed-
19 eral power marketing agency; and

20 (B) with respect to the Tennessee Valley
21 Authority, the Board of Directors of the Ten-
22 nessee Valley Authority.

23 (2) FEDERAL UTILITY.—The term “Federal
24 utility” means a Federal power marketing agency or
25 the Tennessee Valley Authority.

1 (3) TRANSMISSION SYSTEM.—The term “trans-
2 mission system” means electric transmission facili-
3 ties owned, leased, or contracted for by the United
4 States and operated by a Federal utility.

5 (b) TRANSFER.—The appropriate Federal regulatory
6 authority is authorized to enter into a contract, agreement
7 or other arrangement transferring control and use of all
8 or part of the Federal utility’s transmission system to an
9 RTO or ISO (as defined in the Federal Power Act), ap-
10 proved by the Federal Energy Regulatory Commission.

11 Such contract, agreement or arrangement shall include—

12 (1) performance standards for operation and
13 use of the transmission system that the head of the
14 Federal utility determines necessary or appropriate,
15 including standards that assure recovery of all the
16 Federal utility’s costs and expenses related to the
17 transmission facilities that are the subject of the
18 contract, agreement or other arrangement; consist-
19 ency with existing contracts and third-party financ-
20 ing arrangements; and consistency with said Federal
21 utility’s statutory authorities, obligations, and limi-
22 tations;

23 (2) provisions for monitoring and oversight by
24 the Federal utility of the RTO’s or ISO’s fulfillment
25 of the terms and conditions of the contract, agree-

1 ment or other arrangement, including a provision for
2 the resolution of disputes through arbitration or
3 other means with the regional transmission organi-
4 zation or with other participants, notwithstanding
5 the obligations and limitations of any other law re-
6 garding arbitration; and

7 (3) a provision that allows the Federal utility to
8 withdraw from the RTO or ISO and terminate the
9 contract, agreement or other arrangement in accord-
10 ance with its terms.

11 Neither this section, actions taken pursuant to it, nor any
12 other transaction of a Federal utility using a regional
13 transmission organization shall confer upon the Federal
14 Energy Regulatory Commission jurisdiction or authority
15 over the Federal utility's electric generation assets, electric
16 capacity or energy that the Federal utility is authorized
17 by law to market, or the Federal utility's power sales ac-
18 tivities.

19 (c) EXISTING STATUTORY AND OTHER OBLIGA-
20 TIONS.—

21 (1) SYSTEM OPERATION REQUIREMENTS.—No
22 statutory provision requiring or authorizing a Fed-
23 eral utility to transmit electric power or to construct,
24 operate or maintain its transmission system shall be
25 construed to prohibit a transfer of control and use

1 of its transmission system pursuant to, and subject
2 to all requirements of subsection (b).

3 (2) OTHER OBLIGATIONS.—This subsection
4 shall not be construed to—

5 (A) suspend, or exempt any Federal utility
6 from, any provision of existing Federal law, in-
7 cluding but not limited to any requirement or
8 direction relating to the use of the Federal util-
9 ity’s transmission system, environmental protec-
10 tion, fish and wildlife protection, flood control,
11 navigation, water delivery, or recreation; or

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

14 (3) REPEAL.—Section 311 of title III of Appen-
15 dix B of the Act of October 27, 2000 (P.L. 106–
16 377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16
17 U.S.C. 824n) is repealed.

18 **SEC. 1235. STANDARD MARKET DESIGN.**

19 (a) REMAND.—The Commission’s proposed rule-
20 making entitled “Remedying Undue Discrimination
21 through Open Access Transmission Service and Standard
22 Electricity Market Design” (Docket No. RM01–12–000)
23 (“SMD NOPR”) is remanded to the Commission for re-
24 consideration. No final rule mandating a standard elec-
25 tricity market design pursuant to the proposed rule-

1 making, including any rule or order of general applica-
2 bility within the scope of the proposed rulemaking, may
3 be issued before October 31, 2006, or take effect before
4 December 31, 2006. Any final rule issued by the Commis-
5 sion pursuant to the proposed rulemaking shall be pre-
6 ceded by a second notice of proposed rulemaking issued
7 after the date of enactment of this Act and an opportunity
8 for public comment.

9 (b) SAVINGS CLAUSE.—This section shall not be con-
10 strued to modify or diminish any authority or obligation
11 the Commission has under this Act, the Federal Power
12 Act, or other applicable law, including, but not limited to,
13 any authority to—

14 (1) issue any rule or order (of general or par-
15 ticular applicability) pursuant to any such authority
16 or obligation; or

17 (2) act on a filing or filings by 1 or more trans-
18 mitting utilities for the voluntary formation of a Re-
19 gional Transmission Organization or Independent
20 System Operator (as defined in the Federal Power
21 Act) (and related market structures or rules) or vol-
22 untary modification of an existing Regional Trans-
23 mission Organization or Independent System Oper-
24 ator (and related market structures or rules).

1 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) is amended by adding at the end the following:

4 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

5 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
6 load-serving entity that, as of the date of enactment of
7 this section—

8 “(A) owns generation facilities, markets the
9 output of Federal generation facilities, or holds
10 rights under 1 or more wholesale contracts to pur-
11 chase electric energy, for the purpose of meeting a
12 service obligation, and

13 “(B) by reason of ownership of transmission fa-
14 cilities, or 1 or more contracts or service agreements
15 for firm transmission service, holds firm trans-
16 mission rights for delivery of the output of such gen-
17 eration facilities or such purchased energy to meet
18 such service obligation,

19 is entitled to use such firm transmission rights, or, equiva-
20 lent tradable or financial transmission rights, in order to
21 deliver such output or purchased energy, or the output of
22 other generating facilities or purchased energy to the ex-
23 tent deliverable using such rights, to the extent required
24 to meet its service obligation.

25 “(2) To the extent that all or a portion of the service
26 obligation covered by such firm transmission rights or

1 equivalent tradable or financial transmission rights is
2 transferred to another load-serving entity, the successor
3 load-serving entity shall be entitled to use the firm trans-
4 mission rights or equivalent tradable or financial trans-
5 mission rights associated with the transferred service obli-
6 gation. Subsequent transfers to another load-serving enti-
7 ty, or back to the original load-serving entity, shall be enti-
8 tled to the same rights.

9 “(3) The Commission shall exercise its authority
10 under this Act in a manner that facilitates the planning
11 and expansion of transmission facilities to meet the rea-
12 sonable needs of load-serving entities to satisfy their serv-
13 ice obligations.

14 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
15 Nothing in this section shall affect any methodology ap-
16 proved by the Commission prior to September 15, 2003,
17 for the allocation of transmission rights by an RTO or
18 ISO that has been authorized by the Commission to allo-
19 cate transmission rights.

20 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
21 mission may exercise authority under this Act to make
22 transmission rights not used to meet an obligation covered
23 by subsection (a) available to other entities in a manner
24 determined by the Commission to be just, reasonable, and
25 not unduly discriminatory or preferential.

1 “(d) OBLIGATION TO BUILD.—Nothing in this Act
2 shall relieve a load-serving entity from any obligation
3 under State or local law to build transmission or distribu-
4 tion facilities adequate to meet its service obligations.

5 “(e) CONTRACTS.—Nothing in this section shall pro-
6 vide a basis for abrogating any contract or service agree-
7 ment for firm transmission service or rights in effect as
8 of the date of the enactment of this subsection.

9 “(f) WATER PUMPING FACILITIES.—The Commis-
10 sion shall ensure that any entity described in section
11 201(f) that owns transmission facilities used predomi-
12 nately to support its own water pumping facilities shall
13 have, with respect to such facilities, protections for trans-
14 mission service comparable to those provided to load-serv-
15 ing entities pursuant to this section.

16 “(g) ERCOT.—This section shall not apply within
17 the area referred to in section 212(k)(2)(A).

18 “(h) JURISDICTION.—This section does not authorize
19 the Commission to take any action not otherwise within
20 its jurisdiction.

21 “(i) EFFECT OF EXERCISING RIGHTS.—An entity
22 that lawfully exercises rights granted under subsection (a)
23 shall not be considered by such action as engaging in
24 undue discrimination or preference under this Act.

1 “(j) TVA AREA.—For purposes of subsection
2 (a)(1)(B), a load-serving entity that is located within the
3 service area of the Tennessee Valley Authority and that
4 has a firm wholesale power supply contract with the Ten-
5 nessee Valley Authority shall be deemed to hold firm
6 transmission rights for the transmission of such power.

7 “(k) DEFINITIONS.—For purposes of this section:

8 “(1) The term ‘distribution utility’ means an
9 electric utility that has a service obligation to end-
10 users or to a State utility or electric cooperative
11 that, directly or indirectly, through 1 or more addi-
12 tional State utilities or electric cooperatives, provides
13 electric service to end-users.

14 “(2) The term ‘load-serving entity’ means a dis-
15 tribution utility or an electric utility that has a serv-
16 ice obligation.

17 “(3) The term ‘service obligation’ means a re-
18 quirement applicable to, or the exercise of authority
19 granted to, an electric utility under Federal, State
20 or local law or under long-term contracts to provide
21 electric service to end-users or to a distribution util-
22 ity.

23 “(4) The term ‘State utility’ means a State or
24 any political subdivision of a State, or any agency,
25 authority, or instrumentality of any 1 or more of the

1 ably serve consumers, recognizing any operational limits
2 of generation and transmission facilities.

