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TITLE XII—ELECTRICITY

SEC. 1201. SHORT TITLE.

This title may be cited as the “Electricity Modernization Act of 2005”.

Subtitle A—Reliability Standards

SEC. 1211. ELECTRIC RELIABILITY STANDARDS.

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

“SEC. 215. ELECTRIC RELIABILITY.

“(a) DEFINITIONS.—In this section:

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

“(i) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion of such a network); and

“(ii) electric energy from generation facilities needed to maintain transmission system reliability.

“(B) The term ‘bulk-power system’ does not include facilities used in the local distribution of electric energy.

“(2) The terms ‘Electric Reliability Organization’ and ‘ERO’ mean the organization certified by the Commission under subsection (c) the purpose of

1 which is to establish and enforce reliability stand-
2 ards for the bulk-power system, subject to review by
3 the Commission.

4 “(3)(A) The term ‘reliability standard’ means a
5 requirement, approved by the Commission under this
6 section, to provide for reliable operation of the bulk-
7 power system.

8 “(B) The term ‘reliability standard’ includes re-
9 quirements for the operation of existing bulk-power
10 system components and the design of planned addi-
11 tions or modifications to those components to the ex-
12 tent necessary to provide for reliable operation of the
13 bulk-power system, except that the term does not in-
14 clude any requirement to enlarge those components
15 or to construct new transmission capacity or genera-
16 tion capacity.

17 “(4) The term ‘reliable operation’ means oper-
18 ating the components of the bulk-power system with-
19 in equipment and electric system thermal, voltage,
20 and stability limits so that instability, uncontrolled
21 separation, or cascading failures of the system will
22 not occur as a result of a sudden disturbance or un-
23 anticipated failure of system components.

24 “(5) The term ‘interconnection’ means a geo-
25 graphic area in which the operation of bulk-power

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

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

10 “(b) JURISDICTION AND APPLICABILITY.—(1) The
11 Commission shall have jurisdiction, within the United
12 States, over the ERO certified by the Commission under
13 subsection (c), any regional entities, and all users, owners
14 and operators of the bulk-power system (including the en-
15 tities described in section 201(f)), for purposes of approv-
16 ing reliability standards established under this section and
17 enforcing compliance with this section.

18 “(2) All users, owners, and operators of the bulk-
19 power system shall comply with reliability standards that
20 take effect under this section.

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

24 “(c) CERTIFICATION.—(1) Following the issuance of
25 a Commission rule under subsection (b)(3), any person

1 may submit an application to the Commission for certifi-
2 cation as the Electric Reliability Organization.

3 “(2) The Commission may certify 1 such ERO if the
4 Commission determines that the ERO—

5 “(A) has the ability to develop and enforce, sub-
6 ject to subsection (e)(2), reliability standards that
7 provide for an adequate level of reliability of the
8 bulk-power system; and

9 “(B) has established rules that—

10 “(i) ensure the independence of the ERO
11 from the users and owners and operators of the
12 bulk-power system, while ensuring fair stake-
13 holder representation in the selection of the di-
14 rectors of the ERO and balanced decision-
15 making in any ERO committee or subordinate
16 organizational structure;

17 “(ii) allocate equitably reasonable dues,
18 fees, and other charges among end users for all
19 activities under this section;

20 “(iii) provide fair and impartial procedures
21 for enforcement of reliability standards through
22 the imposition of penalties in accordance with
23 subsection (e) (including limitations on activi-
24 ties, functions, or operations, or other appro-
25 priate sanctions);

1 “(iv) provide for reasonable notice and op-
2 portunity for public comment, due process,
3 openness, and balance of interests in developing
4 reliability standards and otherwise exercising
5 the duties of the ERO; and

6 “(v) provide for taking, after certification,
7 appropriate steps to gain recognition in Canada
8 and Mexico.

9 “(d) RELIABILITY STANDARDS.—(1) The ERO shall
10 file each reliability standard or modification to a reliability
11 standard that the ERO proposes to be made effective
12 under this section with the Commission.

13 “(2)(A) The Commission may approve, by rule or
14 order, a proposed reliability standard or modification to
15 a reliability standard if the Commission determines that
16 the standard is just, reasonable, not unduly discriminatory
17 or preferential, and in the public interest.

18 “(B) The Commission—

19 “(i) shall give due weight to the technical exper-
20 tise of the ERO with respect to the content of a pro-
21 posed standard or modification to a reliability stand-
22 ard and to the technical expertise of a regional enti-
23 ty organized on an interconnection-wide basis with
24 respect to a reliability standard to be applicable
25 within that interconnection; but

1 “(ii) shall not defer with respect to the effect of
2 a standard on competition.

3 “(C) A proposed standard or modification shall take
4 effect on approval by the Commission.

5 “(3) The ERO shall rebuttably presume that a pro-
6 posal from a regional entity organized on an interconnec-
7 tion-wide basis for a reliability standard or modification
8 to a reliability standard to be applicable on an interconnec-
9 tion-wide basis is just, reasonable, not unduly discrimina-
10 tory or preferential, and in the public interest.

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

15 “(5) The Commission, on a motion of the Commis-
16 sion or on complaint, may order the ERO to submit to
17 the Commission a proposed reliability standard or a modi-
18 fication to a reliability standard that addresses a specific
19 matter if the Commission considers such a new or modi-
20 fied reliability standard appropriate to carry out this sec-
21 tion.

22 “(6)(A) The final rule adopted under subsection
23 (b)(2) shall include fair processes for the identification
24 and timely resolution of any conflict between a reliability
25 standard and any function, rule, order, tariff, rate sched-

1 rule, or agreement accepted, approved, or ordered by the
2 Commission applicable to a transmission organization.

3 “(B) The transmission organization shall continue to
4 comply with such function, rule, order, tariff, rate sched-
5 ule or agreement accepted approved, or ordered by the
6 Commission until—

7 “(i) the Commission finds a conflict exists be-
8 tween a reliability standard and any such provision;

9 “(ii) the Commission orders a change to the
10 provision pursuant to section 206; and

11 “(iii) the ordered change becomes effective
12 under this part.

13 “(C) If the Commission determines that a reliability
14 standard needs to be changed as a result of such a con-
15 flict, the Commission shall order the ERO to develop and
16 file with the Commission a modified reliability standard
17 under paragraph (4) or (5).

18 “(e) ENFORCEMENT.—(1) Subject to paragraph (2),
19 the ERO may impose a penalty on a user or owner or
20 operator of the bulk-power system for a violation of a reli-
21 ability standard approved by the Commission under sub-
22 section (d) if the ERO, after notice and an opportunity
23 for a hearing—

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

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

6 “(2)(A) A penalty imposed under paragraph (1) may
7 take effect not earlier than the day that is 31 days after
8 the date on which the ERO files with the Commission no-
9 tice of the penalty and the record of proceedings.

10 “(B) The penalty shall be subject to review by the
11 Commission on—

12 “(i) a motion by the Commission; or

13 “(ii) application by the user, owner or operator
14 that is the subject of the penalty filed not later than
15 30 days after the date on which the notice is filed
16 with the Commission.

17 “(C) Application to the Commission for review, or the
18 initiation of review by the Commission on a motion of the
19 Commission, shall not operate as a stay of the penalty un-
20 less the Commission orders otherwise on a motion of the
21 Commission or on application by the user, owner or oper-
22 ator that is the subject of the penalty.

23 “(D) In any proceeding to review a penalty imposed
24 under paragraph (1), the Commission, after notice and op-
25 portunity for hearing (which hearing may consist solely

1 of the record before the ERO and opportunity for the
2 presentation of supporting reasons to—

3 “(i) affirm, modify, or set aside the penalty),
4 shall by order affirm, set aside, reinstate, or modify
5 the penalty; and

6 “(ii) if appropriate, remand to the ERO for fur-
7 ther proceedings.

8 “(E) The Commission shall implement expedited pro-
9 cedures for the hearings described in subparagraph (D).

10 “(3) On a motion of the Commission or on complaint,
11 the Commission may order compliance with a reliability
12 standard and may impose a penalty against a user or
13 owner or operator of the bulk-power system if the Com-
14 mission finds, after notice and opportunity for a hearing,
15 that the user or owner or operator of the bulk-power sys-
16 tem has engaged or is about to engage in any act or prac-
17 tice that constitutes or will constitute a violation of a reli-
18 ability standard.

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

24 “(i) the regional entity is governed by—

25 “(I) an independent board;

1 “(II) a balanced stakeholder board; or

2 “(III) a combination independent and bal-
3 anced stakeholder board;

4 “(ii) the regional entity otherwise meets the re-
5 quirements of paragraphs (1) and (2) of subsection
6 (c); and

7 “(iii) the agreement promotes effective and effi-
8 cient administration of bulk-power system reliability.

9 “(B) The Commission may modify a delegation under
10 this paragraph.

11 “(C) The ERO and the Commission shall rebuttably
12 presume that a proposal for delegation to a regional entity
13 organized on an interconnection-wide basis promotes effec-
14 tive and efficient administration of bulk-power system reli-
15 ability and should be approved.

16 “(D) The regulation issued under this paragraph may
17 provide that the Commission may assign the authority of
18 the ERO to enforce reliability standards under paragraph
19 (1) directly to a regional entity in accordance with this
20 paragraph.

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

25 “(6) Any penalty imposed under this section shall—

1 “(A) bear a reasonable relation to the serious-
2 ness of the violation; and

3 “(B) take into consideration the efforts of the
4 user, owner, or operator to remedy the violation in
5 a timely manner.

6 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
7 TION RULES.—(1) The Electric Reliability Organization
8 shall file with the Commission for approval any proposed
9 rule or proposed rule change, accompanied by an expla-
10 nation of the basis and purpose of the rule and proposed
11 rule change.

12 “(2) The Commission, upon a motion of the Commis-
13 sion or upon complaint, may propose a change to the rules
14 of the ERO.

15 “(3) A proposed rule or proposed rule change shall
16 take effect upon a finding by the Commission, after notice
17 and opportunity for comment, that the change is just, rea-
18 sonable, and not unduly discriminatory or preferential, is
19 in the public interest, and meets the requirements of sub-
20 section (c).

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

24 “(h) COORDINATION WITH CANADA AND MEXICO.—
25 The President is urged to negotiate international agree-

1 ments with the governments of Canada and Mexico to pro-
2 vide for effective compliance with reliability standards and
3 the effectiveness of the ERO in the United States and
4 Canada or Mexico.

