

105TH CONGRESS  
2D SESSION

# S. 2287

To provide for a more competitive electric power industry, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 10, 1998

Mr. MURKOWSKI (for himself and Mr. BUMPERS) (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To provide for a more competitive electric power industry,  
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Elec-  
5 tricity Competition Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

### TITLE I—RETAIL ELECTRIC SERVICE

Sec. 101. Retail competition.

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Sec. 103. Consumer information.

★(Star Print)

## TITLE II—FACILITATING STATE AND REGIONAL REGULATION

- Sec. 201. Clarification of State and Federal authority over retail transmission services.
- Sec. 202. Interstate compacts on regional transmission planning.
- Sec. 203. Backup authority to impose a charge on an ultimate consumer's receipt of electric energy.
- Sec. 204. Authority to establish and require independent system operation.

## TITLE III—PUBLIC BENEFITS

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- Sec. 302. Federal renewable portfolio standard.
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- Sec. 304. Reform of section 210 of PURPA.

## TITLE IV—REGULATION OF MERGERS AND CORPORATE STRUCTURE

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## TITLE VI—ENVIRONMENTAL PROTECTION

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## TITLE VII—OTHER REGULATORY PROVISIONS

- Sec. 701. Treatment of nuclear decommissioning costs in bankruptcy.
- Sec. 702. Study of impacts of competition in electricity markets by the Energy Information Administration.
- Sec. 703. Antitrust savings clause.
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1           **TITLE I—RETAIL ELECTRIC**  
 2   **SERVICE**

3   **SEC. 101. RETAIL COMPETITION.**

4           (a) The Public Utility Regulatory Policies Act of  
 5 1978 (referred to in this Act as PURPA) is amended by  
 6 adding after section 608 the following new section:

1 **“SEC. 609. RETAIL COMPETITION.**

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

3 “(1) ‘distribution utility’ means a person, State  
4 agency, or any other entity that owns or operates a  
5 local distribution facility used for the sale of electric  
6 energy to an electric consumer;

7 “(2) ‘nonregulated distribution utility’ means a  
8 distribution utility not subject to the ratemaking au-  
9 thority of a State regulatory authority; and

10 “(3) ‘retail stranded costs’ means the amount  
11 of net costs incurred or obligations undertaken be-  
12 fore the date of enactment of the Comprehensive  
13 Electricity Competition Act by a distribution utility  
14 that—

15 “(A) were incurred or undertaken by that  
16 distribution utility in order to comply with a  
17 legal obligation on the utility to provide elec-  
18 tricity to electric consumers in its service terri-  
19 tory, and

20 “(B) cannot be recovered because of imple-  
21 mentation of retail competition under sub-  
22 section (b).

23 “(b) RETAIL COMPETITION REQUIREMENT.—Except  
24 as provided in subsection (c), not later than January 1,  
25 2003, any distribution utility that has the capability to  
26 deliver electric energy to an electric consumer over its fa-

1 cilities shall offer open access to those facilities for the  
2 sale of electric energy to the consumer and shall do so  
3 at rates, terms, and conditions that are not unduly dis-  
4 criminatory or preferential, as determined by the appro-  
5 priate regulatory authority.

6 “(c) OPT OUT.—(1) A State regulatory authority  
7 (with respect to a distribution utility for which it has rate-  
8 making authority) may direct a distribution utility not to  
9 implement the retail competition requirement described in  
10 subsection (b) if the State regulatory authority finds, after  
11 notice and opportunity for hearing, that implementation  
12 of the retail competition requirement by the distribution  
13 utility will have a negative impact on a class of customers  
14 of that utility that cannot be mitigated reasonably.

15 “(2) A nonregulated distribution utility may deter-  
16 mine not to implement the retail competition requirement  
17 described in subsection (b) if it finds, after notice and op-  
18 portunity for hearing, that implementation of the retail  
19 competition requirement by the distribution utility will  
20 have a negative impact on a class of customers of that  
21 utility that cannot be mitigated reasonably.

22 “(3) The State regulatory authority (with respect to  
23 a distribution utility for which it has ratemaking author-  
24 ity) or nonregulated distribution utility shall publish the

1 determination and its basis and shall file a notice with  
2 the Commission of its determination by January 1, 2002.

3       “(d) NOTICE OF RETAIL COMPETITION.—A State  
4 regulatory authority (with respect to a distribution utility  
5 for which it has ratemaking authority) or nonregulated  
6 distribution utility shall file with the Commission a notice  
7 that the distribution utility has implemented or will imple-  
8 ment retail competition consistent with subsection (b).  
9 The notice shall describe the implementation of retail com-  
10 petition. The notice is effective for purposes of section 118  
11 of this Act and sections 212(h), 216, and 217 of the Fed-  
12 eral Power Act on the date the notice is filed or the date  
13 of implementation of retail competition consistent with  
14 subsection (b), whichever is later.

15       “(e) CONSIDERATION OF RECOVERY OF RETAIL  
16 STRANDED COSTS.—If a State regulatory authority con-  
17 ducts a public proceeding before a distribution utility im-  
18 plements retail competition as required under subsection  
19 (b), as part of this proceeding, the State regulatory au-  
20 thority shall consider the appropriate mechanism under  
21 State law to address recovery by a distribution utility for  
22 which it has ratemaking authority of retail stranded costs  
23 that are legitimate, prudent, and verifiable, if the utility  
24 has taken all reasonable steps to mitigate the costs. A  
25 charge imposed for purposes of recovering retail stranded

1 costs should be imposed in a manner so as to minimize  
 2 to the fullest extent possible any effect on an electric con-  
 3 sumer's choice among competing suppliers or products.

4       “(f) ENFORCEMENT.—Any person may bring an ac-  
 5 tion in the appropriate State court against a State regu-  
 6 latory authority, a distribution utility, or a nonregulated  
 7 distribution utility for failure to comply with this section.  
 8 Filing an action challenging whether retail competition is  
 9 being implemented consistent with subsection (b) makes  
 10 a notice of retail competition ineffective for purposes of  
 11 section 118 of this Act and sections 212(h), 216, and 217  
 12 of the Federal Power Act until final resolution of the ac-  
 13 tion. Notwithstanding any other law, a court created  
 14 under Article III of the Constitution does not have juris-  
 15 diction over an action arising under this section.”.

16       (b) DEFINITION.—Section 3 of PURPA is amended  
 17 by adding after paragraph (21) the following new para-  
 18 graph:

19               “(22) The term ‘notice of retail competition’  
 20 means a notice filed under section 609(d).”.

21 **SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**  
 22 **MENTS.**

23       PURPA is amended by adding the following new sec-  
 24 tion after section 117:

1 **“SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**  
2 **MENTS.**

3       “(a) STATE REGULATORY AUTHORITY.—If a State  
4 regulatory authority files a notice of retail competition  
5 with respect to a distribution utility, beginning on the ef-  
6 fective date of the notice, the State regulatory authority  
7 may prohibit any other distribution utility located in the  
8 United States over which it does not have ratemaking au-  
9 thority (and any affiliate of such a utility, as defined  
10 under the Public Utility Holding Company Act of 1998)  
11 from selling electric energy to electric consumers of a dis-  
12 tribution facility covered by the notice of retail competi-  
13 tion, unless a notice of retail competition has been filed  
14 with respect to the other distribution utility.

15       “(b) NONREGULATED DISTRIBUTION UTILITY.—If a  
16 nonregulated distribution utility files a notice of retail  
17 competition, beginning on the effective date of the notice,  
18 it may prohibit any other distribution utility located in the  
19 United States (or affiliate of the utility, as defined under  
20 the Public Utility Holding Company Act of 1998) from  
21 selling electric energy to electric consumers of the non-  
22 regulated distribution utility covered by the notice unless  
23 a notice of retail competition has been filed with respect  
24 to the other distribution utility.

1       “(c) DEFINITIONS.—For purposes of this section,  
2 ‘distribution utility’ and ‘nonregulated distribution utility’  
3 have the meaning given them in section 609(a).”.