3 (c) REPORT TO CONGRESS AND THE STATES.—Not
4 later than 90 days after the date of enactment of this Act,
5 and on a yearly basis following, the Secretary of Energy
6 shall submit a report to Congress and the States on the
7 results of the study conducted under subsection (a), in-
8 cluding recommendations to Congress and the States for
9 any suggested legislative or regulatory changes.

10 **Subtitle D—Transmission Rate** 11 **Reform**

12 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

13 Part II of the Federal Power Act (16 U.S.C. 824 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

16 “(a) RULEMAKING REQUIREMENT.—Within 1 year
17 after the enactment of this section, the Commission shall
18 establish, by rule, incentive-based (including, but not lim-
19 ited to performance-based) rate treatments for the trans-
20 mission of electric energy in interstate commerce by public
21 utilities for the purpose of benefiting consumers by ensur-
22 ing reliability and reducing the cost of delivered power by
23 reducing transmission congestion. Such rule shall—

24 “(1) promote reliable and economically efficient
25 transmission and generation of electricity by pro-

1 moting capital investment in the enlargement, im-
2 provement, maintenance and operation of facilities
3 for the transmission of electric energy in interstate
4 commerce;

5 “(2) provide a return on equity that attracts
6 new investment in transmission facilities (including
7 related transmission technologies);

8 “(3) encourage deployment of transmission
9 technologies and other measures to increase the ca-
10 pacity and efficiency of existing transmission facili-
11 ties and improve the operation of such facilities; and

12 “(4) allow recovery of all prudently incurred
13 costs necessary to comply with mandatory reliability
14 standards issued pursuant to section 215 of this
15 Act.

16 The Commission may, from time to time, revise such rule.

17 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
18 TION.—In the rule issued under this section, the Commis-
19 sion shall, to the extent within its jurisdiction, provide for
20 incentives to each transmitting utility or electric utility
21 that joins a Regional Transmission Organization or Inde-
22 pendent System Operator. Incentives provided by the
23 Commission pursuant to such rule shall include—

1 “(1) recovery of all prudently incurred costs to
2 develop and participate in any proposed or approved
3 RTO, ISO, or independent transmission company;

4 “(2) recovery of all costs previously approved by
5 a State commission which exercised jurisdiction over
6 the transmission facilities prior to the utility’s par-
7 ticipation in the RTO or ISO, including costs nec-
8 essary to honor preexisting transmission service con-
9 tracts, in a manner which does not reduce the reve-
10 nues the utility receives for transmission services for
11 a reasonable transition period after the utility joins
12 the RTO or ISO;

13 “(3) recovery as an expense in rates of the
14 costs prudently incurred to conduct transmission
15 planning and reliability activities, including the costs
16 of participating in RTO, ISO and other regional
17 planning activities and design, study and other
18 precertification costs involved in seeking permits and
19 approvals for proposed transmission facilities;

20 “(4) a current return in rates for construction
21 work in progress for transmission facilities and full
22 recovery of prudently incurred costs for constructing
23 transmission facilities;

24 “(5) formula transmission rates; and

1 “(6) a maximum 15 year accelerated deprecia-
2 tion on new transmission facilities for rate treatment
3 purposes.

4 The Commission shall ensure that any costs recoverable
5 pursuant to this subsection may be recovered by such util-
6 ity through the transmission rates charged by such utility
7 or through the transmission rates charged by the RTO
8 or ISO that provides transmission service to such utility.

9 “(c) **JUST AND REASONABLE RATES.**—All rates ap-
10 proved under the rules adopted pursuant to this section,
11 including any revisions to such rules, are subject to the
12 requirement of sections 205 and 206 that all rates,
13 charges, terms, and conditions be just and reasonable and
14 not unduly discriminatory or preferential.”.

15 **SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS**

16 Part II of the Federal Power Act (16 U.S.C. 824 et
17 seq.) is amended by adding at the end the following:

18 **“SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.**

19 “(a) **IN GENERAL.**—Any transmission provider, in-
20 cluding an RTO or ISO, may submit to the Commission
21 a plan or plans under section 205 containing the criteria
22 for determining the person or persons that will be required
23 to pay for any construction of new transmission facilities
24 or expansion, modification or upgrade of transmission fa-

1 cilities (in this section referred to as ‘transmission service
2 related expansion’) or new generator interconnection.

3 “(b) VOLUNTARY TRANSMISSION PRICING PLANS.—

4 (1) Any plan or plans submitted under subsection (a) shall
5 specify the method or methods by which costs may be allo-
6 cated or assigned. Such methods may include, but are not
7 limited to:

8 “(A) directly assigned;

9 “(B) participant funded; or

10 “(C) rolled into regional or sub-regional rates.

11 “(2) FERC shall approve a plan or plans submitted
12 under subparagraph (B) of paragraph (1) if such plan or
13 plans—

14 “(A) result in rates that are just and reason-
15 able and not unduly discriminatory or preferential
16 consistent with section 205; and

17 “(B) ensure that the costs of any transmission
18 service related expansion or new generator inter-
19 connection not required to meet applicable reliability
20 standards established under section 215 are assigned
21 in a fair manner, meaning that those who benefit
22 from the transmission service related expansion or
23 new generator interconnection pay an appropriate
24 share of the associated costs, provided that—

1 “(i) costs may not be assigned or allocated
2 to an electric utility if the native load customers
3 of that utility would not have required such
4 transmission service related expansion or new
5 generator interconnection absent the request for
6 transmission service related expansion or new
7 generator interconnection that necessitated the
8 investment;

9 “(ii) the party requesting such trans-
10 mission service related expansion or new gener-
11 ator interconnection shall not be required to
12 pay for both—

13 “(I) the assigned cost of the upgrade;

14 and

15 “(II) the difference between—

16 “(aa) the embedded cost paid for
17 transmission services (including the
18 cost of the requested upgrade); and

19 “(bb) the embedded cost that
20 would have been paid absent the up-
21 grade; and

22 “(iii) the party or parties who pay for fa-
23 cilities necessary for the transmission service
24 related expansion or new generator interconnec-
25 tion receives full compensation for its costs for

1 the participant funded facilities in the form
2 of—

3 “(I) monetary credit equal to the cost
4 of the participant funded facilities (ac-
5 counting for the time value of money at
6 the Gross Domestic Product deflator),
7 which credit shall be pro-rated in equal in-
8 stallments over a period of not more than
9 30 years and shall not exceed in total the
10 amount of the initial investment, against
11 the transmission charges that the funding
12 entity or its assignee is otherwise assessed
13 by the transmission provider;

14 “(II) appropriate financial or physical
15 rights; or

16 “(III) any other method of cost recov-
17 ery or compensation approved by the Com-
18 mission.

19 “(3) A plan submitted under this section shall apply
20 only to—

21 “(A) a contract or interconnection agreement
22 executed or filed with the Commission after the date
23 of enactment of this section; or

24 “(B) an interconnection agreement pending re-
25 hearing as of November 1, 2003.

1 “(4) Nothing in this section diminishes or alters the
2 rights of individual members of an RTO or ISO under
3 this Act.

4 “(5) Nothing in this section shall affect the allocation
5 of costs or the cost methodology employed by an RTO or
6 ISO authorized by the Commission to allocate costs (in-
7 cluding costs for transmission service related expansion or
8 new generator interconnection) prior to the date of enact-
9 ment of this section.

10 “(6) This section shall not apply within the area re-
11 ferred to in section 212(k)(2)(A).

12 “(7) The term ‘transmission provider’ means a public
13 utility that owns or operates facilities that provide inter-
14 connection or transmission service in interstate com-
15 merce.”.

16 **Subtitle E—Amendments to PURPA**

17 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

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

22 “(11) NET METERING.—Each electric utility
23 shall make available upon request net metering serv-
24 ice to any electric consumer that the electric utility
25 serves. For purposes of this paragraph, the term

1 'net metering service' means service to an electric
2 consumer under which electric energy generated by
3 that electric consumer from an eligible on-site gener-
4 ating facility and delivered to the local distribution
5 facilities may be used to offset electric energy pro-
6 vided by the electric utility to the electric consumer
7 during the applicable billing period.

8 "(12) FUEL SOURCES.—Each electric utility
9 shall develop a plan to minimize dependence on 1
10 fuel source and to ensure that the electric energy it
11 sells to consumers is generated using a diverse range
12 of fuels and technologies, including renewable tech-
13 nologies.

14 "(13) FOSSIL FUEL GENERATION EFFI-
15 CIENCY.—Each electric utility shall develop and im-
16 plement a 10-year plan to increase the efficiency of
17 its fossil fuel generation.”.

18 (b) COMPLIANCE.—

19 (1) TIME LIMITATIONS.—Section 112(b) of the
20 Public Utility Regulatory Policies Act of 1978 (16
21 U.S.C. 2622(b)) is amended by adding at the end
22 the following:

23 “(3)(A) Not later than 2 years after the enactment
24 of this paragraph, each State regulatory authority (with
25 respect to each electric utility for which it has ratemaking

1 authority) and each nonregulated electric utility shall com-
2 mence the consideration referred to in section 111, or set
3 a hearing date for such consideration, with respect to each
4 standard established by paragraphs (11) through (13) of
5 section 111(d).