5 “(i) SAVINGS PROVISIONS.—(1) The ERO may de-
6 velop and enforce compliance with reliability standards for
7 only the bulk-power system.

8 “(2) Nothing in this section authorizes the ERO or
9 the Commission to order the construction of additional
10 generation or transmission capacity or to set and enforce
11 compliance with standards for adequacy or safety of elec-
12 tric facilities or services.

13 “(3) Nothing in this section preempts any authority
14 of any State to take action to ensure the safety, adequacy,
15 and reliability of electric service within that State, as long
16 as the action is not inconsistent with any reliability stand-
17 ard.

18 “(4) Not later than 90 days after the date of applica-
19 tion of the Electric Reliability Organization or other af-
20 fected party, and after notice and opportunity for com-
21 ment, the Commission shall issue a final order deter-
22 mining whether a State action is inconsistent with a reli-
23 ability standard, taking into consideration any rec-
24 ommendation of the ERO.

1 “(5) The Commission, after consultation with the
2 ERO and the State taking action, may stay the effective-
3 ness of any State action, pending the issuance by the Com-
4 mission of a final order.

5 “(j) REGIONAL ADVISORY BODIES.—(1) The Com-
6 mission shall establish a regional advisory body on the pe-
7 tition of at least $\frac{2}{3}$ of the States within a region that have
8 more than $\frac{1}{2}$ of the electric load of the States served with-
9 in the region.

10 “(2) A regional advisory body—

11 “(A) shall be composed of 1 member from each
12 participating State in the region, appointed by the
13 Governor of the State; and

14 “(B) may include representatives of agencies,
15 States, and provinces outside the United States.

16 “(3) A regional advisory body may provide advice to
17 the Electric Reliability Organization, a regional entity, or
18 the Commission regarding—

19 “(A) the governance of an existing or proposed
20 regional entity within the same region;

21 “(B) whether a standard proposed to apply
22 within the region is just, reasonable, not unduly dis-
23 criminatory or preferential, and in the public inter-
24 est;

1 “(C) whether fees proposed to be assessed with-
2 in the region are just, reasonable, not unduly dis-
3 criminatory or preferential, and in the public inter-
4 est; and

5 “(D) any other responsibilities requested by the
6 Commission.

7 “(4) The Commission may give deference to the ad-
8 vice of a regional advisory body if that body is organized
9 on an interconnection-wide basis.

10 “(k) ALASKA AND HAWAII.—This section does not
11 apply to Alaska or Hawaii.”.

12 (b) STATUS OF ERO.—The Electric Reliability Orga-
13 nization certified by the Commission under section 215(c)
14 of the Federal Power Act (as added by subsection (a))
15 and any regional entity delegated enforcement authority
16 pursuant to section 215(e)(4) of that Act (as so added)
17 are not departments, agencies, or instrumentalities of the
18 Federal Government.

19 **Subtitle B—Transmission**
20 **Infrastructure Modernization**
21 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
22 **MISSION FACILITIES.**

23 (a) IN GENERAL.—Part II of the Federal Power Act
24 (16 U.S.C. 824 et seq.) (as amended by section 1211(a))
25 is amended by adding at the end the following:

1 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
2 **MISSION FACILITIES.**

3 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
4 TRIC TRANSMISSION CORRIDORS.—(1) Not later than 1
5 year after the date of enactment of this section and every
6 3 years thereafter, the Secretary of Energy (referred to
7 in this section as the ‘Secretary’), in consultation with af-
8 fected States, shall conduct a study of electric trans-
9 mission congestion.

10 “(2) After considering alternatives and recommenda-
11 tions from interested parties (including an opportunity for
12 comment from affected States), the Secretary shall issue
13 a report, based on the study, which may designate any
14 geographic area experiencing electric energy transmission
15 capacity constraints or congestion that adversely affects
16 consumers as a national interest electric transmission cor-
17 ridor.

18 “(3) The Secretary shall conduct the study and issue
19 the report in consultation with any appropriate regional
20 entity referred to in section 215.

21 “(4) In determining whether to designate a national
22 interest electric transmission corridor under paragraph
23 (2), the Secretary may consider whether—

24 “(A) the economic vitality and development of
25 the corridor, or the end markets served by the cor-

1 ridor, may be constrained by lack of adequate or
2 reasonably priced electricity;

3 “(B)(i) economic growth in the corridor, or the
4 end markets served by the corridor, may be jeopard-
5 ized by reliance on limited sources of energy; and

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

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

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

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

13 “(b) CONSTRUCTION PERMIT.—Except as provided
14 in subsection (i), the Commission may, after notice and
15 an opportunity for hearing, issue 1 or more permits for
16 the construction or modification of electric transmission
17 facilities in a national interest electric transmission cor-
18 ridor designated by the Secretary under subsection (a) if
19 the Commission finds that—

20 “(1)(A) a State in which the transmission fa-
21 cilities are to be constructed or modified does not
22 have authority to—

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

24 “(ii) consider the interstate benefits ex-
25 pected to be achieved by the proposed construc-

1 tion or modification of transmission facilities in
2 the State;

3 “(B) the applicant for a permit is a transmit-
4 ting utility under this Act but does not qualify to
5 apply for a permit or siting approval for the pro-
6 posed project in a State because the applicant does
7 not serve end-use customers in the State; or

8 “(C) a State commission or other entity that
9 has authority to approve the siting of the facilities
10 has—

11 “(i) withheld approval for more than 1
12 year after the filing of an application seeking
13 approval pursuant to applicable law or 1 year
14 after the designation of the relevant national in-
15 terest electric transmission corridor, whichever
16 is later; or

17 “(ii) conditioned its approval in such a
18 manner that the proposed construction or modi-
19 fication will not significantly reduce trans-
20 mission congestion in interstate commerce or is
21 not economically feasible;

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

1 “(3) the proposed construction or modification
2 is consistent with the public interest;

3 “(4) the proposed construction or modification
4 will significantly reduce transmission congestion in
5 interstate commerce and protects or benefits con-
6 sumers; and

7 “(5) the proposed construction or modification
8 is consistent with sound national energy policy and
9 will enhance energy independence.

10 “(c) PERMIT APPLICATIONS.—(1) Permit applica-
11 tions under subsection (b) shall be made in writing to the
12 Commission.

13 “(2) The Commission shall issue rules specifying—

14 “(A) the form of the application;

15 “(B) the information to be contained in the ap-
16 plication; and

17 “(C) the manner of service of notice of the per-
18 mit application on interested persons.

19 “(d) COMMENTS.—In any proceeding before the
20 Commission under subsection (b), the Commission shall
21 afford each State in which a transmission facility covered
22 by the permit is or will be located, each affected Federal
23 agency and Indian tribe, private property owners, and
24 other interested persons, a reasonable opportunity to

1 present their views and recommendations with respect to
2 the need for and impact of a facility covered by the permit.

3 “(e) RIGHTS-OF-WAY.—(1) In the case of a permit
4 under subsection (b) for electric transmission facilities to
5 be located on property other than property owned by the
6 United States or a State, if the permit holder cannot ac-
7 quire by contract, or is unable to agree with the owner
8 of the property to the compensation to be paid for, the
9 necessary right-of-way to construct or modify the trans-
10 mission facilities, the permit holder may acquire the right-
11 of-way by the exercise of the right of eminent domain in
12 the district court of the United States for the district in
13 which the property concerned is located, or in the appro-
14 priate court of the State in which the property is located.

15 “(2) Any right-of-way acquired under paragraph (1)
16 shall be used exclusively for the construction or modifica-
17 tion of electric transmission facilities within a reasonable
18 period of time after the acquisition.

19 “(3) The practice and procedure in any action or pro-
20 ceeding under this subsection in the district court of the
21 United States shall conform as nearly as practicable to
22 the practice and procedure in a similar action or pro-
23 ceeding in the courts of the State in which the property
24 is located.

1 “(f) COMPENSATION.—(1) Any right-of-way acquired
2 pursuant to subsection (e) shall be considered a taking of
3 private property for which just compensation is due.

4 “(2) Just compensation shall be an amount equal to
5 the fair market value (including applicable severance dam-
6 ages) of the property taken on the date of the exercise
7 of eminent domain authority.

8 “(g) STATE LAW.—Nothing in this section precludes
9 any person from constructing or modifying any trans-
10 mission facility in accordance with State law.

11 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
12 FOR TRANSMISSION FACILITIES.—(1) In this subsection:

13 “(A) The term ‘Federal authorization’ means
14 any authorization required under Federal law in
15 order to site a transmission facility.

16 “(B) The term ‘Federal authorization’ includes
17 such permits, special use authorizations, certifi-
18 cations, opinions, or other approvals as may be re-
19 quired under Federal law in order to site a trans-
20 mission facility.

21 “(2) The Department of Energy shall act as the lead
22 agency for purposes of coordinating all applicable Federal
23 authorizations and related environmental reviews of the
24 facility.

1 “(3) To the maximum extent practicable under appli-
2 cable Federal law, the Secretary shall coordinate the Fed-
3 eral authorization and review process under this sub-
4 section with any Indian tribes, multistate entities, and
5 State agencies that are responsible for conducting any sep-
6 arate permitting and environmental reviews of the facility,
7 to ensure timely and efficient review and permit decisions.

8 “(4)(A) As head of the lead agency, the Secretary,
9 in consultation with agencies responsible for Federal au-
10 thorizations and, as appropriate, with Indian tribes,
11 multistate entities, and State agencies that are willing to
12 coordinate their own separate permitting and environ-
13 mental reviews with the Federal authorization and envi-
14 ronmental reviews, shall establish prompt and binding in-
15 termediate milestones and ultimate deadlines for the re-
16 view of, and Federal authorization decisions relating to,
17 the proposed facility.

18 “(B) The Secretary shall ensure that, once an appli-
19 cation has been submitted with such data as the Secretary
20 considers necessary, all permit decisions and related envi-
21 ronmental reviews under all applicable Federal laws shall
22 be completed—

23 “(i) within 1 year; or

1 “(ii) if a requirement of another provision of
2 Federal law does not permit compliance with clause
3 (i), as soon thereafter as is practicable.