4 **SEC. 103. CONSUMER INFORMATION.**

5       PURPA is amended by adding the following new sec-  
6 tion after section 118 as added by section 102 of this Act:

7 **“SEC. 119. CONSUMER INFORMATION DISCLOSURE.**

8       “(a) DISCLOSURE RULES.—Not later than January  
9 1, 2000, the Secretary, in consultation with the Commis-  
10 sion, the Administrator of the Environmental Protection  
11 Agency, and the Federal Trade Commission, shall issue  
12 rules prescribing the form, content, placement, and timing  
13 of the supplier disclosure required under subsections (b)  
14 and (c) of this section. The rules shall be prescribed in  
15 accordance with section 553 of title 5, United States Code  
16 (the Administrative Procedure Act).

17       “(b) DISCLOSURE TO ELECTRIC CONSUMERS.—An  
18 electric utility that offers to sell electric energy to an elec-  
19 tric consumer shall provide the electric consumer, to the  
20 extent practicable and in accordance with rules issued  
21 under subsection (a), a statement containing the following  
22 information:

23               “(1) the nature of the service being offered, in-  
24 cluding information about interruptibility or curtail-  
25 ment of service;



1           “(2) the price of the electric energy, including  
2 a description of any variable charges;

3           “(3) a description of all other charges associ-  
4 ated with the service being offered including, but not  
5 limited to, access charges, exit charges, back-up  
6 service charges, stranded cost recovery charges, and  
7 customer service charges;

8           “(4) information concerning the type of energy  
9 resource used to generate the electric energy and the  
10 environmental attributes of the generation (including  
11 air emissions characteristics); and

12           “(5) any other information the Secretary deter-  
13 mines can be provided feasibly and would be useful  
14 to consumers in making purchasing decisions.

15           “(c) DISCLOSURE TO WHOLESALE CUSTOMERS.—In  
16 every sale of electric energy for resale, the seller shall pro-  
17 vide to the purchaser the information respecting the type  
18 of energy resource used to generate the electric energy and  
19 the environmental attributes of the generation required by  
20 rules established under subsection (a).

21           “(d) FEDERAL TRADE COMMISSION ENFORCE-  
22 MENT.—A violation of a rule prescribed under this section  
23 shall constitute an unfair or deceptive act or practice in  
24 violation of section 5 of the Federal Trade Commission  
25 Act (15 U.S.C. 45) and shall be treated as a violation of

1 a rule under section 18 of the Federal Trade Commission  
2 Act (15 U.S.C. 57a). All functions and powers of the Fed-  
3 eral Trade Commission under the Federal Trade Commis-  
4 sion Act are available to the Federal Trade Commission  
5 to enforce compliance with this section notwithstanding  
6 jurisdictional limitations in the Federal Trade Commission  
7 Act.

8 “(e) AUTHORITY TO OBTAIN INFORMATION.—Au-  
9 thority to obtain information under section 11 of the En-  
10 ergy Supply and Environmental Coordination Act of 1974  
11 (15 U.S.C. 796) is available to the Secretary to administer  
12 this section and to the Federal Trade Commission to en-  
13 force this section. In order to carry out its duties under  
14 this section, the Federal Trade Commission may use any  
15 of its powers under sections 3, 6, 9, and 20 of the Federal  
16 Trade Commission Act (15 U.S.C. 43, 46, 49, and 58b-  
17 2) without regard to the limitations contained in section  
18 20(b) of that Act (15 U.S.C. 57b-2(b)) or any jurisdic-  
19 tional limitations contained in that Act.

20 “(f) ENFORCEMENT BY STATES.—(1) When a State  
21 determines that the interests of its residents have been  
22 or are being threatened or adversely affected because any  
23 person is violating or has violated a rule of the Secretary  
24 under this section, the State may bring a civil action on

1 behalf of its residents in an appropriate district court of  
2 the United States to—

3           “(A) enjoin the violation;

4           “(B) enforce compliance with the rule of the  
5 Secretary;

6           “(C) obtain damages, restitution, or other com-  
7 pensation on behalf of its residents; or

8           “(D) obtain other relief the court considers ap-  
9 propriate.

10          “(2) The State shall serve prior written notice of any  
11 civil action under this subsection upon the Federal Trade  
12 Commission and provide the Federal Trade Commission  
13 with a copy of its complaint, except that if it is not feasible  
14 for the State to provide this prior notice, the State shall  
15 serve the notice immediately upon instituting the action.  
16 Upon receiving a notice respecting a civil action, the Fed-  
17 eral Trade Commission may—

18           “(A) intervene in the action, and

19           “(B) upon so intervening, be heard on all mat-  
20 ters arising in the action and file petition for appeal.

21          “(3) For purposes of bringing any civil action under  
22 this subsection, this section does not prevent a State offi-  
23 cial from exercising the powers conferred by State law to  
24 conduct investigations, administer oaths or affirmations,

1 or compel the attendance of witnesses or the production  
2 of documentary and other evidence.

3 “(4) While a civil action instituted by or on behalf  
4 of the Federal Trade Commission for violation of any rule  
5 prescribed under this subsection is pending, a State may  
6 not institute a civil action under this section against a de-  
7 fendant named in the complaint in the pending action for  
8 a violation alleged in the complaint.

9 “(5) A civil action brought under this subsection may  
10 be brought in the district in which the defendant is found,  
11 is an inhabitant, or transacts business or wherever venue  
12 is proper under section 1391 of title 28, United States  
13 Code. Process in such an action may be served in any dis-  
14 trict in which the defendant is an inhabitant or in which  
15 the defendant may be found.

16 “(6) This section does not prohibit a State from pro-  
17 ceeding in State court on the basis of an alleged violation  
18 of a State civil or criminal statute.”.

19 **TITLE II—FACILITATING STATE**  
20 **AND REGIONAL REGULATION**

21 **SEC. 201. CLARIFICATION OF STATE AND FEDERAL AU-**  
22 **THORITY OVER RETAIL TRANSMISSION SERV-**  
23 **ICES.**

24 (a) NONPREEMPTION OF STATE AUTHORITY TO  
25 ORDER RETAIL WHEELING AND TO IMPOSE LOCAL DE-

1 LIVERY CHARGES.—Section 201(b) of the Federal Power  
 2 Act (referred to in this Act as “the FPA”) is amended  
 3 by adding the following new paragraph after paragraph  
 4 (2):

5           “(3) This Act does not preempt or otherwise af-  
 6           fect any authority under the law of a State or mu-  
 7           nicipality to—

8                   “(A) require unbundled transmission and  
 9                   local distribution services for the delivery of  
 10                  electric energy directly to an ultimate consumer,  
 11                  but if unbundled transmission is in interstate  
 12                  commerce, the rate, terms, and conditions of  
 13                  the transmission are subject to the exclusive ju-  
 14                  risdiction of the Commission under this part, or

15                   “(B) impose a delivery charge on an ulti-  
 16                  mate consumer’s receipt of electric energy.”.

17           (b) OPEN ACCESS TRANSMISSION AUTHORITY; RE-  
 18           TAIL WHEELING IN RETAIL COMPETITION STATES.—

19                   (1) APPLICABILITY OF OPEN ACCESS TRANS-  
 20                  MISSION RULES.—Section 206 of the FPA is amend-  
 21                  ed by adding the following new subsection after sub-  
 22                  section (d):

23                   “(e) OPEN ACCESS TRANSMISSION SERVICES.—(1)  
 24                  Under section 205 and this section, the Commission may  
 25                  require, by rule or order, public utilities and transmitting

1 utilities to provide open access transmission services, sub-  
2 ject to section 212(h), and may authorize recovery of  
3 stranded costs, as defined by the Commission, arising  
4 from any requirement to provide open access transmission  
5 services. This section applies to any rule or order issued  
6 by the Commission before the date of enactment of the  
7 Comprehensive Electricity Competition Act.”.