6 “(B) Not later than 3 years after the date of the en-
7 actment of this paragraph, each State regulatory authority
8 (with respect to each electric utility for which it has rate-
9 making authority), and each nonregulated electric utility,
10 shall complete the consideration, and shall make the deter-
11 mination, referred to in section 111 with respect to each
12 standard established by paragraphs (11) through (13) of
13 section 111(d).”.

14 (2) FAILURE TO COMPLY.—Section 112(c) of
15 the Public Utility Regulatory Policies Act of 1978
16 (16 U.S.C. 2622(c)) is amended by adding at the
17 end the following:

18 “In the case of each standard established by paragraphs
19 (11) through (13) of section 111(d), the reference con-
20 tained in this subsection to the date of enactment of this
21 Act shall be deemed to be a reference to the date of enact-
22 ment of such paragraphs (11) through (13).”.

23 (3) PRIOR STATE ACTIONS.—

24 (A) IN GENERAL.—Section 112 of the
25 Public Utility Regulatory Policies Act of 1978

1 (16 U.S.C. 2622) is amended by adding at the
2 end the following:

3 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
4 (c) of this section shall not apply to the standards estab-
5 lished by paragraphs (11) through (13) of section 111(d)
6 in the case of any electric utility in a State if, before the
7 enactment of this subsection—

8 “(1) the State has implemented for such utility
9 the standard concerned (or a comparable standard);

10 “(2) the State regulatory authority for such
11 State has conducted a proceeding to consider imple-
12 mentation of the standard concerned (or a com-
13 parable standard) for such utility; or

14 “(3) the State legislature has voted on the im-
15 plementation of such standard (or a comparable
16 standard) for such utility.”.

17 (B) CROSS REFERENCE.—Section 124 of
18 such Act (16 U.S.C. 2634) is amended by add-
19 ing the following at the end thereof: “In the
20 case of each standard established by paragraphs
21 (11) through (13) of section 111(d), the ref-
22 erence contained in this subsection to the date
23 of enactment of this Act shall be deemed to be
24 a reference to the date of enactment of such
25 paragraphs (11) through (13).”.

1 **SEC. 1252. SMART METERING.**

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

5 “(14) TIME-BASED METERING AND COMMU-
6 NICATIONS.—

7 “(A) Not later than 18 months after the
8 date of enactment of this paragraph, each elec-
9 tric utility shall offer each of its customer class-
10 es, and provide individual customers upon cus-
11 tomer request, a time-based rate schedule under
12 which the rate charged by the electric utility
13 varies during different time periods and reflects
14 the variance, if any, in the utility’s costs of gen-
15 erating and purchasing electricity at the whole-
16 sale level. The time-based rate schedule shall
17 enable the electric consumer to manage energy
18 use and cost through advanced metering and
19 communications technology.

20 “(B) The types of time-based rate sched-
21 ules that may be offered under the schedule re-
22 ferred to in subparagraph (A) include, among
23 others—

24 “(i) time-of-use pricing whereby elec-
25 tricity prices are set for a specific time pe-
26 riod on an advance or forward basis, typi-

1 cally not changing more often than twice a
2 year, based on the utility's cost of gener-
3 ating and/or purchasing such electricity at
4 the wholesale level for the benefit of the
5 consumer. Prices paid for energy consumed
6 during these periods shall be pre-estab-
7 lished and known to consumers in advance
8 of such consumption, allowing them to
9 vary their demand and usage in response
10 to such prices and manage their energy
11 costs by shifting usage to a lower cost pe-
12 riod or reducing their consumption overall;

13 “(ii) critical peak pricing whereby
14 time-of-use prices are in effect except for
15 certain peak days, when prices may reflect
16 the costs of generating and/or purchasing
17 electricity at the wholesale level and when
18 consumers may receive additional discounts
19 for reducing peak period energy consump-
20 tion; and

21 “(iii) real-time pricing whereby elec-
22 tricity prices are set for a specific time pe-
23 riod on an advanced or forward basis, re-
24 flecting the utility's cost of generating and/

1 or purchasing electricity at the wholesale
2 level, and may change as often as hourly.

3 “(C) Each electric utility subject to sub-
4 paragraph (A) shall provide each customer re-
5 questing a time-based rate with a time-based
6 meter capable of enabling the utility and cus-
7 tomer to offer and receive such rate, respec-
8 tively.

9 “(D) For purposes of implementing this
10 paragraph, any reference contained in this sec-
11 tion to the date of enactment of the Public Util-
12 ity Regulatory Policies Act of 1978 shall be
13 deemed to be a reference to the date of enact-
14 ment of this paragraph.

15 “(E) In a State that permits third-party
16 marketers to sell electric energy to retail elec-
17 tric consumers, such consumers shall be entitled
18 to receive the same time-based metering and
19 communications device and service as a retail
20 electric consumer of the electric utility.

21 “(F) Notwithstanding subsections (b) and
22 (c) of section 112, each State regulatory au-
23 thority shall, not later than 18 months after the
24 date of enactment of this paragraph conduct an
25 investigation in accordance with section 115(i)

1 and issue a decision whether it is appropriate to
2 implement the standards set out in subpara-
3 graphs (A) and (C).”.

4 (b) STATE INVESTIGATION OF DEMAND RESPONSE
5 AND TIME-BASED METERING.—Section 115 of the Public
6 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
7 is amended as follows:

8 (1) By inserting in subsection (b) after the
9 phrase “the standard for time-of-day rates estab-
10 lished by section 111(d)(3)” the following: “and the
11 standard for time-based metering and communica-
12 tions established by section 111(d)(14)”.

13 (2) By inserting in subsection (b) after the
14 phrase “are likely to exceed the metering” the fol-
15 lowing: “and communications”.

16 (3) By adding the at the end the following:
17 “(i) TIME-BASED METERING AND COMMUNICA-
18 TIONS.—In making a determination with respect to the
19 standard established by section 111(d)(14), the investiga-
20 tion requirement of section 111(d)(14)(F) shall be as fol-
21 lows: Each State regulatory authority shall conduct an in-
22 vestigation and issue a decision whether or not it is appro-
23 priate for electric utilities to provide and install time-based
24 meters and communications devices for each of their cus-
25 tomers which enable such customers to participate in time-

1 based pricing rate schedules and other demand response
2 programs.”.

3 (c) FEDERAL ASSISTANCE ON DEMAND RE-
4 SPONSE.—Section 132(a) of the Public Utility Regulatory
5 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
6 striking “and” at the end of paragraph (3), striking the
7 period at the end of paragraph (4) and inserting “; and”,
8 and by adding the following at the end thereof:

9 “(5) technologies, techniques, and rate-making
10 methods related to advanced metering and commu-
11 nications and the use of these technologies, tech-
12 niques and methods in demand response programs.”.

13 (d) FEDERAL GUIDANCE.—Section 132 of the Public
14 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
15 is amended by adding the following at the end thereof:

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

18 “(1) educating consumers on the availability,
19 advantages, and benefits of advanced metering and
20 communications technologies, including the funding
21 of demonstration or pilot projects;

22 “(2) working with States, utilities, other energy
23 providers and advanced metering and communica-
24 tions experts to identify and address barriers to the
25 adoption of demand response programs; and

1 “(3) not later than 180 days after the date of
2 enactment of the Energy Policy Act of 2003, pro-
3 viding Congress with a report that identifies and
4 quantifies the national benefits of demand response
5 and makes a recommendation on achieving specific
6 levels of such benefits by January 1, 2005.”.

7 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
8 TION.—

9 (1) IN GENERAL.—It is the policy of the United
10 States to encourage States to coordinate, on a re-
11 gional basis, State energy policies to provide reliable
12 and affordable demand response services to the pub-
13 lic.

14 (2) TECHNICAL ASSISTANCE.—The Secretary of
15 Energy shall provide technical assistance to States
16 and regional organizations formed by 2 or more
17 States to assist them in—

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

20 (B) identifying and resolving problems in
21 transmission and distribution networks, includ-
22 ing through the use of demand response;

23 (C) developing plans and programs to use
24 demand response to respond to peak demand or
25 emergency needs; and

1 (D) identifying specific measures con-
2 sumers can take to participate in these demand
3 response programs.

4 (3) REPORT.—Not later than 1 year after the
5 date of enactment of the Energy Policy Act of 2003,
6 the Commission shall prepare and publish an annual
7 report, by appropriate region, that assesses demand
8 response resources, including those available from all
9 consumer classes, and which identifies and reviews—

10 (A) saturation and penetration rate of ad-
11 vanced meters and communications tech-
12 nologies, devices and systems;

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

15 (C) the annual resource contribution of de-
16 mand resources;

17 (D) the potential for demand response as
18 a quantifiable, reliable resource for regional
19 planning purposes; and

20 (E) steps taken to ensure that, in regional
21 transmission planning and operations, demand
22 resources are provided equitable treatment as a
23 quantifiable, reliable resource relative to the re-
24 source obligations of any load-serving entity,
25 transmission provider, or transmitting party.

1 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
2 SPONSE DEVICES.—It is the policy of the United States
3 that time-based pricing and other forms of demand re-
4 sponse, whereby electricity customers are provided with
5 electricity price signals and the ability to benefit by re-
6 sponding to them, shall be encouraged, and the deploy-
7 ment of such technology and devices that enable electricity
8 customers to participate in such pricing and demand re-
9 sponse systems shall be facilitated. It is further the policy
10 of the United States that the benefits of such demand re-
11 sponse that accrue to those not deploying such technology
12 and devices, but who are part of the same regional elec-
13 tricity entity, shall be recognized.