4 “(C) The Secretary shall provide an expeditious pre-
5 application mechanism for prospective applicants to confer
6 with the agencies involved to have each such agency deter-
7 mine and communicate to the prospective applicant not
8 later than 60 days after the prospective applicant submits
9 a request for such information concerning—

10 “(i) the likelihood of approval for a potential fa-
11 cility; and

12 “(ii) key issues of concern to the agencies and
13 public.

14 “(5)(A) As lead agency head, the Secretary, in con-
15 sultation with the affected agencies, shall prepare a single
16 environmental review document, which shall be used as the
17 basis for all decisions on the proposed project under Fed-
18 eral law.

19 “(B) The Secretary and the heads of other agencies
20 shall streamline the review and permitting of transmission
21 within corridors designated under section 503 of the Fed-
22 eral Land Policy and Management Act (43 U.S.C. 1763)
23 by fully taking into account prior analyses and decisions
24 relating to the corridors.

1 “(C) The document shall include consideration by the
2 relevant agencies of any applicable criteria or other mat-
3 ters as required under applicable law.

4 “(6)(A) If any agency has denied a Federal author-
5 ization required for a transmission or distribution facility,
6 or has failed to act by the deadline established by the Sec-
7 retary pursuant to this section for deciding whether to
8 issue the authorization, the applicant or any State in
9 which the facility would be located may file an appeal with
10 the President, who shall, in consultation with the affected
11 agency, review the denial or failure to take action on the
12 pending application.

13 “(B) Based on the overall record and in consultation
14 with the affected agency, the President may—

15 “(i) issue the necessary authorization with any
16 appropriate conditions; or

17 “(ii) deny the application.

18 “(C) The President shall issue a decision not later
19 than 90 days after the date of the filing of the appeal.

20 “(D) In making a decision under this paragraph, the
21 President shall comply with applicable requirements of
22 Federal law, including any requirements of—

23 “(i) the National Forest Management Act of
24 1976 (16 U.S.C. 472a et seq.);

1 “(ii) the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.);

3 “(iii) the Federal Water Pollution Control Act
4 (33 U.S.C. 1251 et seq.);

5 “(iv) the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.); and

7 “(v) the Federal Land Policy and Management
8 Act of 1976 (43 U.S.C. 1701 et seq.).

9 “(7)(A) Not later than 18 months after the date of
10 enactment of this section, the Secretary shall issue any
11 regulations necessary to implement this subsection.

12 “(B)(i) Not later than 1 year after the date of enact-
13 ment of this section, the Secretary and the heads of all
14 Federal agencies with authority to issue Federal author-
15 izations shall enter into a memorandum of understanding
16 to ensure the timely and coordinated review and permit-
17 ting of electricity transmission facilities.

18 “(ii) Interested Indian tribes, multistate entities, and
19 State agencies may enter the memorandum of under-
20 standing.

21 “(C) The head of each Federal agency with authority
22 to issue a Federal authorization shall designate a senior
23 official responsible for, and dedicate sufficient other staff
24 and resources to ensure, full implementation of the regula-
25 tions and memorandum required under this paragraph.

1 “(8)(A) Each Federal land use authorization for an
2 electricity transmission or distribution facility shall be
3 issued—

4 “(i) for a duration, as determined by the Sec-
5 retary, commensurate with the anticipated use of the
6 facility; and

7 “(ii) with appropriate authority to manage the
8 right-of-way for reliability and environmental protec-
9 tion.

10 “(B) On the expiration of the authorization (includ-
11 ing an authorization issued before the date of enactment
12 of this section), the authorization shall be reviewed for re-
13 newal taking fully into account reliance on such electricity
14 infrastructure, recognizing the importance of the author-
15 ization for public health, safety, and economic welfare and
16 as a legitimate use of Federal land.

17 “(9) In exercising the responsibilities under this sec-
18 tion, the Secretary shall consult regularly with—

19 “(A) the Federal Energy Regulatory Commis-
20 sion;

21 “(B) electric reliability organizations (including
22 related regional entities) approved by the Commis-
23 sion; and

24 “(C) Transmission Organizations approved by
25 the Commission.

1 “(i) INTERSTATE COMPACTS.—(1) The consent of
2 Congress is given for 3 or more contiguous States to enter
3 into an interstate compact, subject to approval by Con-
4 gress, establishing regional transmission siting agencies
5 to—

6 “(A) facilitate siting of future electric energy
7 transmission facilities within those States; and

8 “(B) carry out the electric energy transmission
9 siting responsibilities of those States.

10 “(2) The Secretary may provide technical assistance
11 to regional transmission siting agencies established under
12 this subsection.

13 “(3) The regional transmission siting agencies shall
14 have the authority to review, certify, and permit siting of
15 transmission facilities, including facilities in national in-
16 terest electric transmission corridors (other than facilities
17 on property owned by the United States).

18 “(4) The Commission shall have no authority to issue
19 a permit for the construction or modification of an electric
20 transmission facility within a State that is a party to a
21 compact, unless the members of the compact are in dis-
22 agreement and the Secretary makes, after notice and an
23 opportunity for a hearing, the finding described in sub-
24 section (b)(1)(C).

1 “(j) RELATIONSHIP TO OTHER LAWS.—(1) Except
2 as specifically provided, nothing in this section affects any
3 requirement of an environmental law of the United States,
4 including the National Environmental Policy Act of 1969
5 (42 U.S.C. 4321 et seq.).

6 “(2) Subsection (h) [(6)] shall not apply to any com-
7 ponents designated by Federal law of—

8 “(A) the National Wilderness Preservation Sys-
9 tem;

10 “(B) the National Wild and Scenic Rivers Sys-
11 tem;

12 “(C) the National Park System; or

13 “(D) a National Monument.”.

14 (b) REPORTS TO CONGRESS ON CORRIDORS AND
15 RIGHTS OF WAY ON FEDERAL LANDS.—Not later than
16 90 days after the date of enactment of this Act, the Sec-
17 retary of the Interior, the Secretary, the Secretary of Agri-
18 culture, and the Chairman of the Council on Environ-
19 mental Quality shall, submit to Congress a joint report
20 identifying—

21 (1)(A) all existing designated transmission and
22 distribution corridors on Federal land and the status
23 of work related to proposed transmission and dis-
24 tribution corridor designations under title V of the

1 Federal Land Policy and Management Act of 1976
2 (43 U.S.C. 1761 et seq.);

3 (B) the schedule for completing the work;

4 (C) any impediments to completing the work;

5 and

6 (D) steps that Congress could take to expedite
7 the process;

8 (2)(A) the number of pending applications to
9 locate transmission facilities on Federal land;

10 (B) key information relating to each such facil-
11 ity;

12 (C) how long each application has been pend-
13 ing;

14 (D) the schedule for issuing a timely decision as
15 to each facility; and

16 (E) progress in incorporating existing and new
17 such rights-of-way into relevant land use and re-
18 source management plans or the equivalent of those
19 plans; and

20 (3)(A) the number of existing transmission and
21 distribution rights-of-way on Federal land that will
22 come up for renewal within the following 5-, 10-,
23 and 15-year periods; and

24 (B) a description of how the Secretaries plan to
25 manage the renewals.

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

2 (a) EXISTING FACILITIES.—The Secretary, acting
3 through the Administrator of the Western Area Power Ad-
4 ministration (referred to in this section as “WAPA”) or
5 the Administrator of the Southwestern Power Administra-
6 tion (referred to in this section as “SWPA”), or both, may
7 carry out a project to design, develop, construct, operate,
8 maintain, or own, or participate with other entities in de-
9 signing, developing, constructing, operating, maintaining,
10 or owning, an electric power transmission facility and re-
11 lated facilities needed to upgrade existing transmission fa-
12 cilities owned by the SWPA or WAPA if the Secretary,
13 in consultation with the applicable Administrator, deter-
14 mines that the proposed project—

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

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

23 (2) is consistent with—

24 (A) transmission needs identified, in a
25 transmission expansion plan or otherwise, by
26 the appropriate Transmission Organization (as

1 defined in section 3 of the Federal Power Act
2 (16 U.S.C. 796)), if any, or approved regional
3 reliability organization; and

4 (B) efficient and reliable operation of the
5 transmission grid; and

6 (3) would be operated in conformance with pru-
7 dent utility practice.

8 (b) NEW FACILITIES.—The Secretary, acting
9 through the WAPA or SWPA, or both, may carry out a
10 project to design, develop, construct, operate, maintain, or
11 own, or participate with other entities in designing, devel-
12 oping, constructing, operating, maintaining, or owning, a
13 new electric power transmission facility and related facili-
14 ties located within any State in which the WAPA or
15 SWPA operates if the Secretary, in consultation with the
16 applicable Administrator, determines that the proposed
17 project—

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

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

1 (2) is consistent with—

2 (A) transmission needs identified, in a
3 transmission expansion plan or otherwise, by
4 the appropriate Transmission Organization, if
5 any, or approved regional reliability organiza-
6 tion; and

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

9 (3) will be operated in conformance with pru-
10 dent utility practice;

11 (4) will be operated by, or in conformance with
12 the rules of, the appropriate—

13 (A) Transmission Organization, if any; or

14 (B) if such an organization does not exist,
15 regional reliability organization; and

16 (5) will not duplicate the functions of existing
17 transmission facilities or proposed facilities that are
18 the subject of ongoing or approved siting and related
19 permitting proceedings.

20 (c) OTHER FUNDS.—

21 (1) IN GENERAL.—In carrying out a project
22 under subsection (a) or (b), the Secretary may ac-
23 cept and use funds contributed by another entity for
24 the purpose of carrying out the project.

1 (2) AVAILABILITY.—The contributed funds
2 shall be available for expenditure for the purpose of
3 carrying out the project—

4 (A) without fiscal year limitation; and

5 (B) as if the funds had been appropriated
6 specifically for the project.

7 (3) ALLOCATION OF COSTS.—In carrying out a
8 project under subsection (a) or (b), any costs of the
9 project not paid for by contributions from another
10 entity shall be—

11 (A) collected through rates charged to cus-
12 tomers using the new transmission capability
13 provided by the project; and

14 (B) allocated equitably among these
15 project beneficiaries using the new transmission
16 capability.

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

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

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

24 (3) any authorizing law in effect on the date of
25 enactment of this Act.

1 (e) SAVINGS CLAUSE.—Nothing in this section con-
2 strains or restricts an Administrator in the use of other
3 authority delegated to the Administrator of the WAPA or
4 SWPA.