8 (2) AUTHORITY TO ORDER RETAIL WHEEL-  
9 ING.—Section 212(h) of the FPA is amended—

10 (A) by inserting “(1)” before “No”;

11 (B) by striking “(1)”, “(2)”, “(A)”, and  
12 “(B)” and inserting in their places “(A)”,  
13 “(B)”, “(i)”, and “(ii)” respectively;

14 (C) by striking from redesignated para-  
15 graph (1)(B)(ii) “the date of enactment of this  
16 subsection” and inserting “October 24, 1992,”  
17 in its place; and

18 (D) by adding at the end a new paragraph  
19 as follows:

20 “(2) Notwithstanding paragraph (1), the Com-  
21 mission may issue an order that requires the trans-  
22 mission of electric energy directly or indirectly to an  
23 ultimate consumer if a notice of retail competition  
24 under section 609 of the Public Utility Regulatory  
25 Policies Act of 1978 has been filed and is in effect

1 with respect to the ultimate consumer or if a dis-  
2 tribution utility offers open access to its delivery fa-  
3 cilities to the ultimate consumer.”.

4 (3) CONFORMING AMENDMENTS—.

5 (A) Section 3(23) of the FPA is amended to  
6 read as follows:

7 “(23) ‘transmitting utility’ means any entity  
8 that owns, controls, or operates electric power trans-  
9 mission facilities that are used for the sale of electric  
10 energy, notwithstanding section 201(f) of this Act.”.

11 (B) Section 3(24) of the FPA is amended to  
12 read as follows:

13 “(24) ‘transmission services’ means the trans-  
14 mission of electric energy sold or to be sold.”.

15 (C) Section 211(a) of the FPA is amended by  
16 striking “for resale”.

17 (D) Section 212(a) of the FPA is amended by  
18 striking “wholesale” each time it appears, except the  
19 last time.

20 (e) APPLICABILITY OF COMMISSION JURISDICTION  
21 TO TRANSMITTING UTILITIES.—Section 206(e) of the  
22 FPA as added by subsection (b)(1) of this section is  
23 amended by adding the following new paragraphs after  
24 paragraph (1):

1           “(2)(A) The Commission has jurisdiction over  
2 the rates, terms, and conditions for transmission  
3 services provided by a transmitting utility that is not  
4 a public utility, subject to section 212(h).

5           “(B) in exercising its authority under this para-  
6 graph, the Commission—

7           “(i) shall take into account the different  
8 structural and operating characteristics of  
9 transmitting utilities, including the multi-tier  
10 structure and the not-for-profit operations of  
11 cooperatives;

12           “(ii) with respect to any transmitting util-  
13 ity that has outstanding loans made or guaran-  
14 teed by the Rural Utilities Service, shall take  
15 into account the policies of the Department of  
16 Agriculture in implementing the Rural Elec-  
17 trification Act of 1936 and shall assure, to the  
18 extent practicable, that the utility will be able  
19 to meet any loan obligations under that Act;  
20 and

21           “(iii) shall not approve rates, terms, or  
22 conditions the Commission determines would  
23 have the effect of jeopardizing the tax exempt  
24 status of nonprofit electric cooperatives under  
25 the Internal Revenue Code of 1986.



1           “(C) Notwithstanding any other law, section  
2           205, this section, and part III apply to a transmit-  
3           ting utility that is not a public utility for purposes  
4           of this section.

5           “(3) The Commission may suspend or modify  
6           for specified periods application of its rules on non-  
7           discriminatory open access to one or more of the fol-  
8           lowing entities: the Tennessee Valley Authority, the  
9           Bonneville Power Administration, the Southeastern  
10          Power Administration, the Southwestern Power Ad-  
11          ministration, the Western Area Power Administra-  
12          tion, a corporation or association with outstanding  
13          debt to the Administrator of the Rural Utility Serv-  
14          ice relating to electric utility facilities, or a full-re-  
15          quirements wholesale customer of any of these enti-  
16          ties, if the Commission finds that the entity will not  
17          be able to recover stranded costs.

18          “(4) Any electric utility that owns, directly or  
19          indirectly, generation facilities financed in whole or  
20          in part with outstanding loans made or guaranteed  
21          by the Rural Utilities Service may apply to the Com-  
22          mission to impose a charge for the recovery of  
23          stranded costs as defined by the Commission. If the  
24          Commission determines that the proposed charge is  
25          just, reasonable, and not unduly discriminatory or

1 preferential, the Commission may issue an order  
 2 providing for the imposition of the charge on trans-  
 3 mission service by the applicant or by another trans-  
 4 mitting utility or on any electric utility or trans-  
 5 action subject to the Commission’s jurisdiction.”.

6 **SEC. 202. INTERSTATE COMPACTS ON REGIONAL TRANS-**  
 7 **MISSION PLANNING.**

8 The FPA is amended by adding after section 214 the  
 9 following new section:

10 **“SEC. 215. INTERSTATE COMPACTS ON REGIONAL TRANS-**  
 11 **MISSION PLANNING.**

12 “(a) The consent of Congress is given for an agree-  
 13 ment to establish a regional transmission planning agency,  
 14 if the Commission determines that the agreement would—

15 “(1) facilitate coordination among the States  
 16 within a particular region with regard to the plan-  
 17 ning of future transmission, generation, and dis-  
 18 tribution facilities,

19 “(2) carry out State electric facility siting re-  
 20 sponsibilities more effectively,

21 “(3) meet the other requirements of this section  
 22 and rules prescribed by the Commission under this  
 23 section, and

24 “(4) otherwise be consistent with the public in-  
 25 terest.

1       “(b)(1) If the Commission determines that an agree-  
2 ment meets the requirements of subsection (a), the agency  
3 established under the agreement has the authority nec-  
4 essary or appropriate to carry out the agreement. This au-  
5 thority includes authority with respect to matters other-  
6 wise within the jurisdiction of the Commission, if expressly  
7 provided for in the agreement and approved by the Com-  
8 mission.

9       “(2) The Commission’s determination under this sec-  
10 tion may be subject to any terms or conditions the Com-  
11 mission determines are necessary to ensure that the agree-  
12 ment is in the public interest.

13       “(c)(1) The Commission shall prescribe—

14               “(A) criteria for determining whether a regional  
15 transmission planning agreement meets subsection  
16 (a), and

17               “(B) standards for the administration of a re-  
18 gional transmission planning agency established  
19 under the agreement.

20       “(2) The criteria shall provide that, in order to meet  
21 subsection (a)—

22               “(A) a regional transmission planning agency  
23 must operate within a region that includes all tribal  
24 governments and all or part of each State that is a  
25 party to the agreement,

1           “(B) a regional transmission planning agency  
2           must be composed of one or more members from  
3           each State and tribal government that is a party to  
4           the agreement,

5           “(C) each participating State and tribal govern-  
6           ment must vest in the regional transmission plan-  
7           ning agency the authority necessary to carry out the  
8           agreement and this section, and

9           “(D) the agency must follow workable and fair  
10          procedures in making its decisions, in governing  
11          itself, and in regulating parties to the agreement  
12          with respect to matters covered by the agreement,  
13          including a requirement that all decisions of the  
14          agency be made by majority vote (or majority of  
15          weighted votes) of the members present and voting.

16          “(3) The criteria may include any other requirement  
17          for meeting subsection (a) that the Commission deter-  
18          mines is necessary to ensure that the regional trans-  
19          mission planning agency’s organization, practices, and  
20          procedures are sufficient to carry out this section and the  
21          rules issued under it.

22          “(d) The Commission, after notice and opportunity  
23          for comment, may terminate the approval of an agreement  
24          under this section at any time if it determines that the  
25          regional transmission planning agency fails to comply with

1 this section or Commission prescriptions under subsection  
 2 (c) or that the agreement is contrary to the public interest.

3 “(e) Section 313 applies to a rehearing before a re-  
 4 gional transmission planning agency and judicial review  
 5 of any action of a regional transmission planning agency.  
 6 For this purpose, when section 313 refers to ‘Commis-  
 7 sion’, substitute ‘regional transmission planning agency’  
 8 and when section 313(b) refers to ‘licensee or public util-  
 9 ity’, substitute ‘entity.’”.