14 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
15 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
16 2622(b)) is amended by adding at the end the following:

17 “(4)(A) Not later than 1 year after the enact-
18 ment of this paragraph, each State regulatory au-
19 thority (with respect to each electric utility for which
20 it has ratemaking authority) and each nonregulated
21 electric utility shall commence the consideration re-
22 ferred to in section 111, or set a hearing date for
23 such consideration, with respect to the standard es-
24 tablished by paragraph (14) of section 111(d).

1 “(B) Not later than 2 years after the date of
2 the enactment of this paragraph, each State regu-
3 latory authority (with respect to each electric utility
4 for which it has ratemaking authority), and each
5 nonregulated electric utility, shall complete the con-
6 sideration, and shall make the determination, re-
7 ferred to in section 111 with respect to the standard
8 established by paragraph (14) of section 111(d).”.

9 (h) FAILURE TO COMPLY.—Section 112(c) of the
10 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
11 2622(c)) is amended by adding at the end the following:
12 “In the case of the standard established by paragraph (14)
13 of section 111(d), the reference contained in this sub-
14 section to the date of enactment of this Act shall be
15 deemed to be a reference to the date of enactment of such
16 paragraph (14).”.

17 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
18 TERING STANDARDS.—

19 (1) IN GENERAL.—Section 112 of the Public
20 Utility Regulatory Policies Act of 1978 (16 U.S.C.
21 2622) is amended by adding at the end the fol-
22 lowing:

23 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
24 (c) of this section shall not apply to the standard estab-
25 lished by paragraph (14) of section 111(d) in the case of

1 any electric utility in a State if, before the enactment of
2 this subsection—

3 “(1) the State has implemented for such utility
4 the standard concerned (or a comparable standard);

5 “(2) the State regulatory authority for such
6 State has conducted a proceeding to consider imple-
7 mentation of the standard concerned (or a com-
8 parable standard) for such utility within the pre-
9 vious 3 years; or

10 “(3) the State legislature has voted on the im-
11 plementation of such standard (or a comparable
12 standard) for such utility within the previous 3
13 years.”.

14 (2) CROSS REFERENCE.—Section 124 of such
15 Act (16 U.S.C. 2634) is amended by adding the fol-
16 lowing at the end thereof: “In the case of the stand-
17 ard established by paragraph (14) of section 111(d),
18 the reference contained in this subsection to the date
19 of enactment of this Act shall be deemed to be a ref-
20 erence to the date of enactment of such paragraph
21 (14).”.

22 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
23 **TION PURCHASE AND SALE REQUIREMENTS.**

24 (a) **TERMINATION OF MANDATORY PURCHASE AND**
25 **SALE REQUIREMENTS.**—Section 210 of the Public Utility

1 Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is
2 amended by adding at the end the following:

3 “(m) TERMINATION OF MANDATORY PURCHASE AND
4 SALE REQUIREMENTS.—

5 “(1) OBLIGATION TO PURCHASE.—After the
6 date of enactment of this subsection, no electric util-
7 ity shall be required to enter into a new contract or
8 obligation to purchase electric energy from a quali-
9 fying cogeneration facility or a qualifying small
10 power production facility under this section if the
11 Commission finds that the qualifying cogeneration
12 facility or qualifying small power production facility
13 has nondiscriminatory access to—

14 “(A)(i) independently administered, auc-
15 tion-based day ahead and real time wholesale
16 markets for the sale of electric energy; and (ii)
17 wholesale markets for long-term sales of capac-
18 ity and electric energy; or

19 “(B)(i) transmission and interconnection
20 services that are provided by a Commission-ap-
21 proved regional transmission entity and admin-
22 istered pursuant to an open access transmission
23 tariff that affords nondiscriminatory treatment
24 to all customers; and (ii) competitive wholesale
25 markets that provide a meaningful opportunity

1 to sell capacity, including long-term and short-
2 term sales, and electric energy, including long-
3 term, short-term and real-time sales, to buyers
4 other than the utility to which the qualifying fa-
5 cility is interconnected. In determining whether
6 a meaningful opportunity to sell exists, the
7 Commission shall consider, among other fac-
8 tors, evidence of transactions within the rel-
9 evant market; or

10 “(C) wholesale markets for the sale of ca-
11 pacity and electric energy that are, at a min-
12 imum, of comparable competitive quality as
13 markets described in subparagraphs (A) and
14 (B).

15 “(2) REVISED PURCHASE AND SALE OBLIGA-
16 TION FOR NEW FACILITIES.—(A) After the date of
17 enactment of this subsection, no electric utility shall
18 be required pursuant to this section to enter into a
19 new contract or obligation to purchase from or sell
20 electric energy to a facility that is not an existing
21 qualifying cogeneration facility unless the facility
22 meets the criteria for qualifying cogeneration facili-
23 ties established by the Commission pursuant to the
24 rulemaking required by subsection (n).

1 “(B) For the purposes of this paragraph, the
2 term ‘existing qualifying cogeneration facility’ means
3 a facility that—

4 “(i) was a qualifying cogeneration facility
5 on the date of enactment of subsection (m); or

6 “(ii) had filed with the Commission a no-
7 tice of self-certification, self recertification or
8 an application for Commission certification
9 under 18 C.F.R. 292.207 prior to the date on
10 which the Commission issues the final rule re-
11 quired by subsection (n).

12 “(3) COMMISSION REVIEW.—Any electric utility
13 may file an application with the Commission for re-
14 lief from the mandatory purchase obligation pursu-
15 ant to this subsection on a service territory-wide
16 basis. Such application shall set forth the factual
17 basis upon which relief is requested and describe
18 why the conditions set forth in subparagraphs (A),
19 (B) or (C) of paragraph (1) of this subsection have
20 been met. After notice, including sufficient notice to
21 potentially affected qualifying cogeneration facilities
22 and qualifying small power production facilities, and
23 an opportunity for comment, the Commission shall
24 make a final determination within 90 days of such
25 application regarding whether the conditions set

1 forth in subparagraphs (A), (B) or (C) of paragraph
2 (1) have been met.

3 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
4 CHASE.—At any time after the Commission makes a
5 finding under paragraph (3) relieving an electric
6 utility of its obligation to purchase electric energy,
7 a qualifying cogeneration facility, a qualifying small
8 power production facility, a State agency, or any
9 other affected person may apply to the Commission
10 for an order reinstating the electric utility’s obliga-
11 tion to purchase electric energy under this section.
12 Such application shall set forth the factual basis
13 upon which the application is based and describe
14 why the conditions set forth in subparagraphs (A),
15 (B) or (C) of paragraph (1) of this subsection are
16 no longer met. After notice, including sufficient no-
17 tice to potentially affected utilities, and opportunity
18 for comment, the Commission shall issue an order
19 within 90 days of such application reinstating the
20 electric utility’s obligation to purchase electric en-
21 ergy under this section if the Commission finds that
22 the conditions set forth in subparagraphs (A), (B) or
23 (C) of paragraph (1) which relieved the obligation to
24 purchase, are no longer met.

1 “(5) OBLIGATION TO SELL.—After the date of
2 enactment of this subsection, no electric utility shall
3 be required to enter into a new contract or obliga-
4 tion to sell electric energy to a qualifying cogenera-
5 tion facility or a qualifying small power production
6 facility under this section if the Commission finds
7 that—

8 “(A) competing retail electric suppliers are
9 willing and able to sell and deliver electric en-
10 ergy to the qualifying cogeneration facility or
11 qualifying small power production facility; and

12 “(B) the electric utility is not required by
13 State law to sell electric energy in its service
14 territory.

15 “(6) NO EFFECT ON EXISTING RIGHTS AND
16 REMEDIES.—Nothing in this subsection affects the
17 rights or remedies of any party under any contract
18 or obligation, in effect or pending approval before
19 the appropriate State regulatory authority or non-
20 regulated electric utility on the date of enactment of
21 this subsection, to purchase electric energy or capac-
22 ity from or to sell electric energy or capacity to a
23 qualifying cogeneration facility or qualifying small
24 power production facility under this Act (including

1 the right to recover costs of purchasing electric en-
2 ergy or capacity).

3 “(7) RECOVERY OF COSTS.—(A) The Commis-
4 sion shall issue and enforce such regulations as are
5 necessary to ensure that an electric utility that pur-
6 chases electric energy or capacity from a qualifying
7 cogeneration facility or qualifying small power pro-
8 duction facility in accordance with any legally en-
9 forceable obligation entered into or imposed under
10 this section recovers all prudently incurred costs as-
11 sociated with the purchase.

12 “(B) A regulation under subparagraph (A) shall
13 be enforceable in accordance with the provisions of
14 law applicable to enforcement of regulations under
15 the Federal Power Act (16 U.S.C. 791a et seq.).