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

9 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
10 shall not accept and use more than \$100,000,000 under
11 subsection (c)(1) for the period of fiscal years [2006]
12 through 2013.

13 **SEC. 1223. ADVANCED TRANSMISSION TECHNOLOGIES.**

14 (a) DEFINITION OF ADVANCED TRANSMISSION
15 TECHNOLOGY.—In this section, the term “advanced
16 transmission technology” means a technology that in-
17 creases the capacity, efficiency, or reliability of an existing
18 or new transmission facility, including—

19 (1) high-temperature lines (including super-
20 conducting cables);

21 (2) underground cables;

22 (3) advanced conductor technology (including
23 advanced composite conductors, high-temperature
24 low-sag conductors, and fiber optic temperature
25 sensing conductors);

- 1 (4) high-capacity ceramic electric wire, connec-
- 2 tors, and insulators;
- 3 (5) optimized transmission line configurations
- 4 (including multiple phased transmission lines);
- 5 (6) modular equipment;
- 6 (7) wireless power transmission;
- 7 (8) ultra-high voltage lines;
- 8 (9) high-voltage DC technology;
- 9 (10) flexible AC transmission systems;
- 10 (11) energy storage devices (including pumped
- 11 hydro, compressed air, superconducting magnetic en-
- 12 ergy storage, flywheels, and batteries);
- 13 (12) controllable load;
- 14 (13) distributed generation (including PV, fuel
- 15 cells, and microturbines);
- 16 (14) enhanced power device monitoring;
- 17 (15) direct system state sensors;
- 18 (16) fiber optic technologies;
- 19 (17) power electronics and related software (in-
- 20 cluding real time monitoring and analytical soft-
- 21 ware);
- 22 (18) mobile transformers and mobile sub-
- 23 stations; and
- 24 (19) any other technologies the Commission
- 25 considers appropriate.

1 (b) AUTHORITY.—In carrying out the Federal Power
2 Act (16 U.S.C. 791a et seq.) and the Public Utility Regu-
3 latory Policies Act of 1978 (16 U.S.C. 2601 et seq.), the
4 Commission shall encourage, as appropriate, the deploy-
5 ment of advanced transmission technologies.

6 **SEC. 1224. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
7 **CENTIVE PROGRAM.**

8 (a) DEFINITIONS.—In this section:

9 (1) QUALIFYING ADVANCED POWER SYSTEM
10 TECHNOLOGY FACILITY.—The term “qualifying ad-
11 vanced power system technology facility” means a
12 facility using an advanced fuel cell, turbine, or hy-
13 brid power system or power storage system to gen-
14 erate or store electric energy.

15 (2) QUALIFYING SECURITY AND ASSURED
16 POWER FACILITY.—The term “qualifying security
17 and assured power facility” means a qualifying ad-
18 vanced power system technology facility determined
19 by the Secretary, in consultation with the Secretary
20 of Homeland Security, to be in critical need of se-
21 cure, reliable, rapidly available, high-quality power
22 for critical governmental, industrial, or commercial
23 applications.

24 (b) PROGRAM.—The Secretary may establish an ad-
25 vanced power system technology incentive program to—

1 (1) support the deployment of certain advanced
2 power system technologies; and

3 (2) improve and protect certain critical govern-
4 mental, industrial, and commercial processes.

5 (c) INCENTIVE PAYMENTS.—

6 (1) IN GENERAL.—Funds provided under this
7 section shall be used by the Secretary to make incen-
8 tive payments to eligible owners or operators of ad-
9 vanced power system technologies to increase power
10 generation through enhanced operational, economic,
11 and environmental performance.

12 (2) APPLICATION.—Payments under this sec-
13 tion may only be made on receipt by the Secretary
14 of an incentive payment application establishing an
15 applicant as—

16 (A) a qualifying advanced power system
17 technology facility; or

18 (B) a qualifying security and assured
19 power facility.

20 (3) PAYMENT RATES.—Subject to availability of
21 funds—

22 (A) a payment of 1.8 cents per kilowatt-
23 hour shall be paid to the owner or operator of
24 a qualifying advanced power system technology

1 facility under this section for electricity gen-
2 erated at the facility; and

3 (B) an additional 0.7 cents per kilowatt-
4 hour shall be paid to the owner or operator of
5 a qualifying security and assured power facility
6 for electricity generated at the facility.

7 (4) PAYMENT QUANTITY.—Any facility quali-
8 fying under this section shall be eligible for an in-
9 centive payment for up to, but not more than, the
10 first 10,000,000 kilowatt-hours produced in any fis-
11 cal year.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to the Secretary to carry
14 out this section \$10,000,000 for each of fiscal years 2006
15 through 2012.

16 **Subtitle C—Transmission** 17 **Operation Improvements**

18 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by inserting after section 211 (16 U.S.C.
21 824j) the following:

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

3 “(a) DEFINITION OF UNREGULATED TRANSMITTING
4 UTILITY.—In this section, the term ‘unregulated trans-
5 mitting utility’ means an entity that—

6 “(1) owns or operates facilities used for the
7 transmission of electric energy in interstate com-
8 merce; and

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

10 “(b) TRANSMISSION OPERATION IMPROVEMENTS.—
11 Subject to section 212(h), the Commission may, by rule
12 or order, require an unregulated transmitting utility to
13 provide transmission services—

14 “(1) at rates that are comparable to those that
15 the unregulated transmitting utility charges itself;
16 and

17 “(2) on terms and conditions (not relating to
18 rates) that are comparable to those under which the
19 unregulated transmitting utility provides trans-
20 mission services to itself and that are not unduly
21 discriminatory or preferential.

22 “(c) EXEMPTION.—The Commission shall exempt
23 from any rule or order under this section any unregulated
24 transmitting utility that—

25 “(1) sells not more than 4,000,000 megawatt
26 hours of electricity per year;

1 “(2) does not own or operate any transmission
2 facilities that are necessary for operating an inter-
3 connected transmission system (or any portion of the
4 system); or

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

7 “(d) LOCAL DISTRIBUTION FACILITIES.—The re-
8 quirements of subsection (b) shall not apply to facilities
9 used in local distribution.

10 “(e) EXEMPTION TERMINATION.—If the Commis-
11 sion, after an evidentiary hearing held on a complaint and
12 after giving consideration to reliability standards estab-
13 lished under section 215, finds on the basis of a prepon-
14 derance of the evidence that any exemption granted pursu-
15 ant to subsection (c) unreasonably impairs the continued
16 reliability of an interconnected transmission system, the
17 Commission shall revoke the exemption granted to the
18 transmitting utility.

19 “(f) APPLICATION TO UNREGULATED TRANSMITTING
20 UTILITIES.—The rate changing procedures applicable to
21 public utilities under subsections (c) and (d) of section 205
22 are applicable to unregulated transmitting utilities for
23 purposes of this section.

24 “(g) REMAND.—In exercising authority under sub-
25 section (b)(1), the Commission may remand transmission

1 rates to an unregulated transmitting utility for review and
2 revision if necessary to meet the requirements of sub-
3 section (b).

4 “(h) OTHER REQUESTS.—The provision of trans-
5 mission services under subsection (b) does not preclude
6 a request for transmission services under section 211.

7 “(i) LIMITATION.—The Commission may not require
8 a State or municipality to take action under this section
9 that would violate a private activity bond rule for purposes
10 of section 141 of the Internal Revenue Code of 1986.

11 “(j) TRANSFER OF CONTROL OF TRANSMITTING FA-
12 CILITIES.—Nothing in this section authorizes the Commis-
13 sion to require an unregulated transmitting utility to
14 transfer control or operational control of its transmitting
15 facilities to a Transmission Organization that is des-
16 ignated to provide nondiscriminatory transmission ac-
17 cess.”.

18 **SEC. 1232. REGIONAL TRANSMISSION ORGANIZATIONS.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) (as amended by section 1221(a)) is amended by add-
21 ing at the end the following:

22 **“SEC. 217. PROMOTION OF VOLUNTARY TRANSMISSION OR-**
23 **GANIZATIONS.**

24 “(a) IN GENERAL.—The Commission may encourage
25 and may approve the voluntary formation of RTOs, ISOs,

1 or other similar organizations approved by the Commis-
2 sion for the purposes of—

3 “(1) promoting fair, open access to electric
4 transmission service;

5 “(2) facilitating wholesale competition;

6 “(3) improving efficiencies in transmission grid
7 management;

8 “(4) promoting grid reliability;

9 “(5) removing opportunities for unduly dis-
10 criminatory or preferential transmission practices;
11 and

12 “(6) providing for the efficient development of
13 transmission infrastructure needed to meet the
14 growing demands of competitive wholesale power
15 markets.

16 “(b) OPERATIONAL CONTROL.—No order issued
17 under this Act shall be conditioned on or require a trans-
18 mitting utility to transfer operational control of jurisdic-
19 tional facilities to a Transmission Organization approved
20 by the Commission.

21 “(c) ANNUAL AUDITS.—(1) Each Transmission Or-
22 ganization shall report to the Commission on a scheduled
23 basis, as determined by the Commission, the means by
24 which the Transmission Organization will ensure that the
25 Transmission Organization will operate and perform the

1 functions of the Transmission Organization in a cost effec-
2 tive manner that is also consistent with the obligations of
3 the Transmission Organization under the Commission-ap-
4 proved tariffs and agreements of the Transmission Orga-
5 nization.

6 “(2) The Commission shall annually audit the compli-
7 ance of the Transmission Organization with the filed plan
8 and any additional Commission requirements concerning
9 performance of the performance, operations, and cost effi-
10 ciencies of the Transmission Organization.

11 “(3) The Commission shall establish appropriate ac-
12 counting procedures for recording costs to facilitate com-
13 parisons among Transmission Organizations and, to the
14 extent practicable, among other transmission utilities per-
15 forming similar functions.”.

16 **SEC. 1233. FEDERAL UTILITY PARTICIPATION IN TRANS-**
17 **MISSION ORGANIZATIONS.**

18 (a) DEFINITIONS.—In this section—

19 (1) APPROPRIATE FEDERAL REGULATORY AU-
20 THORITY.—The term “appropriate Federal regu-
21 latory authority” means—

22 (A) in the case of a Federal power mar-
23 keting agency, the Secretary, except that the
24 Secretary may designate the Administrator of a
25 Federal power marketing agency to act as the

1 appropriate Federal regulatory authority with
2 respect to the transmission system of the Fed-
3 eral power marketing agency; and

4 (B) in the case of the Tennessee Valley
5 Authority, the Board of Directors of the Ten-
6 nessee Valley Authority.