10 **SEC. 203. BACKUP AUTHORITY TO IMPOSE A CHARGE ON**  
 11 **AN ULTIMATE CONSUMER’S RECEIPT OF**  
 12 **ELECTRIC ENERGY.**

13 The FPA is amended by adding the following new  
 14 section after section 215 as added by section 202 of this  
 15 Act:

16 **“SEC. 216. BACKUP AUTHORITY FOR CHARGE ON RECEIPT**  
 17 **OF ELECTRIC ENERGY.**

18 “(a) If a State regulatory authority that has provided  
 19 notice of retail competition under section 609 of the Public  
 20 Utility Regulatory Policies Act of 1978 for a distribution  
 21 utility determines that the utility should be authorized or  
 22 required to impose a charge on an ultimate consumer’s  
 23 receipt of electric energy but the State regulatory author-  
 24 ity lacks authority to authorize or require imposition of  
 25 such a charge, the State regulatory authority may apply

1 to the Commission for an order providing for the imposi-  
2 tion of the charge. If the Commission determines that the  
3 imposition of the charge is just, reasonable, and not un-  
4 duly discriminatory or preferential; is consistent with the  
5 State regulatory authority's policy regarding the imposi-  
6 tion of the charge; and is not specifically prohibited by  
7 State law, the Commission may issue an order providing  
8 for the imposition of the charge.

9       “(b) If a utility that has outstanding loans made or  
10 guaranteed by the Rural Utilities Service and that has  
11 filed a notice of retail competition under section 609 of  
12 the Public Utilities Regulatory Policies Act of 1978 deter-  
13 mines that it is appropriate to impose a charge on an ulti-  
14 mate consumer's receipt of electric energy, but lacks the  
15 authority to impose such a charge under State law, the  
16 utility may apply to the Commission for an order provid-  
17 ing for the imposition of a charge. If the Commission de-  
18 termines that the proposed charge is just, reasonable, and  
19 not unduly discriminatory or preferential, the Commission  
20 may issue an order providing for the imposition of the  
21 charge.”.

22 **SEC. 204. AUTHORITY TO ESTABLISH AND REQUIRE INDE-**  
23 **PENDENT SYSTEM OPERATION.**

24       Section 202 of the FPA is amended by adding the  
25 following new subsection after subsection (g):

1       “(h) Upon its own motion or upon application or  
2 complaint and after notice and an opportunity for a hear-  
3 ing, the Commission may order the establishment of an  
4 entity for the purpose of independent operation and con-  
5 trol of interconnected transmission facilities, may order a  
6 transmitting utility to relinquish control over operation of  
7 its transmission facilities to an entity established for the  
8 purpose of independent operation and control of inter-  
9 connected transmission facilities, or may do both, if the  
10 Commission finds that—

11               “(1) this action is appropriate to promote com-  
12 petitive electricity markets and efficient, economical,  
13 and reliable operation of the interstate transmission  
14 grid;

15               “(2) the entity established for the purpose of  
16 independent operation and control of interconnected  
17 transmission facilities will operate the transmission  
18 facilities in a manner that assures that ownership of  
19 transmission facilities provides no advantage in com-  
20 petitive electricity markets; and

21               “(3) any transmitting utility ordered to transfer  
22 control of its transmission facilities will receive just  
23 and reasonable compensation for the use of its facili-  
24 ties.”.

1       **TITLE III—PUBLIC BENEFITS**

2       **SEC. 301. PUBLIC BENEFITS FUND.**

3       PURPA is amended by adding after section 609, as  
4 added by section 101 of this Act, the following new sec-  
5 tion:

6       **“SEC. 610. PUBLIC BENEFITS FUND.**

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

8               “(1) the term ‘Board’ means the Federal-State  
9       Joint Board established under subsection (b)(1);

10              “(2) the term ‘eligible public purpose program’  
11       means a program that supports one or more of the  
12       following—

13                      “(A) availability of affordable electricity  
14       service to low-income customers;

15                      “(B) implementation of energy conserva-  
16       tion and energy efficiency measures and energy  
17       management practices,

18                      “(C) consumer education,

19                      “(D) the development and demonstration  
20       of an electricity generation technology that the  
21       Secretary determines is emerging from research  
22       and development, provides environmental bene-  
23       fits, and—

24                              “(i) has significant national commer-  
25       cial potential, or



1                   “(ii) provides energy security or gen-  
2                   eration resource diversity benefits, or

3                   “(E) rural assistance subsequent to a de-  
4                   termination made under subsection (d)(4);

5                   “(3) the term ‘fiscal agent’ means the entity  
6                   designated under subsection (b)(2)(B);

7                   “(4) the term ‘Fund’ means the Public Benefits  
8                   Fund established under subsection (b)(2)(A); and

9                   “(5) the term ‘State’ means each of the contig-  
10                  uous States and the District of Columbia.

11               “(b) FEDERAL-STATE JOINT BOARD.—(1) A Fed-  
12               eral-State Joint Board is established whose membership  
13               is composed of two officers or employees of the United  
14               States Government appointed by the Secretary and five  
15               State commissioners appointed by the national organiza-  
16               tion of State commissions. The Secretary shall designate  
17               the Chair of the Board.

18               “(2) The Board shall—

19                   “(A) establish a Public Benefits Fund upon pe-  
20                   tition of States and tribal governments wishing to  
21                   participate in the program under this section,

22                   “(B) appoint a fiscal agent, from persons nomi-  
23                   nated by the States and tribal governments petition-  
24                   ing to establish the Fund, and

1           “(C) administer the Fund as set forth in this  
2 section.

3           “(c) FISCAL AGENT.—The fiscal agent appointed by  
4 the Board shall collect and disburse the amounts in the  
5 Fund as set forth in this section.

6           “(d) SECRETARY.—The Secretary shall prescribe  
7 rules for—

8           “(1) the determination of charges under sub-  
9 section (e);

10           “(2) the collection of amounts for the Fund, in-  
11 cluding provisions for overcollection or undercollec-  
12 tion;

13           “(3) distribution of amounts from the Fund;  
14 and

15           “(4) the criteria under which the Board deter-  
16 mines whether a State or tribal government’s pro-  
17 gram is an eligible public purpose program, includ-  
18 ing a rural assistance program. A rural assistance  
19 program shall be an eligible public purpose program  
20 to the extent that the Secretary, in consultation with  
21 the Secretary of Agriculture, determines by rule that  
22 significant adverse economic effects on rural cus-  
23 tomers have occurred or will occur as a result of  
24 electricity restructuring that meets the retail com-  
25 petition requirements of this Act. After such a dem-

1        onstration is made, the Secretary, in consultation  
2        with the Secretary of Agriculture, shall specify by  
3        rule the mechanism for distribution of funds to rural  
4        assistance programs, amounts to be provided, and  
5        variances to the overall requirements to the Public  
6        Benefits Fund under this section, if any. For the  
7        purposes of funding rural assistance programs, the  
8        Secretary shall increase the charge for the Public  
9        Benefit Fund as necessary, up to a maximum of .17  
10       mills per kilowatt hour. Funding for rural assistance  
11       programs under this section shall be provided exclu-  
12       sively from this increase in the charge.

13       “(e) PUBLIC BENEFITS CHARGE.—(1) As a condition  
14       of existing or future interconnection with facilities of any  
15       transmitting utility, each owner of an electric generating  
16       facility whose capacity exceeds one megawatt shall pay the  
17       transmitting utility a public benefits charge determined  
18       under paragraph (2), even if the generation facility and  
19       the transmitting facility are under common ownership or  
20       are otherwise affiliated. Each importer of electric energy  
21       from Canada or Mexico, as a condition of existing or fu-  
22       ture interconnection with facilities of any transmitting  
23       utility in the United States, shall pay this same charge  
24       for imported electric energy. The transmitting utility shall  
25       pay the amounts collected to the fiscal agent at the close

1 of each month, and the fiscal agent shall deposit the  
2 amounts into the Fund.