16 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
17 TIES.—(1)(A) Not later than 180 days after the date of
18 enactment of this section, the Commission shall issue a
19 rule revising the criteria in 18 C.F.R. 292.205 for new
20 qualifying cogeneration facilities seeking to sell electric en-
21 ergy pursuant to section 210 of this Act to ensure—

22 “(i) that the thermal energy output of a new
23 qualifying cogeneration facility is used in a produc-
24 tive and beneficial manner;

1 “(ii) the electrical, thermal, and chemical out-
2 put of the cogeneration facility is used fundamen-
3 tally for industrial, commercial, or institutional pur-
4 poses and is not intended fundamentally for sale to
5 an electric utility, taking into account technological,
6 efficiency, economic, and variable thermal energy re-
7 quirements, as well as State laws applicable to sales
8 of electric energy from a qualifying facility to its
9 host facility; and

10 “(iii) continuing progress in the development of
11 efficient electric energy generating technology.

12 “(B) The rule issued pursuant to section (n)(1)(A)
13 shall be applicable only to facilities that seek to sell electric
14 energy pursuant to section 210 of this Act. For all other
15 purposes, except as specifically provided in section
16 (m)(2)(A), qualifying facility status shall be determined
17 in accordance with the rules and regulations of this Act.

18 “(2) Notwithstanding rule revisions under paragraph
19 (1), the Commission’s criteria for qualifying cogeneration
20 facilities in effect prior to the date on which the Commis-
21 sion issues the final rule required by paragraph (1) shall
22 continue to apply to any cogeneration facility that—

23 “(A) was a qualifying cogeneration facility on
24 the date of enactment of subsection (m), or

1 “(B) had filed with the Commission a notice of
2 self-certification, self-recertification or an application
3 for Commission certification under 18 C.F.R.
4 292.207 prior to the date on which the Commission
5 issues the final rule required by paragraph (1).”.

6 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

7 (1) QUALIFYING SMALL POWER PRODUCTION
8 FACILITY.—Section 3(17)(C) of the Federal Power
9 Act (16 U.S.C. 796(17)(C)) is amended to read as
10 follows:

11 “(C) ‘qualifying small power production fa-
12 cility’ means a small power production facility
13 that the Commission determines, by rule, meets
14 such requirements (including requirements re-
15 specting fuel use, fuel efficiency, and reliability)
16 as the Commission may, by rule, prescribe;”.

17 (2) QUALIFYING COGENERATION FACILITY.—
18 Section 3(18)(B) of the Federal Power Act (16
19 U.S.C. 796(18)(B)) is amended to read as follows:

20 “(B) ‘qualifying cogeneration facility’
21 means a cogeneration facility that the Commis-
22 sion determines, by rule, meets such require-
23 ments (including requirements respecting min-
24 imum size, fuel use, and fuel efficiency) as the
25 Commission may, by rule, prescribe;”.

1 **Subtitle F—Repeal of PUHCA**

2 **SEC. 1261. SHORT TITLE.**

3 This subtitle may be cited as the “Public Utility
4 Holding Company Act of 2003”.

5 **SEC. 1262. DEFINITIONS.**

6 For purposes of this subtitle:

7 (1) **AFFILIATE.**—The term “affiliate” of a com-
8 pany means any company, 5 percent or more of the
9 outstanding voting securities of which are owned,
10 controlled, or held with power to vote, directly or in-
11 directly, by such company.

12 (2) **ASSOCIATE COMPANY.**—The term “associate
13 company” of a company means any company in the
14 same holding company system with such company.

15 (3) **COMMISSION.**—The term “Commission”
16 means the Federal Energy Regulatory Commission.

17 (4) **COMPANY.**—The term “company” means a
18 corporation, partnership, association, joint stock
19 company, business trust, or any organized group of
20 persons, whether incorporated or not, or a receiver,
21 trustee, or other liquidating agent of any of the fore-
22 going.

23 (5) **ELECTRIC UTILITY COMPANY.**—The term
24 “electric utility company” means any company that
25 owns or operates facilities used for the generation,

1 transmission, or distribution of electric energy for
2 sale.

3 (6) EXEMPT WHOLESale GENERATOR AND
4 FOREIGN UTILITY COMPANY.—The terms “exempt
5 wholesale generator” and “foreign utility company”
6 have the same meanings as in sections 32 and 33,
7 respectively, of the Public Utility Holding Company
8 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those
9 sections existed on the day before the effective date
10 of this subtitle.

11 (7) GAS UTILITY COMPANY.—The term “gas
12 utility company” means any company that owns or
13 operates facilities used for distribution at retail
14 (other than the distribution only in enclosed portable
15 containers or distribution to tenants or employees of
16 the company operating such facilities for their own
17 use and not for resale) of natural or manufactured
18 gas for heat, light, or power.

19 (8) HOLDING COMPANY.—The term “holding
20 company” means—

21 (A) any company that directly or indirectly
22 owns, controls, or holds, with power to vote, 10
23 percent or more of the outstanding voting secu-
24 rities of a public-utility company or of a holding
25 company of any public-utility company; and

1 (B) any person, determined by the Com-
2 mission, after notice and opportunity for hear-
3 ing, to exercise directly or indirectly (either
4 alone or pursuant to an arrangement or under-
5 standing with 1 or more persons) such a con-
6 trolling influence over the management or poli-
7 cies of any public-utility company or holding
8 company as to make it necessary or appropriate
9 for the rate protection of utility customers with
10 respect to rates that such person be subject to
11 the obligations, duties, and liabilities imposed
12 by this subtitle upon holding companies.

13 (9) HOLDING COMPANY SYSTEM.—The term
14 “holding company system” means a holding com-
15 pany, together with its subsidiary companies.

16 (10) JURISDICTIONAL RATES.—The term “ju-
17 risdictional rates” means rates accepted or estab-
18 lished by the Commission for the transmission of
19 electric energy in interstate commerce, the sale of
20 electric energy at wholesale in interstate commerce,
21 the transportation of natural gas in interstate com-
22 merce, and the sale in interstate commerce of nat-
23 ural gas for resale for ultimate public consumption
24 for domestic, commercial, industrial, or any other
25 use.

1 (11) NATURAL GAS COMPANY.—The term “nat-
2 ural gas company” means a person engaged in the
3 transportation of natural gas in interstate commerce
4 or the sale of such gas in interstate commerce for
5 resale.

6 (12) PERSON.—The term “person” means an
7 individual or company.

8 (13) PUBLIC UTILITY.—The term “public util-
9 ity” means any person who owns or operates facili-
10 ties used for transmission of electric energy in inter-
11 state commerce or sales of electric energy at whole-
12 sale in interstate commerce.

13 (14) PUBLIC-UTILITY COMPANY.—The term
14 “public-utility company” means an electric utility
15 company or a gas utility company.

16 (15) STATE COMMISSION.—The term “State
17 commission” means any commission, board, agency,
18 or officer, by whatever name designated, of a State,
19 municipality, or other political subdivision of a State
20 that, under the laws of such State, has jurisdiction
21 to regulate public utility companies.

22 (16) SUBSIDIARY COMPANY.—The term “sub-
23 sidiary company” of a holding company means—

24 (A) any company, 10 percent or more of
25 the outstanding voting securities of which are

1 directly or indirectly owned, controlled, or held
2 with power to vote, by such holding company;
3 and

4 (B) any person, the management or poli-
5 cies of which the Commission, after notice and
6 opportunity for hearing, determines to be sub-
7 ject to a controlling influence, directly or indi-
8 rectly, by such holding company (either alone or
9 pursuant to an arrangement or understanding
10 with 1 or more other persons) so as to make it
11 necessary for the rate protection of utility cus-
12 tomers with respect to rates that such person
13 be subject to the obligations, duties, and liabil-
14 ities imposed by this subtitle upon subsidiary
15 companies of holding companies.

16 (17) VOTING SECURITY.—The term “voting se-
17 curity” means any security presently entitling the
18 owner or holder thereof to vote in the direction or
19 management of the affairs of a company.

20 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
21 **PANY ACT OF 1935.**

22 The Public Utility Holding Company Act of 1935 (15
23 U.S.C. 79 et seq.) is repealed.

1 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission determines
6 are relevant to costs incurred by a public utility or natural
7 gas company that is an associate company of such holding
8 company and necessary or appropriate for the protection
9 of utility customers with respect to jurisdictional rates.

10 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
11 ing company or of any subsidiary company of a holding
12 company shall maintain, and shall make available to the
13 Commission, such books, accounts, memoranda, and other
14 records with respect to any transaction with another affil-
15 iate, as the Commission determines are relevant to costs
16 incurred by a public utility or natural gas company that
17 is an associate company of such holding company and nec-
18 essary or appropriate for the protection of utility cus-
19 tomers with respect to jurisdictional rates.

20 (c) HOLDING COMPANY SYSTEMS.—The Commission
21 may examine the books, accounts, memoranda, and other
22 records of any company in a holding company system, or
23 any affiliate thereof, as the Commission determines are
24 relevant to costs incurred by a public utility or natural
25 gas company within such holding company system and

1 necessary or appropriate for the protection of utility cus-
2 tomers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-
4 ployee of the Commission shall divulge any fact or infor-
5 mation that may come to his or her knowledge during the
6 course of examination of books, accounts, memoranda, or
7 other records as provided in this section, except as may
8 be directed by the Commission or by a court of competent
9 jurisdiction.

10 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a
12 State commission having jurisdiction to regulate a public-
13 utility company in a holding company system, the holding
14 company or any associate company or affiliate thereof,
15 other than such public-utility company, wherever located,
16 shall produce for inspection books, accounts, memoranda,
17 and other records that—

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

20 (2) the State commission determines are rel-
21 evant to costs incurred by such public-utility com-
22 pany; and

23 (3) are necessary for the effective discharge of
24 the responsibilities of the State commission with re-
25 spect to such proceeding.