7 (2) FEDERAL POWER MARKETING AGENCY.—
8 The term “Federal power marketing agency” has
9 the meaning given the term in section 3 of the Fed-
10 eral Power Act (16 U.S.C. 796).

11 (3) FEDERAL UTILITY.—The term “Federal
12 utility” means—

13 (A) a Federal power marketing agency; or

14 (B) the Tennessee Valley Authority.

15 (4) TRANSMISSION ORGANIZATION.—The term
16 “Transmission Organization” has the meaning given
17 the term in section 3 of the Federal Power Act (16
18 U.S.C. 796).

19 (5) TRANSMISSION SYSTEM.—The term “trans-
20 mission system” means an electric transmission fa-
21 cility owned, leased, or contracted for by the United
22 States and operated by a Federal utility.

23 (b) TRANSFER.—The appropriate Federal regulatory
24 authority may enter into a contract, agreement, or other
25 arrangement transferring control and use of all or part

1 of the transmission system of a Federal utility to a Trans-
2 mission Organization.

3 (c) CONTENTS.—The contract, agreement, or ar-
4 rangement shall include—

5 (1) performance standards for operation and
6 use of the transmission system that the head of the
7 Federal utility determines are necessary or appro-
8 priate, including standards that ensure—

9 (A) recovery of all of the costs and ex-
10 penses of the Federal utility related to the
11 transmission facilities that are the subject of
12 the contract, agreement, or other arrangement;

13 (B) consistency with existing contracts and
14 third-party financing arrangements; and

15 (C) consistency with the statutory authori-
16 ties, obligations, and limitations of the Federal
17 utility;

18 (2) provisions for monitoring and oversight by
19 the Federal utility of the Transmission Organiza-
20 tion's terms and conditions of the contract, agree-
21 ment, or other arrangement, including a provision
22 for the resolution of disputes through arbitration or
23 other means with the Transmission Organization or
24 with other participants, notwithstanding the obliga-

1 tions and limitations of any other law regarding ar-
2 bitration; and

3 (3) a provision that allows the Federal utility to
4 withdraw from the Transmission Organization and
5 terminate the contract, agreement, or other arrange-
6 ment in accordance with its terms.

7 (d) COMMISSION.—Neither this section, actions taken
8 pursuant to this section, nor any other transaction of a
9 Federal utility using a Transmission Organization shall
10 confer on the Commission jurisdiction or authority over—

11 (1) the electric generation assets, electric capac-
12 ity, or energy of the Federal utility that the Federal
13 utility is authorized by law to market; or

14 (2) the power sales activities of the Federal
15 utility.

16 (e) EXISTING STATUTORY AND OTHER OBLIGA-
17 TIONS.—

18 (1) SYSTEM OPERATION REQUIREMENTS.—No
19 statutory provision requiring or authorizing a Fed-
20 eral utility to transmit electric power or to construct,
21 operate, or maintain the transmission system of the
22 Federal utility prohibits a transfer of control and
23 use of the transmission system pursuant to, and
24 subject to, the requirements of this section.

1 (2) OTHER OBLIGATIONS.—This subsection
2 does not—

3 (A) suspend, or exempt any Federal utility
4 from, any provision of Federal law in effect on
5 the date of enactment of this Act, including any
6 requirement or direction relating to the use of
7 the transmission system of the Federal utility,
8 environmental protection, fish and wildlife pro-
9 tection, flood control, navigation, water delivery,
10 or recreation; or

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

13 (3) CONFORMING AMENDMENT.—Section 311
14 of the Energy and Water Development Appropria-
15 tions Act, 2001 (16 U.S.C. 824n) is repealed.

16 **SEC. 1234. STANDARD MARKET DESIGN.**

17 The proposed rulemaking of the Federal Energy Reg-
18 ulatory Commission entitled “Remedying Undue Discrimi-
19 nation through Open Access Transmission Service and
20 Standard Electricity Market Design” (Docket No. RM01–
21 12–000) (commonly known as “SMD NOPR”) is termi-
22 nated and shall not be reissued.

1 **SEC. 1235. NATIVE LOAD SERVICE OBLIGATION.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) (as amended by section 1232) is amended by adding
4 at the end the following:

5 **“SEC. 218. NATIVE LOAD SERVICE OBLIGATION.**

6 “(a) DEFINITIONS.—In this section:

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

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

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

22 “(4) The term ‘State utility’ means a State or
23 any political subdivision of a State, or any agency,
24 authority, or instrumentality of any 1 or more
25 States or political subdivisions, or a corporation that
26 is wholly owned, directly or indirectly, by any 1 or

1 more of the States or political subdivisions, com-
2 petent to carry on the business of developing, trans-
3 mitting, using, or distributing power.

4 “(b) MEETING SERVICE OBLIGATIONS.—(1) This
5 subsection applies to any load-serving entity that, as of
6 the date of enactment of this section—

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

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

18 “(2) Any load-serving entity described in paragraph
19 (1) is entitled to use the firm transmission rights, or,
20 equivalent tradable or financial transmission rights, in
21 order to deliver the output or purchased energy, or the
22 output of other generating facilities or purchased energy
23 to the extent deliverable using the rights, to the extent
24 required to meet the service obligation of the load-serving
25 entity.

1 “(3)(A) To the extent that all or a portion of the
2 service obligation covered by the firm transmission rights
3 or equivalent tradable or financial transmission rights is
4 transferred to another load-serving entity, the successor
5 load-serving entity shall be entitled to use the firm trans-
6 mission rights or equivalent tradable or financial trans-
7 mission rights associated with the transferred service obli-
8 gation.

9 “(B) Subsequent transfers to another load-serving
10 entity, or back to the original load-serving entity, shall be
11 entitled to the same rights.

12 “(4) The Commission shall exercise the authority of
13 the Commission under this Act in a manner that facili-
14 tates the planning and expansion of transmission facilities
15 to meet the reasonable needs of load-serving entities to
16 satisfy the service obligations of the load-serving entities.

17 “(c) ALLOCATION OF TRANSMISSION RIGHTS.—
18 Nothing in this section affects any methodology approved
19 by the Commission before the date of enactment of this
20 section for the allocation of transmission rights by a
21 Transmission Organization that has been authorized by
22 the Commission to allocate transmission rights.

23 “(d) CERTAIN TRANSMISSION RIGHTS.—The Com-
24 mission may exercise authority under this Act to make
25 transmission rights not used to meet an obligation covered

1 by subsection (b) available to other entities in a manner
2 determined by the Commission to be just, reasonable, and
3 not unduly discriminatory or preferential.

4 “(e) OBLIGATION TO BUILD.—Nothing in this Act re-
5 lieves a load-serving entity from any obligation under
6 State or local law to build transmission or distribution fa-
7 cilities adequate to meet the service obligations of the load-
8 serving entity.

9 “(f) CONTRACTS.—Nothing in this section provides
10 a basis for abrogating any contract or service agreement
11 for firm transmission service or rights in effect as of the
12 date of enactment of this section.

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

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

22 “(i) JURISDICTION.—This section does not authorize
23 the Commission to take any action not otherwise within
24 the jurisdiction of the Commission.

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

8 “(2) Nothing in this subsection affects the require-
9 ments of section 212(j).

10 “(3) The Commission shall not issue an order on the
11 basis of this subsection that is contrary to the purposes
12 of section 212(j).”.

13 **Subtitle D—Transmission Rate** 14 **Reform**

15 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

16 Part II of the Federal Power Act (16 U.S.C. 824 et
17 seq.) (as amended by section 1235) is amended by adding
18 at the end the following:

19 **“SEC. 219. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

20 “(a) RULEMAKING REQUIREMENT.—Not later than
21 1 year after the date of enactment of this section, the
22 Commission shall establish, by rule, incentive-based (in-
23 cluding performance-based) rate treatments for the trans-
24 mission of electric energy in interstate commerce by public
25 utilities for the purpose of benefiting consumers by ensur-

1 ing reliability and reducing the cost of delivered power by
2 reducing transmission congestion.

3 “(b) CONTENTS.—The rule shall—

4 “(1) promote reliable and economically efficient
5 transmission and generation of electricity by pro-
6 moting capital investment in the enlargement, im-
7 provement, maintenance, and operation of facilities
8 for the transmission of electric energy in interstate
9 commerce;

10 “(2) provide a return on equity that attracts
11 new investment in transmission facilities (including
12 related transmission technologies);

13 “(3) encourage deployment of transmission
14 technologies and other measures to increase the ca-
15 pacity and efficiency of existing transmission facili-
16 ties and improve the operation of the facilities; and

17 “(4) allow recovery of—

18 “(A) all prudently incurred costs necessary
19 to comply with mandatory reliability standards
20 issued pursuant to section 215; and

21 “(B) all prudently incurred costs related to
22 transmission infrastructure development pursu-
23 ant to section 216.

24 “(c) JUST AND REASONABLE RATES.—All rates ap-
25 proved under the rules adopted pursuant to this section,

1 including any revisions to the rules, are subject to the re-
2 quirements of sections 205 and 206 that all rates, charges,
3 terms, and conditions be just and reasonable and not un-
4 duly discriminatory or preferential.”.

5 **SEC. 1242. FUNDING NEW INTERCONNECTION AND TRANS-**
6 **MISSION UPGRADES.**

7 The Commission may approve a participant funding
8 plan that allocates costs related to transmission upgrades
9 or new generator interconnection, without regard to
10 whether an applicant is a member of a Commission-ap-
11 proved Transmission Organization, if the plan results in
12 rates that—

13 (1) are just and reasonable;

14 (2) are not unduly discriminatory or pref-
15 erential; and

16 (3) are otherwise consistent with sections 205
17 and 206 of the Federal Power Act (16 U.S.C. 824d,
18 824e).

19 **Subtitle E—Amendments to PURPA**

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

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

1 “(11) NET METERING.—Each electric utility
2 shall make available upon request net metering serv-
3 ice to any electric consumer that the electric utility
4 serves. For purposes of this paragraph, the term
5 ‘net metering service’ means service to an electric
6 consumer under which electric energy generated by
7 that electric consumer from an eligible on-site gener-
8 ating facility and delivered to the local distribution
9 facilities may be used to offset electric energy pro-
10 vided by the electric utility to the electric consumer
11 during the applicable billing period.