3 “(2)(A) The Board shall notify the Commission of  
4 the sum of the requests of all States and tribal govern-  
5 ments under subsection (f) within 30 days after receiving  
6 the requests.

7 “(B) The Commission shall calculate the rate for the  
8 public benefits charge for each calendar year at an  
9 amount, not in excess of 1 mill per kilowatt-hour, equal  
10 to the sum of the requests of all States and tribal govern-  
11 ments under subsection (f) for programs described in sub-  
12 section (a)(2)(A) through (a)(2)(D) divided by the esti-  
13 mated kilowatt hours of electric energy to be generated  
14 by generators subject to the charge. Every five years the  
15 Secretary shall review the charge and shall direct the  
16 Commission to revise the charge as appropriate to main-  
17 tain a total Fund level relatively close to the target level  
18 of approximately \$3 billion per year nationwide, adjusted  
19 for inflation. If there are significant receipts from the sale  
20 of Renewable Energy Credits under section 611, the Sec-  
21 retary shall review the rate for this charge on a more fre-  
22 quent basis and may direct the Commission to reduce the  
23 charge by some portion of these receipts as long as suffi-  
24 cient funds remain to ensure that the Fund level is appro-

1 piate to achieve the environmental goals of this section  
2 and section 611 of this Act.

3 “(C) If a finding is made under subsection (d)(4) in  
4 relation to rural customers, the public benefit charge shall  
5 be increased as indicated under subsection (d)(4).

6 “(f) STATE AND TRIBAL GOVERNMENT PARTICIPA-  
7 TION.—(1) Not later than 90 days before the beginning  
8 of each calendar year, each State and tribal government  
9 seeking to participate in the Fund shall submit to the  
10 Board a request for payments from the Fund for the cal-  
11 endar year in an amount not in excess of 50 percent of  
12 the State or tribal government’s estimated expenditures  
13 for eligible public purpose programs for the year, except  
14 as provided under rules issued under subsection (d)(4) for  
15 rural assistance programs.

16 “(2) To the extent a State or tribal government gen-  
17 erates all or part of its funds for eligible public purpose  
18 programs through a wires charge on an ultimate consum-  
19 er’s receipt of electric energy, the State or tribal govern-  
20 ment shall impose the charge on a non-discriminatory  
21 basis on all consumers within the State or tribal govern-  
22 ment jurisdiction.

23 “(3) Notwithstanding subsection (a)(5)—

24 “(A) Alaska may participate in the Fund as a  
25 State if it certifies to the Board that all generators

1 within Alaska with a nameplate capacity exceeding  
2 one megawatt shall pay into the Fund at the rate  
3 calculated by the Board during the year in which  
4 Alaska seeks matching funds, and

5 “(B) Hawaii may participate in the Fund as a  
6 State if it certifies to the Board that all generators  
7 within Hawaii with a nameplate capacity exceeding  
8 one megawatt shall pay into the Fund at the rate  
9 calculated by the Board during the year in which  
10 Hawaii seeks matching funds.

11 “(g) DISBURSAL FROM THE FUND.—(1) The Board  
12 shall review State and tribal government submissions and  
13 determine whether programs designated by the State or  
14 tribal government are eligible public purpose programs,  
15 using the criteria prescribed under section (d), and wheth-  
16 er there is reasonable assurance that spending qualifying  
17 as State or tribal government matching funds will occur.

18 “(2) The fiscal agent shall disburse amounts in the  
19 Fund to participating States and tribal governments to  
20 carry out eligible public purpose programs in accordance  
21 with this subsection and rules prescribed under subsection  
22 (d).

23 “(3) To the extent the aggregate amount of funds  
24 requested by the States and tribal governments exceeds  
25 the maximum aggregate revenues eligible to be collected

1 under subsection (e) and deposited as payment for Renew-  
2 able Energy Credits under section 611, the fiscal agent  
3 shall reduce each participating State and tribal govern-  
4 ment's request proportionately.

5       “(4)(A) The fiscal agent shall disburse amounts for  
6 a calendar year from the Fund to a State or tribal govern-  
7 ment in twelve equal monthly payments beginning two  
8 months after the beginning of the calendar year. Amounts  
9 disbursed may not exceed the lesser of the State or tribal  
10 government's request for the fiscal year, after any reduc-  
11 tion required under paragraph (3), or 50 percent of the  
12 State or tribal government's documented expenditures for  
13 eligible public purpose programs for a calendar year, ex-  
14 cept as provided under rules issued under subsection  
15 (d)(4) for rural assistance programs.

16       “(B) The fiscal agent shall make distributions to the  
17 State or tribal government or to an entity designated by  
18 the State or tribal government to receive payments. The  
19 State or tribal government may designate a nonregulated  
20 utility as an entity to receive payments under this section.

21       “(C) A State or tribal government may use amounts  
22 received only for the eligible public purpose programs the  
23 State or tribal government designated in its submission  
24 to the Board and the Board determined eligible.

1       “(h) REPORT.—One year before the date of expira-  
2 tion of this section, the Secretary shall report to Congress,  
3 after consultation with the Board, whether a public bene-  
4 fits fund should continue to exist.

5       “(i) SUNSET.—This section expires at midnight on  
6 December 31 of the fifteenth year after the year the Com-  
7 prehensive Electricity Competition Act is enacted, except  
8 with regard to charges and funding for rural assistance  
9 programs.”.

10 **SEC. 302. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

11       (a) STANDARD.—PURPA is amended by adding after  
12 section 610, as added by section 301 of this Act, the fol-  
13 lowing new section:

14 **“SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

15       “(a) MINIMUM RENEWABLE GENERATION REQUIRE-  
16 MENT.—(1) For each calendar year beginning with 2000,  
17 a retail electric supplier shall submit to the Secretary Re-  
18 newable Energy Credits in an amount equal to the re-  
19 quired annual percentage, specified in subsection (b), of  
20 the total electric energy sold by the retail electric supplier  
21 to electric consumers in the calendar year. The retail elec-  
22 tric supplier shall make this submission before April 1 of  
23 the following calendar year.



1       “(2) For purposes of this section ‘renewable energy’  
2 means energy produced by solar, wind, geothermal, or bio-  
3 mass.

4       “(3) This section does not preclude a State from re-  
5 quiring additional renewable energy generation in that  
6 State.

7       “(b) REQUIRED ANNUAL PERCENTAGE.—(1) The  
8 Secretary shall determine the required annual percentage  
9 that is to be applied to all retail electric suppliers for cal-  
10 endar years 2000–2004. This required annual percentage  
11 shall be equal to the percent of the total electric energy  
12 sold, during the most recent calendar year for which infor-  
13 mation is available before the calendar year of the enact-  
14 ment of this section, by retail electric suppliers to electric  
15 customers in the United States that is renewable energy.

16       “(2) The Secretary shall determine the required an-  
17 nual percentage for all retail electric suppliers for calendar  
18 years 2005–2009. This percentage shall be above the per-  
19 centage in paragraph (1) and below the percentage in  
20 paragraph (3) and shall be selected to promote a smooth  
21 transition to the level in paragraph (3).

22       “(3) For calendar years 2010–2015, 5.5 percent.

23       “(c) SUBMISSION OF CREDITS.—A retail electric sup-  
24 plier may satisfy the requirements of subsection (a)  
25 through the submission of—

1           “(1) Renewable Energy Credits issued under  
2           subsection (d) for renewable energy generated by the  
3           retail electric supplier in the calendar year for which  
4           Credits are being submitted or any previous calendar  
5           year,

6           “(2) Renewable Energy Credits issued under  
7           subsection (d) to any renewable energy generator for  
8           renewable energy generated in the calendar year for  
9           which Credits are being submitted or a previous cal-  
10          endar year and acquired by the retail electric sup-  
11          plier, or

12          “(3) any combination of Credits under para-  
13          graphs (1) and (2).