1 (b) LIMITATION.—Subsection (a) does not apply to
2 any person that is a holding company solely by reason of
3 ownership of 1 or more qualifying facilities under the Pub-
4 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2601 et seq.).

6 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
7 duction of books, accounts, memoranda, and other records
8 under subsection (a) shall be subject to such terms and
9 conditions as may be necessary and appropriate to safe-
10 guard against unwarranted disclosure to the public of any
11 trade secrets or sensitive commercial information.

12 (d) EFFECT ON STATE LAW.—Nothing in this sec-
13 tion shall preempt applicable State law concerning the pro-
14 vision of books, accounts, memoranda, and other records,
15 or in any way limit the rights of any State to obtain books,
16 accounts, memoranda, and other records under any other
17 Federal law, contract, or otherwise.

18 (e) COURT JURISDICTION.—Any United States dis-
19 trict court located in the State in which the State commis-
20 sion referred to in subsection (a) is located shall have ju-
21 risdiction to enforce compliance with this section.

22 **SEC. 1266. EXEMPTION AUTHORITY.**

23 (a) RULEMAKING.—Not later than 90 days after the
24 effective date of this subtitle, the Commission shall issue
25 a final rule to exempt from the requirements of section

1 1264 (relating to Federal access to books and records) any
2 person that is a holding company, solely with respect to
3 1 or more—

4 (1) qualifying facilities under the Public Utility
5 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
6 seq.);

7 (2) exempt wholesale generators; or

8 (3) foreign utility companies.

9 (b) OTHER AUTHORITY.—The Commission shall ex-
10 empt a person or transaction from the requirements of
11 section 1264 (relating to Federal access to books and
12 records) if, upon application or upon the motion of the
13 Commission—

14 (1) the Commission finds that the books, ac-
15 counts, memoranda, and other records of any person
16 are not relevant to the jurisdictional rates of a pub-
17 lic utility or natural gas company; or

18 (2) the Commission finds that any class of
19 transactions is not relevant to the jurisdictional
20 rates of a public utility or natural gas company.

21 **SEC. 1267. AFFILIATE TRANSACTIONS.**

22 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
23 ing in this subtitle shall limit the authority of the Commis-
24 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
25 to require that jurisdictional rates are just and reasonable,

1 including the ability to deny or approve the pass through
2 of costs, the prevention of cross-subsidization, and the
3 issuance of such rules and regulations as are necessary
4 or appropriate for the protection of utility consumers.

5 (b) RECOVERY OF COSTS.—Nothing in this subtitle
6 shall preclude the Commission or a State commission from
7 exercising its jurisdiction under otherwise applicable law
8 to determine whether a public-utility company, public util-
9 ity, or natural gas company may recover in rates any costs
10 of an activity performed by an associate company, or any
11 costs of goods or services acquired by such public-utility
12 company from an associate company.

13 **SEC. 1268. APPLICABILITY.**

14 Except as otherwise specifically provided in this sub-
15 title, no provision of this subtitle shall apply to, or be
16 deemed to include—

17 (1) the United States;

18 (2) a State or any political subdivision of a
19 State;

20 (3) any foreign governmental authority not op-
21 erating in the United States;

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

24 or

1 (5) any officer, agent, or employee of any entity
2 referred to in paragraph (1), (2), (3), or (4) acting
3 as such in the course of his or her official duty.

4 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

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

8 **SEC. 1270. ENFORCEMENT.**

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

13 **SEC. 1271. SAVINGS PROVISIONS.**

14 (a) IN GENERAL.—Nothing in this subtitle, or other-
15 wise in the Public Utility Holding Company Act of 1935,
16 or rules, regulations, or orders thereunder, prohibits a per-
17 son from engaging in or continuing to engage in activities
18 or transactions in which it is legally engaged or authorized
19 to engage on the date of enactment of this Act, if that
20 person continues to comply with the terms (other than an
21 expiration date or termination date) of any such author-
22 ization, whether by rule or by order.

23 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
24 Nothing in this subtitle limits the authority of the Com-

1 mission under the Federal Power Act (16 U.S.C. 791a et
2 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

3 **SEC. 1272. IMPLEMENTATION.**

4 Not later than 12 months after the date of enactment
5 of this subtitle, the Commission shall—

6 (1) issue such regulations as may be necessary
7 or appropriate to implement this subtitle (other than
8 section 1265, relating to State access to books and
9 records); and

10 (2) submit to Congress detailed recommenda-
11 tions on technical and conforming amendments to
12 Federal law necessary to carry out this subtitle and
13 the amendments made by this subtitle.

14 **SEC. 1273. TRANSFER OF RESOURCES.**

15 All books and records that relate primarily to the
16 functions transferred to the Commission under this sub-
17 title shall be transferred from the Securities and Exchange
18 Commission to the Commission.

19 **SEC. 1274. EFFECTIVE DATE.**

20 (a) **IN GENERAL.**—Except for section 1272 (relating
21 to implementation), this subtitle shall take effect 12
22 months after the date of enactment of this subtitle.

23 (b) **COMPLIANCE WITH CERTAIN RULES.**—If the
24 Commission approves and makes effective any final rule-
25 making modifying the standards of conduct governing en-

1 titles that own, operate, or control facilities for trans-
2 mission of electricity in interstate commerce or transpor-
3 tation of natural gas in interstate commerce prior to the
4 effective date of this subtitle, any action taken by a public-
5 utility company or utility holding company to comply with
6 the requirements of such rulemaking shall not subject
7 such public-utility company or utility holding company to
8 any regulatory requirement applicable to a holding com-
9 pany under the Public Utility Holding Company Act of
10 1935 (15 U.S.C. 79 et seq.).

11 **SEC. 1275. SERVICE ALLOCATION.**

12 (a) FERC REVIEW.—In the case of non-power goods
13 or administrative or management services provided by an
14 associate company organized specifically for the purpose
15 of providing such goods or services to any public utility
16 in the same holding company system, at the election of
17 the system or a State commission having jurisdiction over
18 the public utility, the Commission, after the effective date
19 of this subtitle, shall review and authorize the allocation
20 of the costs for such goods or services to the extent rel-
21 evant to that associate company in order to assure that
22 each allocation is appropriate for the protection of inves-
23 tors and consumers of such public utility.

24 (b) COST ALLOCATION.—Nothing in this section shall
25 preclude the Commission or a State commission from exer-

1 cising its jurisdiction under other applicable law with re-
2 spect to the review or authorization of any costs allocated
3 to a public utility in a holding company system located
4 in the affected State as a result of the acquisition of non-
5 power goods or administrative and management services
6 by such public utility from an associate company orga-
7 nized specifically for that purpose.

8 (c) RULES.—Not later than 6 months after the date
9 of enactment of this Act, the Commission shall issue rules
10 (which rules shall be effective no earlier than the effective
11 date of this subtitle) to exempt from the requirements of
12 this section any company in a holding company system
13 whose public utility operations are confined substantially
14 to a single State and any other class of transactions that
15 the Commission finds is not relevant to the jurisdictional
16 rates of a public utility.

17 (d) PUBLIC UTILITY.—As used in this section, the
18 term “public utility” has the meaning given that term in
19 section 201(e) of the Federal Power Act.

20 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such funds
22 as may be necessary to carry out this subtitle.

1 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
2 **POWER ACT.**

3 (a) CONFLICT OF JURISDICTION.—Section 318 of the
4 Federal Power Act (16 U.S.C. 825q) is repealed.

5 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
6 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
7 ing “1935” and inserting “2003”.

8 (2) Section 214 of the Federal Power Act (16 U.S.C.
9 824m) is amended by striking “1935” and inserting
10 “2003”.

11 **Subtitle G—Market Transparency,**
12 **Enforcement, and Consumer**
13 **Protection**

14 **SEC. 1281. MARKET TRANSPARENCY RULES.**

15 Part II of the Federal Power Act (16 U.S.C. 824 et
16 seq.) is amended by adding at the end the following:

17 **“SEC. 220. MARKET TRANSPARENCY RULES.**

18 “(a) IN GENERAL.—Not later than 180 days after
19 the date of enactment of this section, the Commission
20 shall issue rules establishing an electronic information sys-
21 tem to provide the Commission and the public with access
22 to such information as is necessary or appropriate to fa-
23 cilitate price transparency and participation in markets
24 subject to the Commission’s jurisdiction under this Act.
25 Such systems shall provide information about the avail-
26 ability and market price of wholesale electric energy and

1 transmission services to the Commission, State commis-
2 sions, buyers and sellers of wholesale electric energy, users
3 of transmission services, and the public on a timely basis.
4 The Commission shall have authority to obtain such infor-
5 mation from any electric utility or transmitting utility, in-
6 cluding any entity described in section 201(f).

7 “(b) EXEMPTIONS.—The Commission shall exempt
8 from disclosure information it determines would, if dis-
9 closed, be detrimental to the operation of an effective mar-
10 ket or jeopardize system security. This section shall not
11 apply to transactions for the purchase or sale of wholesale
12 electric energy or transmission services within the area de-
13 scribed in section 212(k)(2)(A). In determining the infor-
14 mation to be made available under this section and time
15 to make such information available, the Commission shall
16 seek to ensure that consumers and competitive markets
17 are protected from the adverse effects of potential collu-
18 sion or other anti-competitive behaviors that can be facili-
19 tated by untimely public disclosure of transaction-specific
20 information.