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

18 “(13) FOSSIL FUEL GENERATION EFFI-
19 CIENCY.—Each electric utility shall develop and im-
20 plement a 10-year plan to increase the efficiency of
21 its fossil fuel generation.”.

22 (b) COMPLIANCE.—

23 (1) TIME LIMITATIONS.—Section 112(b) of the
24 Public Utility Regulatory Policies Act of 1978 (16

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

3 “(3)(A) Not later than 2 years after the enactment
4 of this paragraph, each State regulatory authority (with
5 respect to each electric utility for which it has ratemaking
6 authority) and each nonregulated electric utility shall com-
7 mence the consideration referred to in section 111, or set
8 a hearing date for such consideration, with respect to each
9 standard established by paragraphs (11) through (13) of
10 section 111(d).

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

19 (2) FAILURE TO COMPLY.—Section 112(c) of
20 the Public Utility Regulatory Policies Act of 1978
21 (16 U.S.C. 2622(c)) is amended by adding at the
22 end the following:

23 “In the case of each standard established by paragraphs
24 (11) through (13) of section 111(d), the reference con-
25 tained in this subsection to the date of enactment of this

1 Act shall be deemed to be a reference to the date of enact-
2 ment of such paragraphs (11) through (13).”.

3 (3) PRIOR STATE ACTIONS.—

4 (A) IN GENERAL.—Section 112 of the
5 Public Utility Regulatory Policies Act of 1978
6 (16 U.S.C. 2622) is amended by adding at the
7 end the following:

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

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

15 “(2) the State regulatory authority for such
16 State or relevant nonregulated electric utility has
17 conducted a proceeding to consider implementation
18 of the standard concerned (or a comparable stand-
19 ard) for such utility; or

20 “(3) the State legislature has voted on the im-
21 plementation of such standard (or a comparable
22 standard) for such utility.”.

23 (B) CROSS REFERENCE.—Section 124 of
24 such Act (16 U.S.C. 2634) is amended by add-
25 ing the following at the end thereof: “In the

1 case of each standard established by paragraphs
2 (11) through (13) of section 111(d), the ref-
3 erence contained in this subsection to the date
4 of enactment of this Act shall be deemed to be
5 a reference to the date of enactment of such
6 paragraphs (11) through (13).”.

7 **SEC. 1252. SMART METERING.**

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

11 “(14) TIME-BASED METERING AND COMMU-
12 NICATIONS.—

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

1 “(B) The types of time-based rate sched-
2 ules that may be offered under the schedule re-
3 ferred to in subparagraph (A) include, among
4 others—

5 “(i) time-of-use pricing whereby elec-
6 tricity prices are set for a specific time pe-
7 riod on an advance or forward basis, typi-
8 cally not changing more often than twice a
9 year, based on the utility’s cost of gener-
10 ating and/or purchasing such electricity at
11 the wholesale level for the benefit of the
12 consumer. Prices paid for energy consumed
13 during these periods shall be pre-estab-
14 lished and known to consumers in advance
15 of such consumption, allowing them to
16 vary their demand and usage in response
17 to such prices and manage their energy
18 costs by shifting usage to a lower cost pe-
19 riod or reducing their consumption overall;

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

1 for reducing peak period energy consump-
2 tion; and

3 “(iii) real-time pricing whereby elec-
4 tricity prices are set for a specific time pe-
5 riod on an advanced or forward basis, re-
6 flecting the utility’s cost of generating and/
7 or purchasing electricity at the wholesale
8 level, and may change as often as hourly.

9 “(C) Each electric utility subject to sub-
10 paragraph (A) shall provide each customer re-
11 questing a time-based rate with a time-based
12 meter capable of enabling the utility and cus-
13 tomer to offer and receive such rate, respec-
14 tively.

15 “(D) For purposes of implementing this
16 paragraph, any reference contained in this sec-
17 tion to the date of enactment of the Public Util-
18 ity Regulatory Policies Act of 1978 shall be
19 deemed to be a reference to the date of enact-
20 ment of this paragraph.

21 “(E) In a State that permits third-party
22 marketers to sell electric energy to retail elec-
23 tric consumers, such consumers shall be entitled
24 to receive the same time-based metering and

1 communications device and service as a retail
2 electric consumer of the electric utility.

3 “(F) Notwithstanding subsections (b) and
4 (c) of section 112, each State regulatory au-
5 thority shall, not later than 18 months after the
6 date of enactment of this paragraph conduct an
7 investigation in accordance with section 115(i)
8 and issue a decision whether it is appropriate to
9 implement the standards set out in subpara-
10 graphs (A) and (C).”.

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

15 (1) By inserting in subsection (b) after the
16 phrase “the standard for time-of-day rates estab-
17 lished by section 111(d)(3)” the following: “and the
18 standard for time-based metering and communica-
19 tions established by section 111(d)(14)”.

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

23 (3) By adding the at the end the following:

24 “(i) TIME-BASED METERING AND COMMUNICA-
25 TIONS.—In making a determination with respect to the

1 standard established by section 111(d)(14), the investiga-
2 tion requirement of section 111(d)(14)(F) shall be as fol-
3 lows: Each State regulatory authority shall conduct an in-
4 vestigation and issue a decision whether or not it is appro-
5 priate for electric utilities to provide and install time-based
6 meters and communications devices for each of their cus-
7 tomers which enable such customers to participate in time-
8 based pricing rate schedules and other demand response
9 programs.”.

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

16 “(5) technologies, techniques, and rate-making
17 methods related to advanced metering and commu-
18 nications and the use of these technologies, tech-
19 niques and methods in demand response programs.”.

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

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

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

5 “(2) working with States, utilities, other energy
6 providers and advanced metering and communica-
7 tions experts to identify and address barriers to the
8 adoption of demand response programs; and

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

15 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
16 TION.—

17 (1) IN GENERAL.—It is the policy of the United
18 States to encourage States to coordinate, on a re-
19 gional basis, State energy policies to provide reliable
20 and affordable demand response services to the pub-
21 lic.

22 (2) TECHNICAL ASSISTANCE.—The Secretary
23 shall provide technical assistance to States and re-
24 gional organizations formed by 2 or more States to
25 assist them in—

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

3 (B) identifying and resolving problems in
4 transmission and distribution networks, includ-
5 ing through the use of demand response;

6 (C) developing plans and programs to use
7 demand response to respond to peak demand or
8 emergency needs; and

9 (D) identifying specific measures con-
10 sumers can take to participate in these demand
11 response programs.

12 (3) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Commission shall
14 prepare and publish an annual report, by appro-
15 priate region, that assesses demand response re-
16 sources, including those available from all consumer
17 classes, and which identifies and reviews—

18 (A) saturation and penetration rate of ad-
19 vanced meters and communications tech-
20 nologies, devices and systems;

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

23 (C) the annual resource contribution of de-
24 mand resources;

1 (D) the potential for demand response as
2 a quantifiable, reliable resource for regional
3 planning purposes; and

4 (E) steps taken to ensure that, in regional
5 transmission planning and operations, demand
6 resources are provided equitable treatment as a
7 quantifiable, reliable resource relative to the re-
8 source obligations of any load-serving entity,
9 transmission provider, or transmitting party.

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

23 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
24 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
25 2622(b)) is amended by adding at the end the following:

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

9 “(B) Not later than 2 years after the date of
10 the enactment of this paragraph, each State regu-
11 latory authority (with respect to each electric utility
12 for which it has ratemaking authority), and each
13 nonregulated electric utility, shall complete the con-
14 sideration, and shall make the determination, re-
15 ferred to in section 111 with respect to the standard
16 established by paragraph (14) of section 111(d).”.

17 (h) FAILURE TO COMPLY.—Section 112(c) of the
18 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
19 2622(c)) is amended by adding at the end the following:
20 “In the case of the standard established by paragraph (14)
21 of section 111(d), the reference contained in this sub-
22 section to the date of enactment of this Act shall be
23 deemed to be a reference to the date of enactment of such
24 paragraph (14).”.

1 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
2 TERING STANDARDS.—

3 (1) IN GENERAL.—Section 112 of the Public
4 Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2622) is amended by adding at the end the fol-
6 lowing:

7 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
8 (c) of this section shall not apply to the standard estab-
9 lished by paragraph (14) of section 111(d) in the case of
10 any electric utility in a State if, before the enactment of
11 this subsection—

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

14 “(2) the State regulatory authority for such
15 State or relevant nonregulated electric utility has
16 conducted a proceeding to consider implementation
17 of the standard concerned (or a comparable stand-
18 ard) for such utility within the previous 3 years; or

19 “(3) the State legislature has voted on the im-
20 plementation of such standard (or a comparable
21 standard) for such utility within the previous 3
22 years.”.

23 (2) CROSS REFERENCE.—Section 124 of such
24 Act (16 U.S.C. 2634) is amended by adding the fol-
25 lowing at the end thereof: “In the case of the stand-

1 ard established by paragraph (14) of section 111(d),
2 the reference contained in this subsection to the date
3 of enactment of this Act shall be deemed to be a ref-
4 erence to the date of enactment of such paragraph
5 (14).”.

6 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
7 **TION PURCHASE AND SALE REQUIREMENTS.**

8 (a) **TERMINATION OF MANDATORY PURCHASE AND**
9 **SALE REQUIREMENTS.**—Section 210 of the Public Utility
10 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
11 amended by adding at the end the following:

12 “(m) **TERMINATION OF MANDATORY PURCHASE AND**
13 **SALE REQUIREMENTS.**—

14 “(1) **OBLIGATION TO PURCHASE.**—After the
15 date of enactment of this subsection, no electric util-
16 ity shall be required to enter into a new contract or
17 obligation to purchase electric energy from a quali-
18 fying cogeneration facility or a qualifying small
19 power production facility under this section if the
20 Commission finds that the qualifying cogeneration
21 facility or qualifying small power production facility
22 has nondiscriminatory access to—

23 “(A)(i) independently administered, auc-
24 tion-based day ahead and real time wholesale
25 markets for the sale of electric energy; and (ii)

1 wholesale markets for long-term sales of capac-
2 ity and electric energy; or

3 “(B)(i) transmission and interconnection
4 services that are provided by a Commission-ap-
5 proved regional transmission entity and admin-
6 istered pursuant to an open access transmission
7 tariff that affords nondiscriminatory treatment
8 to all customers; and (ii) competitive wholesale
9 markets that provide a meaningful opportunity
10 to sell capacity, including long-term and short-
11 term sales, and electric energy, including long-
12 term, short-term and real-time sales, to buyers
13 other than the utility to which the qualifying fa-
14 cility is interconnected. In determining whether
15 a meaningful opportunity to sell exists, the
16 Commission shall consider, among other fac-
17 tors, evidence of transactions within the rel-
18 evant market; or

19 “(C) wholesale markets for the sale of ca-
20 pacity and electric energy that are, at a min-
21 imum, of comparable competitive quality as
22 markets described in subparagraphs (A) and
23 (B).