14          “(d) ISSUANCE OF CREDITS.—(1) The Secretary  
15          shall establish, not later than one year after the date of  
16          enactment of this section, a program to issue, monitor the  
17          sale or exchange of, and track Renewable Energy Credits.

18          “(2) Under the program, an entity that generates  
19          electric energy through the use of renewable energy may  
20          apply to the Secretary for the issuance of Renewable En-  
21          ergy Credits. The application shall indicate—

22                 “(A) the type of energy used to produce the  
23                 electricity,

24                 “(B) the State in which the electric energy was  
25                 produced, and

1           “(C) any other information the Secretary deter-  
2           mines appropriate.

3           “(3) The Secretary shall issue to an entity one Re-  
4           newable Energy Credit for each kilowatt-hour of electric  
5           energy the entity generates through the use of renewable  
6           energy in any State in 2000 and any succeeding year. To  
7           be eligible for a Renewable Energy Credit, the unit of elec-  
8           tricity generated through the use of renewable energy may  
9           be sold or may be used by the generator. If both renewable  
10          energy and non-renewable energy are used to generate the  
11          electric energy, the Secretary shall issue credits based on  
12          the proportion of renewable energy used. The Secretary  
13          shall identify Renewable Energy Credits by type of genera-  
14          tion and by the State in which the generating facility is  
15          located.

16          “(4) In order to receive a Renewable Energy Credit,  
17          the recipient of a Renewable Energy Credit shall pay a  
18          fee, calculated by the Secretary, in an amount that is  
19          equal to the administrative costs of issuing, recording,  
20          monitoring the sale or exchange of, and tracking the Cred-  
21          it or does not exceed five percent of the dollar value of  
22          the Credit, whichever is lower. The Secretary shall retain  
23          the fee and use it to pay these administrative costs.

24          (5) When a generator sells electric energy generated  
25          through the use of renewable energy to a retail electric

1 supplier under a contract subject to section 210 of this  
2 Act, the retail electric supplier is treated as the generator  
3 of the electric energy for the purposes of this section for  
4 the duration of the contract.

5 (6) The Secretary shall disqualify an otherwise eligi-  
6 ble renewable energy generator from receiving a Renew-  
7 able Energy Credit if the generator has elected to partici-  
8 pate in net metering under section 612.

9 (7) If a generator using renewable energy receives  
10 matching funds under section 610, the Secretary shall re-  
11 duce the number of Renewable Energy Credits the genera-  
12 tor receives under paragraph (3) so that the aggregate  
13 value of those Credits plus the matching funds received  
14 under section 601 equals the aggregate value of the Cred-  
15 its the generator would have received absent this para-  
16 graph. For purposes of this paragraph, the Secretary shall  
17 value a Credit at a price that is representative of the price  
18 of a Credit in private transactions. In no event shall the  
19 Secretary use a price to establish values for purposes of  
20 this paragraph that exceeds the cost cap established under  
21 subsection (f).

22 “(e) SALE OR EXCHANGE.—A Renewable Energy  
23 Credit may be sold or exchanged by the entity to whom  
24 issued or by any other entity who acquires the Credit. A  
25 Renewable Energy Credit for any year that is not used

1 to satisfy the minimum renewable generation requirement  
2 of subsection (a) for that year may be carried forward for  
3 use in another year.

4 “(f) RENEWABLE ENERGY CREDIT COST CAP.—Be-  
5 ginning January 1, 2000, the Secretary shall offer Renew-  
6 able Energy Credit for sale. The Secretary shall charge  
7 1.5 cents for each Renewable Energy Credit sold during  
8 calendar year 2000, and on January 1 of each following  
9 year, the Secretary shall adjust for inflation, based on the  
10 Consumer Price Index, the price charged per Credit for  
11 that calendar year. The Secretary shall deposit in the Pub-  
12 lic Benefits Fund established under section 610 the  
13 amount received from a sale under this subsection. That  
14 amount shall be used for the same purposes as other  
15 amounts in the Public Benefits Fund.

16 “(g) ENFORCEMENT.—The Secretary may bring an  
17 action in the appropriate United States district court to  
18 impose a civil penalty on a retail electric supplier that does  
19 not comply with subsection (a). A retail electric supplier  
20 who does not submit the required number of Renewable  
21 Energy Credits under subsection (a) is subject to a civil  
22 penalty of not more than three times the value of the Re-  
23 newable Energy Credits not submitted. For purposes of  
24 this subsection, the value of a Renewable Energy Credit

1 is the price of a Credit determined under subsection (f)  
2 for the year the Credits were not submitted.

3 “(h) INFORMATION COLLECTION.—The Secretary  
4 may collect the information necessary to verify and  
5 audit—

6 “(1) the annual electric energy generation and  
7 renewable energy generation of any entity applying  
8 for Renewable Energy Credits under this section.

9 “(2) the validity of Renewable Energy Credits  
10 submitted by a retail electric supplier to the Sec-  
11 retary, and

12 “(3) the quantity of electricity sales of all retail  
13 electric suppliers.

14 “(i) SUNSET.—This section expires December 31,  
15 2015.”.

16 (b) DEFINITION.—Section 3 of PURPA is amended  
17 by adding after paragraph (22) as added by section 101  
18 of this Act the following new paragraph:

19 “(23) The term ‘retail electric supplier’ means  
20 a person, State agency, or Federal agency that sells  
21 electric energy to an electric consumer.”.

22 **SEC. 303. NET METERING.**

23 PURPA is amended by adding the following new sec-  
24 tion after section 611 as added by section 302 of this Act:

1 **“SEC. 612. NET METERING FOR RENEWABLE ENERGY.**

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

3 “(1) The term ‘eligible on-site generating facil-  
4 ity’ means a facility on the site of an electric con-  
5 sumer with a peak generating capacity of 20 kilo-  
6 watts or less that is fueled solely by a renewable en-  
7 ergy resource.

8 “(2) The term ‘renewable energy resource’  
9 means solar energy, wind, geothermal, or biomass.

10 “(3) The term ‘net metering service’ means  
11 service to an electric consumer under which elec-  
12 tricity generated by that consumer from an eligible  
13 on-site generating facility and delivered to the dis-  
14 tribution system through the same meter through  
15 which purchased electricity is received may be used  
16 to offset electricity provided by the retail electric  
17 supplier to the electric consumer during the applica-  
18 ble billing period so that an electric consumer is  
19 billed only for the net electricity consumed during  
20 the billing period, but in no event shall the net be  
21 less than zero during the applicable billing period.

22 “(b) REQUIRMENT TO PROVIDE NET METERING  
23 SERVICE.—Each retail electric supplier shall make avail-  
24 able upon request net metering service to any retail elec-  
25 tric consumer whom the supplier currently serves or solie-  
26 its for service.

1       “(c) REQUIREMENT TO PROVIDE INTERCONNEC-  
2 TION.—A distribution utility, as defined in section 609,  
3 shall permit the interconnection to its distribution system  
4 of an on-site generating facility if the facility meets the  
5 safety and power quality standards established by the  
6 Commission.

7       “(d) RULES.—The Commission shall prescribe safety  
8 and power quality standards and rules necessary to carry  
9 out this section. These standards and rules apply to any  
10 interconnections of an on-site generating facility with a  
11 distribution system, regardless of the size of the facility  
12 or the type of fuel used by the facility.

13       “(e) STATE AUTHORITY.—This section does not pre-  
14 clude a State from imposing additional requirements con-  
15 sistent with the requirements in this section. A State may  
16 impose a cap limiting the amount of net metering available  
17 in the State.”.

18 **SEC. 304. REFORM OF SECTION 210 OF PURPA.**

19       Section 210 of PURPA is amended by adding the fol-  
20 lowing new subsection after subsection (l):

21       “(m) REPEAL OF MANDATORY PURCHASE REQUIRE-  
22 MENT.—After the date of enactment of the Comprehensive  
23 Electricity Competition Act, an electric utility shall not be  
24 required to enter into a new contract or obligation to pur-  
25 chase electric energy under this section.”.