21 “(c) COMMODITY FUTURES TRADING COMMIS-
22 SION.—This section shall not affect the exclusive jurisdic-
23 tion of the Commodity Futures Trading Commission with
24 respect to accounts, agreements, contracts, or transactions
25 in commodities under the Commodity Exchange Act (7

1 U.S.C. 1 et seq.). Any request for information to a des-
2 ignated contract market, registered derivatives transaction
3 execution facility, board of trade, exchange, or market in-
4 volving accounts, agreements, contracts, or transactions in
5 commodities (including natural gas, electricity and other
6 energy commodities) within the exclusive jurisdiction of
7 the Commodity Futures Trading Commission shall be di-
8 rected to the Commodity Futures Trading Commission.

9 “(d) SAVINGS PROVISION.—In exercising its author-
10 ity under this section, the Commission shall not—

11 “(1) compete with, or displace from the market
12 place, any price publisher; or

13 “(2) regulate price publishers or impose any re-
14 quirements on the publication of information.”.

15 **SEC. 1282. MARKET MANIPULATION.**

16 Part II of the Federal Power Act (16 U.S.C. 824 et
17 seq.) is amended by adding at the end the following:

18 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

19 “No person or other entity (including an entity de-
20 scribed in section 201(f)) shall willfully and knowingly re-
21 port any information relating to the price of electricity
22 sold at wholesale or availability of transmission capacity,
23 which information the person or any other entity knew to
24 be false at the time of the reporting, to a Federal agency

1 with intent to fraudulently affect the data being compiled
2 by such Federal agency.

3 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

4 “(a) PROHIBITION.—No person or other entity (in-
5 cluding an entity described in section 201(f)) shall willfully
6 and knowingly enter into any contract or other arrange-
7 ment to execute a ‘round trip trade’ for the purchase or
8 sale of electric energy at wholesale.

9 “(b) DEFINITION.—For the purposes of this section,
10 the term ‘round trip trade’ means a transaction, or com-
11 bination of transactions, in which a person or any other
12 entity—

13 “(1) enters into a contract or other arrange-
14 ment to purchase from, or sell to, any other person
15 or other entity electric energy at wholesale;

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

23 “(3) enters into the contract or arrangement
24 with a specific intent to fraudulently affect reported
25 revenues, trading volumes, or prices.”.

1 **SEC. 1283. ENFORCEMENT.**

2 (a) COMPLAINTS.—Section 306 of the Federal Power
3 Act (16 U.S.C. 825e) is amended as follows:

4 (1) By inserting “electric utility,” after “Any
5 person,”.

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

8 (b) REVIEW OF COMMISSION ORDERS.—Section
9 313(a) of the Federal Power Act (16 U.S.C. 8251) is
10 amended by inserting ‘electric utility,’ after ‘person,’ in
11 the first 2 places it appears and by striking ‘any person
12 unless such person’ and inserting ‘any entity unless such
13 entity’.

14 (c) INVESTIGATIONS.—Section 307(a) of the Federal
15 Power Act (16 U.S.C. 825f(a)) is amended as follows:

16 (1) By inserting ‘, electric utility, transmitting
17 utility, or other entity’ after ‘person’ each time it ap-
18 pears.

19 (2) By striking the period at the end of the
20 first sentence and inserting the following: “or in ob-
21 taining information about the sale of electric energy
22 at wholesale in interstate commerce and the trans-
23 mission of electric energy in interstate commerce.”.

24 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
25 eral Power Act (16 U.S.C. 825o) is amended—

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

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

6 (3) by striking subsection (c).

7 (e) CIVIL PENALTIES.—Section 316A of the Federal
8 Power Act (16 U.S.C. 825o–1) is amended as follows:

9 (1) In subsections (a) and (b), by striking “sec-
10 tion 211, 212, 213, or 214” each place it appears
11 and inserting “Part II”.

12 (2) In subsection (b), by striking “\$10,000”
13 and inserting “\$1,000,000”.

14 **SEC. 1284. REFUND EFFECTIVE DATE.**

15 Section 206(b) of the Federal Power Act (16 U.S.C.
16 824e(b)) is amended as follows:

17 (1) By striking “the date 60 days after the fil-
18 ing of such complaint nor later than 5 months after
19 the expiration of such 60-day period” in the second
20 sentence and inserting “the date of the filing of such
21 complaint nor later than 5 months after the filing of
22 such complaint”.

23 (2) By striking “60 days after” in the third
24 sentence and inserting “of”.

1 (3) By striking “expiration of such 60-day pe-
2 riod” in the third sentence and inserting “publica-
3 tion date”.

4 (4) By striking the fifth sentence and inserting
5 the following: “If no final decision is rendered by the
6 conclusion of the 180-day period commencing upon
7 initiation of a proceeding pursuant to this section,
8 the Commission shall state the reasons why it has
9 failed to do so and shall state its best estimate as
10 to when it reasonably expects to make such deci-
11 sion.”.

12 **SEC. 1285. REFUND AUTHORITY.**

13 Section 206 of the Federal Power Act (16 U.S.C.
14 824e) is amended by adding the following new subsection
15 at the end thereof:

16 “(e)(1) Except as provided in paragraph (2), if an
17 entity described in section 201(f) voluntarily makes a
18 short-term sale of electric energy and the sale violates
19 Commission rules in effect at the time of the sale, such
20 entity shall be subject to the Commission’s refund author-
21 ity under this section with respect to such violation.

22 “(2) This section shall not apply to—

23 “(A) any entity that sells less than 8,000,000
24 megawatt hours of electricity per year; or

25 “(B) any electric cooperative.

1 “(3) For purposes of this subsection, the term ‘short-
2 term sale’ means an agreement for the sale of electric en-
3 ergy at wholesale in interstate commerce that is for a pe-
4 riod of 31 days or less.

5 “(4) The Commission shall have refund authority
6 under subsection (e)(1) with respect to a voluntary short-
7 term sale of electric energy by the Bonneville Power Ad-
8 ministration (in this section ‘Bonneville’) only if the sale
9 is at an unjust and unreasonable rate and, in that event,
10 may order a refund only for short-term sales made by
11 Bonneville at rates that are higher than the highest just
12 and reasonable rate charged by any other entity for a
13 short-term sale of electric energy in the same geographic
14 market for the same, or most nearly comparable, period
15 as the sale by Bonneville.

16 “(5) With respect to any Federal power marketing
17 agency or the Tennessee Valley Authority, the Commission
18 shall not assert or exercise any regulatory authority or
19 powers under subsection (e)(1) other than the ordering of
20 refunds to achieve a just and reasonable rate.”.

21 **SEC. 1286. SANCTITY OF CONTRACT.**

22 (a) IN GENERAL.—The Federal Energy Regulatory
23 Commission (in this section, “the Commission”) shall have
24 no authority to abrogate or modify any provision of an
25 executed contract or executed contract amendment de-

1 scribed in subsection (b) that has been entered into or
2 taken effect, except upon a finding that failure to take
3 such action would be contrary to the public interest.

4 (b) LIMITATION.—Except as provided in subsection
5 (c), this section shall apply only to a contract or contract
6 amendment—

7 (1) executed on or after the date of enactment
8 of this Act; and

9 (2) entered into—

10 (A) for the purchase or sale of electric en-
11 ergy under section 205 of the Federal Power
12 Act (16 U.S.C. 824d) where the seller has been
13 authorized by the Commission to charge mar-
14 ket-based rates; or

15 (B) under section 4 of the Natural Gas
16 Act (15 U.S.C. 717c) where the natural gas
17 company has been authorized by the Commis-
18 sion to charge market-based rates for the serv-
19 ice described in the contract.

20 (c) EXCLUSION.—This section shall not apply to an
21 executed contract or executed contract amendment that
22 expressly provides for a standard of review other than the
23 public interest standard.

24 (d) SAVINGS PROVISION.—With respect to contracts
25 to which this section does not apply, nothing in this sec-

1 tion alters existing law regarding the applicable standard
2 of review for a contract subject to the jurisdiction of the
3 Commission.

4 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
5 **TICES.**

6 (a) **PRIVACY.**—The Federal Trade Commission may
7 issue rules protecting the privacy of electric consumers
8 from the disclosure of consumer information obtained in
9 connection with the sale or delivery of electric energy to
10 electric consumers.

11 (b) **SLAMMING.**—The Federal Trade Commission
12 may issue rules prohibiting the change of selection of an
13 electric utility except with the informed consent of the
14 electric consumer or if approved by the appropriate State
15 regulatory authority.

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

20 (d) **RULEMAKING.**—The Federal Trade Commission
21 shall proceed in accordance with section 553 of title 5,
22 United States Code, when prescribing a rule under this
23 section.

24 (e) **STATE AUTHORITY.**—If the Federal Trade Com-
25 mission determines that a State's regulations provide

1 equivalent or greater protection than the provisions of this
2 section, such State regulations shall apply in that State
3 in lieu of the regulations issued by the Commission under
4 this section.

5 (f) DEFINITIONS.—For purposes of this section:

6 (1) STATE REGULATORY AUTHORITY.—The
7 term “State regulatory authority” has the meaning
8 given that term in section 3(21) of the Federal
9 Power Act (16 U.S.C. 796(21)).