24 “(2) REVISED PURCHASE AND SALE OBLIGA-
25 TION FOR NEW FACILITIES.—(A) After the date of

1 enactment of this subsection, no electric utility shall
2 be required pursuant to this section to enter into a
3 new contract or obligation to purchase from or sell
4 electric energy to a facility that is not an existing
5 qualifying cogeneration facility unless the facility
6 meets the criteria for qualifying cogeneration facili-
7 ties established by the Commission pursuant to the
8 rulemaking required by subsection (n).

9 “(B) For the purposes of this paragraph, the
10 term ‘existing qualifying cogeneration facility’ means
11 a facility that—

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

14 “(ii) had filed with the Commission a no-
15 tice of self-certification, self recertification or
16 an application for Commission certification
17 under 18 C.F.R. 292.207 prior to the date on
18 which the Commission issues the final rule re-
19 quired by subsection (n).

20 “(3) COMMISSION REVIEW.—Any electric utility
21 may file an application with the Commission for re-
22 lief from the mandatory purchase obligation pursu-
23 ant to this subsection on a service territory-wide
24 basis. Such application shall set forth the factual
25 basis upon which relief is requested and describe

1 why the conditions set forth in subparagraphs (A),
2 (B) or (C) of paragraph (1) of this subsection have
3 been met. After notice, including sufficient notice to
4 potentially affected qualifying cogeneration facilities
5 and qualifying small power production facilities, and
6 an opportunity for comment, the Commission shall
7 make a final determination within 90 days of such
8 application regarding whether the conditions set
9 forth in subparagraphs (A), (B) or (C) of paragraph
10 (1) have been met.

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

1 for comment, the Commission shall issue an order
2 within 90 days of such application reinstating the
3 electric utility's obligation to purchase electric en-
4 ergy under this section if the Commission finds that
5 the conditions set forth in subparagraphs (A), (B) or
6 (C) of paragraph (1) which relieved the obligation to
7 purchase, are no longer met.

8 “(5) OBLIGATION TO SELL.—After the date of
9 enactment of this subsection, no electric utility shall
10 be required to enter into a new contract or obliga-
11 tion to sell electric energy to a qualifying cogenera-
12 tion facility or a qualifying small power production
13 facility under this section if the Commission finds
14 that—

15 “(A) competing retail electric suppliers are
16 willing and able to sell and deliver electric en-
17 ergy to the qualifying cogeneration facility or
18 qualifying small power production facility; and

19 “(B) the electric utility is not required by
20 State law to sell electric energy in its service
21 territory.

22 “(6) NO EFFECT ON EXISTING RIGHTS AND
23 REMEDIES.—Nothing in this subsection affects the
24 rights or remedies of any party under any contract
25 or obligation, in effect or pending approval before

1 the appropriate State regulatory authority or non-
2 regulated electric utility on the date of enactment of
3 this subsection, to purchase electric energy or capac-
4 ity from or to sell electric energy or capacity to a
5 qualifying cogeneration facility or qualifying small
6 power production facility under this Act (including
7 the right to recover costs of purchasing electric en-
8 ergy or capacity).

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

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

22 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
23 TIES.—(1)(A) Not later than 180 days after the date of
24 enactment of this section, the Commission shall issue a
25 rule revising the criteria in 18 C.F.R. 292.205 for new

1 qualifying cogeneration facilities seeking to sell electric en-
2 ergy pursuant to section 210 of this Act to ensure—

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

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

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

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

23 “(2) Notwithstanding rule revisions under paragraph
24 (1), the Commission’s criteria for qualifying cogeneration
25 facilities in effect prior to the date on which the Commis-

1 sion issues the final rule required by paragraph (1) shall
2 continue to apply to any cogeneration facility that—

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

5 “(B) had filed with the Commission a notice of
6 self-certification, self-recertification or an application
7 for Commission certification under 18 C.F.R.
8 292.207 prior to the date on which the Commission
9 issues the final rule required by paragraph (1).”.

10 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

11 (1) QUALIFYING SMALL POWER PRODUCTION
12 FACILITY.—Section 3(17)(C) of the Federal Power
13 Act (16 U.S.C. 796(17)(C)) is amended to read as
14 follows:

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

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

24 “(B) ‘qualifying cogeneration facility’
25 means a cogeneration facility that the Commis-

1 sion determines, by rule, meets such require-
2 ments (including requirements respecting min-
3 imum size, fuel use, and fuel efficiency) as the
4 Commission may, by rule, prescribe;”.

5 **Subtitle F—Market Transparency,**
6 **Enforcement, and Consumer**
7 **Protection**

8 **SEC. 1261. MARKET TRANSPARENCY RULES.**

9 Part II of the Federal Power Act (16 U.S.C. 824 et
10 seq.) (as amended by section 1241) is amended by adding
11 at the end the following:

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

13 “(a) IN GENERAL.—The Commission may issue such
14 rules as the Commission considers to be appropriate to
15 establish an electronic information system to provide the
16 Commission and the public with access to such informa-
17 tion as is necessary or appropriate to facilitate price trans-
18 parency and participation in markets subject to the juris-
19 diction of the Commission under this Act.

20 “(b) INFORMATION TO BE MADE AVAILABLE.—(1)
21 The system under subsection (a) shall provide, on a timely
22 basis, information about the availability and market price
23 of wholesale electric energy and transmission services to
24 the Commission, State commissions, buyers and sellers of

1 wholesale electric energy, users of transmission services,
2 and the public.

3 “(2) In determining the information to be made avail-
4 able under the system and the time at which to make such
5 information available, the Commission shall seek to ensure
6 that consumers and competitive markets are protected
7 from the adverse effects of potential collusion or other
8 anticompetitive behaviors that can be facilitated by un-
9 timely public disclosure of transaction-specific informa-
10 tion.

11 “(c) AUTHORITY TO OBTAIN INFORMATION.—The
12 Commission shall have authority to obtain information de-
13 scribed in subsections (a) and (b) from any electric utility
14 or transmitting utility (including any entity described in
15 section 201(f)).

16 “(d) EXEMPTIONS.—The rules of the Commission, if
17 adopted, shall exempt from disclosure information that the
18 Commission determines would, if disclosed—

19 “(1) be detrimental to the operation of an effec-
20 tive market; or

21 “(2) jeopardize system security.

22 “(e) COMMODITY FUTURES TRADING COMMIS-
23 SION.—(1) This section shall not affect the exclusive juris-
24 diction of the Commodity Futures Trading Commission
25 with respect to accounts, agreements, contracts, or trans-

1 actions in commodities under the Commodity Exchange
2 Act (7 U.S.C. 1 et seq.).

3 “(2) Any request for information to a designated con-
4 tract market, registered derivatives transaction execution
5 facility, board of trade, exchange, or market involving an
6 account, agreement, contract, or transaction in a com-
7 modity (including natural gas, electricity and other energy
8 commodities) within the exclusive jurisdiction of the Com-
9 modity Futures Trading Commission shall be directed to
10 the Commodity Futures Trading Commission, which shall
11 cooperate in responding to any information request by the
12 Commission.

13 “(f) SAVINGS PROVISION.—In exercising authority
14 under this section, the Commission shall not—

15 “(1) compete with, or displace from the market
16 place, any price publisher (including any electronic
17 price publisher); or

18 “(2) regulate price publishers (including any
19 electronic price publisher) or impose any require-
20 ments on the publication of information by price
21 publishers (including any electronic price publisher).

22 “(g) ERCOT.—This section shall not apply to a
23 transaction for the purchase or sale of wholesale electric
24 energy or transmission services within the area described
25 in section 212(k)(2)(A).”.

1 **SEC. 1262. FALSE STATEMENTS.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) (as amended by section 1261) is amended by adding
4 at the end the following:

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

6 “No entity (including an entity described in section
7 201(f)) shall willfully and knowingly report any informa-
8 tion relating to the price of electricity sold at wholesale
9 or the availability of transmission capacity, which informa-
10 tion the person or any other entity knew to be false at
11 the time of the reporting, to a Federal agency with intent
12 to fraudulently affect the data being compiled by the Fed-
13 eral agency.”.

14 **SEC. 1263. MARKET MANIPULATION.**

15 Part II of the Federal Power Act (16 U.S.C. 824 et
16 seq.) (as amended by section 1262) is amended by adding
17 at the end the following:

18 **“SEC. 222. PROHIBITION OF ENERGY MARKET MANIPULA-**
19 **TION.**

20 “It shall be unlawful for any entity (including an en-
21 tity described in section 201(f)), directly or indirectly, to
22 use or employ, in connection with the purchase or sale of
23 electric energy or the purchase or sale of transmission
24 services subject to the jurisdiction of the Commission, any
25 manipulative or deceptive device or contrivance (as those
26 terms are used in section 10(b) of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78j(b))), in contravention of such
2 rules and regulations as the Commission may prescribe as
3 necessary or appropriate in the public interest or for the
4 protection of electric ratepayers.”.

5 **SEC. 1264. ENFORCEMENT.**

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

8 (1) by inserting “electric utility,” after “Any
9 person,”; and

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

12 (b) INVESTIGATIONS.—Section 307(a) of the Federal
13 Power Act (16 U.S.C. 825f(a)) is amended—

14 (1) by inserting “, electric utility, transmitting
15 utility, or other entity” after “person” each place it
16 appears; and

17 (2) in the first sentence, by inserting before the
18 period at the end the following: “, or in obtaining in-
19 formation about the sale of electric energy at whole-
20 sale in interstate commerce and the transmission of
21 electric energy in interstate commerce”.