1 **TITLE IV—REGULATION OF**  
2 **MERGERS AND CORPORATE**  
3 **STRUCTURE**

4 **SEC. 401. REFORM OF HOLDING COMPANY REGULATION**  
5 **UNDER PUHCA.**

6 Effective 18 months after the enactment of this Act,  
7 the Public Utility Holding Company Act of 1935 is re-  
8 pealed and the following is enacted in its place.

9 **“SECTION 1. SHORT TITLE.**

10 “This Act may be cited as the ‘Public Utility Holding  
11 Company Act of 1998’.

12 **“SEC. 2. DEFINITIONS.**

13 “For purposes of this Act—

14 “(1) the term ‘affiliate’ of a company means  
15 any company 5 percent or more of the outstanding  
16 voting securities of which are owned, controlled, or  
17 held with power to vote, directly or indirectly, by  
18 such company;

19 “(2) the term ‘associate company’ of a company  
20 means any company in the same holding company  
21 system with such company;

22 “(3) the term ‘Commission’ means the Federal  
23 Energy Regulatory Commission;

24 “(4) the term ‘company’ means a corporation,  
25 partnership, association, joint stock company, busi-

1       ness trust, or any organized group of persons,  
2       whether incorporated or not, or a receiver, trustee,  
3       or other liquidating agent of any of the foregoing;

4               “(5) The term ‘electric utility company’ means  
5       any company that owns or operates facilities used  
6       for the generation, transmission, or distribution of  
7       electric energy for sale;

8               “(6) the terms ‘exempt wholesale generator’  
9       and ‘foreign utility company’ have the same mean-  
10      ings as in section 32 and 33, respectively, of the  
11      Public Utility Holding Company Act of 1935, as  
12      those sections existed on the day before the effective  
13      date of this Act;

14              “(7) the term ‘gas utility company’ means any  
15      company that owns or operates facilities used for  
16      distribution at retail (other than the distribution  
17      only in enclosed portable containers, or distribution  
18      to tenants or employees of the company operating  
19      such facilities for their own use and not for resale)  
20      of natural or manufactured gas for heat, light, or  
21      power;

22              “(8) the term ‘holding company’ means—

23                      “(A) any company that directly or indi-  
24                      rectly owns, controls, or holds, with power to  
25                      vote, 10 percent or more of the outstanding vot-

1           ing securities of a public utility company or of  
2           a holding company of any public utility com-  
3           pany; and

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

16                   “(9) the term ‘holding company system’ means  
17          a holding company, together with its subsidiary com-  
18          panies;

19                   “(10) the term ‘jurisdictional rates’ means  
20          rates established by the Commission for the trans-  
21          mission of electric energy, the sale of electric energy  
22          at wholesale in interstate commerce, the transpor-  
23          tation of natural gas, and the sale in interstate com-  
24          merce of natural gas for resale for ultimate public

1 consumption for domestic, commercial, industrial, or  
2 any other use;

3 “(11) the term ‘natural gas company’ means a  
4 person engaged in the transportation of natural gas  
5 in interstate commerce or the sale of such gas in  
6 interstate commerce for resale;

7 “(12) the term ‘person’ means an individual or  
8 company;

9 “(13) the term ‘public utility’ means any person  
10 who owns or operates facilities used for transmission  
11 of electric energy or sales of electric energy at whole-  
12 sale in interstate commerce;

13 “(14) the term ‘public utility company’ means  
14 an electric utility company or a gas utility company;

15 “(15) the term ‘State commission’ means any  
16 commission, board, agency, or officer, by whatever  
17 name designated, of a State, municipality, or other  
18 political subdivision of a State that, under the laws  
19 of such State, has jurisdiction to regulate public util-  
20 ity companies;

21 “(16) the term ‘subsidiary company’ of a hold-  
22 ing company means—

23 “(A) any company, 10 percent or more of  
24 the outstanding voting securities of which are  
25 directly or indirectly owned, controlled, or held

1 with power to vote, by such holding company;  
2 and

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

15 “(17) the term ‘voting security’ means any se-  
16 curity presently entitling the owner or holder thereof  
17 to vote in the direction or management of the affairs  
18 of a company.

19 **“SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS.**

20 “(a) IN GENERAL.—Each holding company and each  
21 associate company thereof shall maintain, and shall make  
22 available to the Commission, such books, accounts,  
23 records, memoranda, and other records as the Commission  
24 deems to be relevant to costs incurred by a public utility  
25 or natural gas company that is an associate company of

1 such holding company and necessary or appropriate for  
2 the protection of utility customers with respect to jurisdic-  
3 tional rates for the transmission of electric energy, the sale  
4 of electric energy at wholesale in interstate commerce, the  
5 transportation of natural gas in interstate commerce, and  
6 the sale in interstate commerce of natural gas for resale  
7 for ultimate public consumption for domestic, commercial,  
8 industrial, or any other use.

9       “(b) AFFILIATE COMPANIES.—Each affiliate of a  
10 holding company or of any subsidiary company of a hold-  
11 ing company shall maintain, and make available to the  
12 Commission, such books, accounts, memoranda, and other  
13 records with respect to any transaction with another affili-  
14 ate, as the Commission deems relevant to costs incurred  
15 by a public utility or natural gas company that is an asso-  
16 ciate company of such holding company and necessary or  
17 appropriate for the protection of utility customers with re-  
18 spect to jurisdictional rates.

19       “(c) HOLDING COMPANY SYSTEMS.— The Commis-  
20 sion may examine the books, accounts, memoranda, and  
21 other records of any company in a holding company sys-  
22 tem, or any affiliate thereof, as the Commission deems rel-  
23 evant to costs incurred by a public utility or natural gas  
24 company within such holding company system and nec-

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

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

10 **“SEC. 4. STATE ACCESS TO BOOKS AND RECORDS.**

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

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

20 “(2) the State commission deems are relevant  
21 to costs incurred by such public utility company; and

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

1       “(b) LIMITATION.—Subsection (a) does not apply to  
2 any person that is a holding company solely by reason of  
3 ownership of one or more qualifying facilities under the  
4 Public Utility Regulatory Policies Act of 1978.

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

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

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

21 **“SEC. 5. EXEMPTION AUTHORITY.**

22       “(a) RULEMAKING.—Not later than 90 days after the  
23 effective date of this Act, the Commission shall promul-  
24 gate a final rule to exempt from the requirements of sec-



1 tion 3 any person that is a holding company, solely with  
2 respect to one or more—

3 “(1) qualifying facilities under the Public Util-  
4 ity Regulatory Policies Act of 1978;

5 “(2) exempt wholesale generators; or

6 “(3) foreign utility companies.

7 “(b) OTHER AUTHORITY.—If, upon application or  
8 upon its own motion, the Commission finds that the books,  
9 records, accounts, memoranda, and other records of any  
10 person are not relevant to the jurisdictional rates of a pub-  
11 lic utility or natural gas company, or if the Commission  
12 finds that any class of transactions is not relevant to the  
13 jurisdictional rates of a public utility or natural gas com-  
14 pany, the Commission shall exempt such person or trans-  
15 action from the requirements of section 3.

16 **“SEC. 6. AFFILIATE TRANSACTIONS.**

17 “Nothing in this Act shall preclude the Commission  
18 or a State commission from exercising its jurisdiction  
19 under otherwise applicable law to determine whether a  
20 public utility company, public utility, or natural gas com-  
21 pany may recover in rates any costs of an activity per-  
22 formed by an associate company, or any costs of goods  
23 or services acquired by such public utility company from  
24 an associate company.

1 **“SEC. 7. APPLICABILITY.**

2 “No provision of this Act shall apply to, or be deemed  
3 to include—

4 “(1) the United States;

5 “(2) a State or any political subdivision of a  
6 State;

7 “(3) any foreign governmental authority not op-  
8 erating in the United States;

9 “(4) any agency, authority, or instrumentality  
10 of any entity referred to in paragraph (1), (2), or  
11 (3); or

12 “(5) any officer, agent, or employee of any en-  
13 tity referred to in paragraph (1), (2), or (3) acting  
14 as such in the course of official duty.