10 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
11 ITY.—The terms “electric consumer” and “electric
12 utility” have the meanings given those terms in sec-
13 tion 3 of the Public Utility Regulatory Policies Act
14 of 1978 (16 U.S.C. 2602).

15 **Subtitle H—Merger Reform**

16 **SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-** 17 **ABILITY.**

18 (a) MERGER REVIEW REFORM.—Within 180 days
19 after the date of enactment of this Act, the Secretary of
20 Energy, in consultation with the Federal Energy Regu-
21 latory Commission and the Attorney General of the United
22 States, shall prepare, and transmit to Congress each of
23 the following:

24 (1) A study of the extent to which the authori-
25 ties vested in the Federal Energy Regulatory Com-

1 mission under section 203 of the Federal Power Act
2 are duplicative of authorities vested in—

3 (A) other agencies of Federal and State
4 Government; and

5 (B) the Federal Energy Regulatory Com-
6 mission, including under sections 205 and 206
7 of the Federal Power Act.

8 (2) Recommendations on reforms to the Fed-
9 eral Power Act that would eliminate any unneces-
10 sary duplication in the exercise of regulatory author-
11 ity or unnecessary delays in the approval (or dis-
12 approval) of applications for the sale, lease, or other
13 disposition of public utility facilities.

14 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
15 than 1 year after the date of enactment of this Act and
16 annually thereafter, with respect to all orders issued with-
17 in the preceding year that impose a condition on a sale,
18 lease, or other disposition of public utility facilities under
19 section 203(b) of the Federal Power Act, the Federal En-
20 ergy Regulatory Commission shall transmit a report to
21 Congress explaining each of the following:

22 (1) The condition imposed.

23 (2) Whether the Commission could have im-
24 posed such condition by exercising its authority

1 under any provision of the Federal Power Act other
2 than under section 203(b).

3 (3) If the Commission could not have imposed
4 such condition other than under section 203(b), why
5 the Commission determined that such condition was
6 consistent with the public interest.

7 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

8 (a) AMENDMENT.—Section 203(a) of the Federal
9 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
10 lows:

11 “(a)(1) No public utility shall, without first having
12 secured an order of the Commission authorizing it to do
13 so—

14 “(A) sell, lease, or otherwise dispose of the
15 whole of its facilities subject to the jurisdiction of
16 the Commission, or any part thereof of a value in
17 excess of \$10,000,000;

18 “(B) merge or consolidate, directly or indi-
19 rectly, such facilities or any part thereof with those
20 of any other person, by any means whatsoever; or

21 “(C) purchase, acquire, or take any security
22 with a value in excess of \$10,000,000 of any other
23 public utility.

24 “(2) No holding company in a holding company sys-
25 tem that includes a public utility shall purchase, acquire,

1 or take any security with a value in excess of \$10,000,000
2 of, or, by any means whatsoever, directly or indirectly,
3 merge or consolidate with, a public utility or a holding
4 company in a holding company system that includes a
5 public utility with a value in excess of \$10,000,000 with-
6 out first having secured an order of the Commission au-
7 thorizing it to do so.

8 “(3) Upon receipt of an application for such approval
9 the Commission shall give reasonable notice in writing to
10 the Governor and State commission of each of the States
11 in which the physical property affected, or any part there-
12 of, is situated, and to such other persons as it may deem
13 advisable.

14 “(4) After notice and opportunity for hearing, the
15 Commission shall approve the proposed disposition, con-
16 solidation, acquisition, or change in control, if it finds that
17 the proposed transaction will be consistent with the public
18 interest. In evaluating whether a transaction will be con-
19 sistent with the public interest, the Commission shall con-
20 sider whether the proposed transaction—

21 “(A) will adequately protect consumer interests;

22 “(B) will be consistent with competitive whole-
23 sale markets;

24 “(C) will impair the financial integrity of any
25 public utility that is a party to the transaction or an

1 associate company of any party to the transaction;
2 and

3 “(D) satisfies such other criteria as the Com-
4 mission considers consistent with the public interest.

5 “(5) The Commission shall, by rule, adopt procedures
6 for the expeditious consideration of applications for the
7 approval of dispositions, consolidations, or acquisitions
8 under this section. Such rules shall identify classes of
9 transactions, or specify criteria for transactions, that nor-
10 mally meet the standards established in paragraph (4).

11 The Commission shall provide expedited review for such
12 transactions. The Commission shall grant or deny any
13 other application for approval of a transaction not later
14 than 180 days after the application is filed. If the Com-
15 mission does not act within 180 days, such application
16 shall be deemed granted unless the Commission finds,
17 based on good cause, that further consideration is required
18 to determine whether the proposed transaction meets the
19 standards of paragraph (4) and issues an order tolling the
20 time for acting on the application for not more than 180
21 days, at the end of which additional period the Commis-
22 sion shall grant or deny the application.

23 “(6) For purposes of this subsection, the terms ‘asso-
24 ciate company’, ‘holding company’, and ‘holding company

1 system' have the meaning given those terms in the Public
2 Utility Holding Company Act of 2003.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect 12 months after the date of
5 enactment of this section.

6 **Subtitle I—Definitions**

7 **SEC. 1295. DEFINITIONS.**

8 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
9 eral Power Act (16 U.S.C. 796(22)) is amended to read
10 as follows:

11 “(22) ELECTRIC UTILITY.—The term ‘electric
12 utility’ means any person or Federal or State agency
13 (including any entity described in section 201(f))
14 that sells electric energy; such term includes the
15 Tennessee Valley Authority and each Federal power
16 marketing administration.”.

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

20 “(23) TRANSMITTING UTILITY.—The term
21 ‘transmitting utility’ means an entity, including any
22 entity described in section 201(f), that owns, oper-
23 ates, or controls facilities used for the transmission
24 of electric energy—

25 “(A) in interstate commerce; or

1 “(B) for the sale of electric energy at
2 wholesale.”.

3 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
4 Federal Power Act (16 U.S.C. 796) is amended by adding
5 at the end the following:

6 “(26) ELECTRIC COOPERATIVE.—The term
7 ‘electric cooperative’ means a cooperatively owned
8 electric utility.

9 “(27) RTO.—The term ‘Regional Transmission
10 Organization’ or ‘RTO’ means an entity of sufficient
11 regional scope approved by the Commission to exer-
12 cise operational or functional control of facilities
13 used for the transmission of electric energy in inter-
14 state commerce and to ensure nondiscriminatory ac-
15 cess to such facilities.

16 “(28) ISO.—The term ‘Independent System
17 Operator’ or ‘ISO’ means an entity approved by the
18 Commission to exercise operational or functional
19 control of facilities used for the transmission of elec-
20 tric energy in interstate commerce and to ensure
21 nondiscriminatory access to such facilities.”.

22 (d) COMMISSION.—For the purposes of this title, the
23 term “Commission” means the Federal Energy Regu-
24 latory Commission.

1 (e) APPLICABILITY.—Section 201(f) of the Federal
2 Power Act (16 U.S.C. 824(f)) is amended by adding after
3 “political subdivision of a state,” the following: “an elec-
4 tric cooperative that has financing under the Rural Elec-
5 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells
6 less than 4,000,000 megawatt hours of electricity per
7 year.”.

8 **Subtitle J—Technical and**
9 **Conforming Amendments**

10 **SEC. 1297. CONFORMING AMENDMENTS.**

11 The Federal Power Act is amended as follows:

12 (1) Section 201(b)(2) of such Act (16 U.S.C.
13 824(b)(2)) is amended as follows:

14 (A) In the first sentence by striking “210,
15 211, and 212” and inserting “203(a)(2),
16 206(e), 210, 211, 211A, 212, 215, 216, 217,
17 218, 219, 220, 221, and 222”.

18 (B) In the second sentence by striking
19 “210 or 211” and inserting “203(a)(2), 206(e),
20 210, 211, 211A, 212, 215, 216, 217, 218, 219,
21 220, 221, and 222”.

22 (C) Section 201(b)(2) of such Act is
23 amended by striking “The” in the first place it
24 appears and inserting “Notwithstanding section

1 201(f), the” and in the second sentence after
2 “any order” by inserting “or rule”.

3 (2) Section 201(e) of such Act is amended by
4 striking “210, 211, or 212” and inserting “206(e),
5 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
6 219, 220, 221, and 222”.

7 (3) Section 206 of such Act (16 U.S.C. 824e)
8 is amended as follows:

9 (A) In subsection (b), in the seventh sen-
10 tence, by striking “the public utility to make”.

11 (B) In the first sentence of subsection (a),
12 by striking ‘hearing had’ and inserting “hearing
13 held”.

14 (4) Section 211(c) of such Act (16 U.S.C.
15 824j(c)) is amended by—

16 (A) striking “(2)”;

17 (B) striking “(A)” and inserting “(1)”

18 (C) striking “(B)” and inserting “(2)”;

19 and

20 (D) striking “termination of modification”
21 and inserting “termination or modification”.

22 (5) Section 211(d)(1) of such Act (16 U.S.C.
23 824j(d)(1)) is amended by striking “electric utility”
24 the second time it appears and inserting “transmit-
25 ting utility”.

1 (6) Section 315 (c) of such Act (16 U.S.C.
2 825n(e)) is amended by striking “subsection” and
3 inserting “section”.