22 (c) REVIEW OF COMMISSION ORDERS.—Section
23 313(a) of the Federal Power Act (16 U.S.C. 825l) is
24 amended by inserting “electric utility,” after “person,” in
25 the first 2 places it appears and by striking “any person

1 unless such person” and inserting “any entity unless such
2 entity”.

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

5 (1) in subsection (a)—

6 (A) by striking “\$5,000” and inserting
7 “\$1,000,000”; and

8 (B) by striking “two years” and inserting
9 “5 years”;

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

12 (3) by striking subsection (c).

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

15 (1) by striking “section 211, 212, 213, or 214”
16 each place it appears and inserting “part II”; and

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

19 **SEC. 1265. REFUND EFFECTIVE DATE.**

20 Section 206(b) of the Federal Power Act (16 U.S.C.
21 824e(b)) is amended—

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

1 complaint nor later than 5 months after the filing of
2 such complaint”;

3 (2) by striking “60 days after” in the third sen-
4 tence and inserting “of”;

5 (3) by striking “expiration of such 60-day pe-
6 riod” in the third sentence and inserting “publica-
7 tion date”; and

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

16 **SEC. 1266. REFUND AUTHORITY.**

17 Section 206 of the Federal Power Act (16 U.S.C.
18 824e) is amended by adding at the end the following:

19 “(e)(1) In this subsection, the term ‘short-term sale’
20 means an agreement for the sale of electric energy at
21 wholesale in interstate commerce that is for a period of
22 31 days or less (excluding monthly contract subject to
23 automatic renewal).

24 “(2) Except as otherwise provided in this subsection,
25 if an entity described in section 201(f) voluntarily makes

1 a short-term sale of electric energy and the sale violates
2 rules of the Commission at the time of the sale, the entity
3 shall be subject to the refund authority of the Commission
4 under this section with respect to the violation.

5 “(3) This section shall not apply to—

6 “(A) any entity that sells in total (including af-
7 filiates of the entity) less than 8,000,000 megawatt
8 hours of electricity per year; or

9 “(B) any electric cooperative.

10 “(4)(A) The Commission shall have refund authority
11 under paragraph (2) with respect to a voluntary short-
12 term sale of electric energy by the Bonneville Power Ad-
13 ministration only if the sale is at an unjust and unreason-
14 able rate.

15 “(B) The Commission may order a refund under sub-
16 paragraph (A) only for short-term sales made by the Bon-
17 neville Power Administration at rates that are higher than
18 the highest just and reasonable rate charged by any other
19 entity for a short-term sale of electric energy in the same
20 geographic market for the same, or most nearly com-
21 parable, period as the sale by the Bonneville Power Ad-
22 ministration.

23 “(5) In the case of any Federal power marketing
24 agency or the Tennessee Valley Authority, the Commission
25 shall not assert or exercise any regulatory authority or

1 power under paragraph (2) other than the ordering of re-
2 funds to achieve a just and reasonable rate.”.

3 **SEC. 1267. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
4 **TICES.**

5 (a) DEFINITIONS.—In this section:

6 (1) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (2) STATE REGULATORY AUTHORITY.—The
9 term “State regulatory authority” has the meaning
10 given the term in section 3 of the Federal Power Act
11 (16 U.S.C. 796).

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

17 (b) PRIVACY.—The Commission may issue rules pro-
18 tecting the privacy of electric consumers from the dislo-
19 sure of consumer information obtained in connection with
20 the sale or delivery of electric energy to electric consumers.

21 (c) SLAMMING.—The Commission may issue rules
22 prohibiting the change of selection of an electric utility ex-
23 cept with the informed consent of the electric consumer
24 or if approved by the appropriate State regulatory author-
25 ity.

1 (d) CRAMMING.—The Commission may issue rules
2 prohibiting the sale of goods and services to an electric
3 consumer unless expressly authorized by law or the electric
4 consumer.

5 (e) RULEMAKING.—The Commission shall proceed in
6 accordance with section 553 of title 5, United States Code,
7 when prescribing a rule under this section.

8 (f) STATE AUTHORITY.—If the Commission deter-
9 mines that the regulations of a State provide equivalent
10 or greater protection than the protection provided under
11 this section, the regulations of the State shall apply in that
12 State in lieu of the regulations issued by the Commission
13 under this section.

14 **SEC. 1268. OFFICE OF CONSUMER ADVOCACY.**

15 (a) DEFINITIONS.—In this section:

16 (1) ENERGY CUSTOMER.—The term “energy
17 customer” means a residential customer or a small
18 commercial customer that receives products or serv-
19 ices from a public utility or natural gas company
20 under the jurisdiction of the Commission.

21 (2) NATURAL GAS COMPANY.—The term “nat-
22 ural gas company” has the meaning given the term
23 in section 2 of the Natural Gas Act (15 U.S.C.
24 717a), as modified by section 601(a) of the Natural
25 Gas Policy Act of 1978 (15 U.S.C. 3431(a)).

1 (3) OFFICE.—The term “Office” means the Of-
2 fice of Consumer Advocacy established by subsection
3 (b)(1).

4 (4) PUBLIC UTILITY.—The term “public util-
5 ity” has the meaning given the term in section
6 201(e) of the Federal Power Act (16 U.S.C. 824(e)).

7 (5) SMALL COMMERCIAL CUSTOMER.—The term
8 “small commercial customer” means a commercial
9 customer that has a peak demand of not more than
10 1,000 kilowatts per hour.

11 (b) OFFICE.—

12 (1) ESTABLISHMENT.—There is established
13 within the Department the Office of Consumer Ad-
14 vocacy.

15 (2) DUTIES.—The Office may represent the in-
16 terests of energy customers on matters concerning
17 rates or service of public utilities and natural gas
18 companies under the jurisdiction of the
19 Commission—

20 (A) at hearings of the Commission;

21 (B) in civil actions brought in connection
22 with any function carried out by the Commis-
23 sion, except as provided in section 518 of title
24 28, United States Code; and

1 (C) at hearings or proceedings of other
2 Federal regulatory agencies and commissions.

3 **Subtitle G—Definitions**

4 **SEC. 1271. DEFINITIONS.**

5 (a) COMMISSION.—In this title, the term “Commis-
6 sion” means the Federal Energy Regulatory Commission.

7 (b) AMENDMENT.—Section 3 of the Federal Power
8 Act (16 U.S.C. 796) is amended—

9 (1) by striking paragraphs (22) and (23) and
10 inserting the following:

11 “(22) ELECTRIC UTILITY.—(A) The term ‘elec-
12 tric utility’ means a person or Federal or State
13 agency (including an entity described in section
14 201(f)) that sells electric energy.

15 “(B) The term ‘electric utility’ includes the
16 Tennessee Valley Authority and each Federal power
17 marketing administration.

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

23 “(A) in interstate commerce;

24 “(B) for the sale of electric energy at
25 wholesale.”; and

1 (2) by adding at the end the following:

2 “(26) ELECTRIC COOPERATIVE.—The term
3 ‘electric cooperative’ means a cooperatively owned
4 electric utility.

5 “(27) RTO.—The term ‘Regional Transmission
6 Organization’ or ‘RTO’ means an entity of sufficient
7 regional scope approved by the Commission—

8 “(A) to exercise operational or functional
9 control of facilities used for the transmission of
10 electric energy in interstate commerce; and

11 “(B) to ensure nondiscriminatory access to
12 the facilities.

13 “(28) ISO.—The term ‘Independent System
14 Operator’ or ‘ISO’ means an entity approved by the
15 Commission—

16 “(A) to exercise operational or functional
17 control of facilities used for the transmission of
18 electric energy in interstate commerce; and

19 “(B) to ensure nondiscriminatory access to
20 the facilities.

21 “(29) TRANSMISSION ORGANIZATION.—The
22 term ‘Transmission Organization’ means a Regional
23 Transmission Organization, Independent System Op-
24 erator, independent transmission provider, or other
25 transmission organization finally approved by the

1 Commission for the operation of transmission facili-
2 ties.”.

3 (c) APPLICABILITY.—Section 201(f) of the Federal
4 Power Act (16 U.S.C. 824(f)) is amended by striking “po-
5 litical subdivision of a state,” and inserting “political sub-
6 division of a State, an electric cooperative that receives
7 financing under the Rural Electrification Act of 1936 (7
8 U.S.C. 901 et seq.) or that sells less than 4,000,000 mega-
9 watt hours of electricity per year,”.

10 **Subtitle H—Technical and** 11 **Conforming Amendments**

12 **SEC. 1281. CONFORMING AMENDMENTS.**

13 (a) Section 201 of the Federal Power Act (16 U.S.C.
14 824) is amended—

15 (1) in subsection (b)(2)—

16 (A) in the first sentence—

17 (i) by striking “The” and inserting
18 “Notwithstanding section 201(f), the”; and

19 (ii) by striking “210, 211, and 212”
20 and inserting “203(a)(2), 206(e), 210,
21 211, 211A, 212, 215, 216, 217, 218, 219,
22 220, 221, and 222”; and

23 (B) in the second sentence—

24 (i) by inserting “or rule” after “any
25 order”; and

1 (ii) by striking “210 or 211” and in-
2 serting “203(a)(2), 206(e), 210, 211,
3 211A, 212, 215, 216, 217, 218, 219, 220,
4 221, and 222”; and

5 (2) in subsection (e), by striking “210, 211, or
6 212” and inserting “206(e), 206(f), 210, 211, 211A,
7 212, 215, 216, 217, 218, 219, 220, 221, or 222”.

8 (b) Section 206 of the Federal Power Act (16 U.S.C.
9 824e) is amended—

10 (1) in the first sentence of subsection (a), by
11 striking “hearing had” and inserting “hearing held”;
12 and

13 (2) in the seventh sentence of subsection (b), by
14 striking “the public utility to make”.

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

17 (1) in subsection (c)—

18 (A) by striking “(2)”;

19 (B) by striking “(A)” and inserting “(1)”

20 (C) by striking “(B)” and inserting “(2)”;

21 and

22 (D) by striking “termination of modifica-
23 tion” and inserting “termination or modifica-
24 tion”; and

1 (2) in the second sentence of subsection (d)(1),
2 by striking “electric utility” the second place it ap-
3 pears and inserting “transmitting utility”.
4 (d) Section 315(c) of the Federal Power Act (16
5 U.S.C. 825n(c)) is amended by striking “subsection” and
6 inserting “section”.