15 **“SEC. 8. EFFECT ON OTHER REGULATIONS.**

16 “Nothing in this Act precludes the Commission or a  
17 State commission from exercising its jurisdiction under  
18 otherwise applicable law to protect utility customers.

19 **“SEC. 9. ENFORCEMENT.**

20 “The Commission shall have the same powers as set  
21 forth in sections 306 through 317 of the Federal Power  
22 Act (16 U.S.C. 825d–825p) to enforce the provisions of  
23 this Act.

24 **“SEC. 10. SAVINGS PROVISIONS.**

25 “(a) IN GENERAL.—Nothing in this Act prohibits a  
26 person from engaging in or continuing to engage in activi-

1 ties or transactions in which it is legally engaged or au-  
2 thorized to engage on the effective date of this Act.

3 “(b) EFFECT ON OTHER COMMISSION AUTHORITY.—  
4 Nothing in this Act limits the authority of the Commission  
5 under the Federal Power Act (16 U.S.C. 791a et seq.)  
6 (including section 301 of that Act) or the Natural Gas  
7 Act (15 U.S.C. 717 et seq.) (including section 8 of that  
8 Act).

9 **“SEC. 11. IMPLEMENTATION.**

10 “Not later than 18 months after the date of enact-  
11 ment of the Comprehensive Electricity Competition Act,  
12 the Commission shall—

13 “(1) promulgate such regulations as may be  
14 necessary or appropriate to implement this Act  
15 (other than section 4); and

16 “(2) submit to the Congress detailed rec-  
17 ommendations on technical and conforming amend-  
18 ments to Federal law necessary to carry out this Act  
19 and the amendments made by this Act.

20 **“SEC. 12. TRANSFER OF RESOURCES.**

21 “All books and records that relate primarily to the  
22 functions transferred to the Commission under this Act  
23 shall be transferred from the Securities and Exchange  
24 Commission to the Commission.

1 **“SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated such funds  
3 as may be necessary to carry out this Act.

4 **“SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL  
5 POWER ACT.**

6 “Section 318 of the Federal Power Act (16 U.S.C.  
7 825q) is repealed.”.

8 **SEC. 402. ELECTRIC COMPANY MERGERS.**

9 Section 203(a) of the FPA is amended by—

10 (1) striking “public utility” each time it ap-  
11 pears and inserting in its place “person or electric  
12 utility company”;

13 (2) inserting after the first sentence the follow-  
14 ing: “Except as the Commission otherwise provides,  
15 a holding company in a holding company system  
16 that includes an electric utility company shall not,  
17 directly or indirectly, purchase, acquire, or take any  
18 security of an electric utility company or of a hold-  
19 ing company in a holding company system that in-  
20 cludes an electric utility company, without first se-  
21 curing an order of the Commission authorizing it to  
22 do so.”;

23 (3) striking “hearing” in the last sentence and  
24 inserting “oral or written presentation of views”;  
25 and

1           (4) adding at the end the following: “For pur-  
 2           poses of this subsection, the terms ‘electric utility  
 3           company,’ ‘holding company’, and ‘holding company  
 4           system’ have the meaning given them in section 2 of  
 5           the Public Utility Holding Company Act of 1998.  
 6           Notwithstanding section 201(b)(1), generation facili-  
 7           ties are subject to the jurisdiction of the Commission  
 8           for purposes of this section, except as the Commis-  
 9           sion otherwise may provide.”.

10 **SEC. 403. REMEDIAL MEASURES FOR MARKET POWER.**

11           The FPA is amended by adding the following new  
 12 section after section 216 as added by section 203 of this  
 13 Act:

14 **“SEC. 217. REMEDIAL MEASURES FOR MARKET POWER.**

15           “(a) DEFINITIONS.—As used in this section—

16           (1) ‘market power’ means the ability of an elec-  
 17 tric utility profitably to maintain prices above com-  
 18 petitive levels for a significant period of time, and

19           “(2) ‘notice of retail competition’ has the mean-  
 20 ing provided under section 3(22) of the Public Util-  
 21 ity Regulatory Policies Act of 1978.

22           “(b) COMMISSION JURISDICTIONAL SALES.—(1) If  
 23 the Commission determines that there are markets in  
 24 which a public utility that owns or controls generation fa-  
 25 cilities has market power in sales of electric energy for

1 resale in interstate commerce, the Commission shall order  
2 that utility to submit a plan for taking necessary actions  
3 to remedy its market power, which may include, but is  
4 not limited to, conditions respecting operation or dispatch  
5 of generation, independent operation of transmission fa-  
6 cilities, or divestiture of ownership of one or more genera-  
7 tion facilities.

8       “(2) In consultation with the Attorney General and  
9 the Federal Trade Commission, the Commission shall re-  
10 view the plan to determine if its implementation would  
11 adequately mitigate the adverse competitive effects of  
12 market power. The Commission may approve the plan  
13 with or without modification. The plan takes effect upon  
14 approval by the Commission. Notwithstanding any State  
15 law, regulation, or order to the contrary and notwithstand-  
16 ing any other provision of this Act or any other law, the  
17 Commission has jurisdiction to order divestiture or other  
18 transfer of control of generation assets pursuant to the  
19 plan.

20       “(c) STATE JURISDICTIONAL SALES.—(1) If a State  
21 commission that has filed a notice of retail competition  
22 has reason to believe that an electric utility doing business  
23 in the State has market power, the State commission may  
24 apply for an order under this section.

1           “(2) If, after receipt of such an application and after  
2 notice and opportunity for a hearing, the Commission de-  
3 termines that the electric utility has market power in the  
4 sales of electric energy sold at retail in the State, this mar-  
5 ket power would adversely affect competition in the State,  
6 and the State commission lacks authority to effectively  
7 remedy such market power, the Commission may order the  
8 electric utility to submit a plan for taking necessary ac-  
9 tions to remedy the electric utility’s market power. These  
10 actions may include conditions respecting operation or dis-  
11 patch of generation, competitive procurement of all gen-  
12 eration capacity or energy, independent operation of trans-  
13 mission facilities, or divestiture of ownership of one or  
14 more generation facilities of the electric utility.

15           “(3) After consultation with the Attorney General  
16 and the Federal Trade Commission, the Commission may  
17 approve the plan with or without modification. The plan  
18 shall take effect upon approval by the Commission.

19           “(4) Notwithstanding any State law, regulation, or  
20 order to the contrary and notwithstanding any other provi-  
21 sion of this act or any other law, the Commission has ju-  
22 risdiction to order divestiture or other transfer of control  
23 of generation assets pursuant to the plan.”.

1                   **TITLE V—ELECTRIC**  
2                   **RELIABILITY**

3 **SEC. 501. ELECTRIC RELIABILITY ORGANIZATION AND**  
4                   **OVERSIGHT.**

5           (a) The FPA is amended by adding the following new  
6 section after section 217 as added by section 403 of this  
7 Act:

8 **“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND**  
9                   **OVERSIGHT.**

10           “(a) DEFINITION.—As used in this section:

11                   “(1) The term ‘bulk-power system’ means all  
12 facilities and control systems necessary for operating  
13 the interconnected transmission grids, including  
14 high-voltage transmission lines; substations; control  
15 centers; communications, data, and operations plan-  
16 ning facilities; and generating units necessary to  
17 maintain transmission system reliability.

18                   “(2) The term ‘electric reliability organization’  
19 or ‘organization’ means the organization registered  
20 by the Commission under subsection (d)(4).

21                   “(3) The term ‘system operator’ means any en-  
22 tity that operates or is responsible for the operation  
23 of the bulk-power system, including control area op-  
24 erators, independent system operators, transmission



1 companies, transmission system operators, and re-  
2 gional security coordinators.

3 “(4) The term ‘user of the bulk-power system’  
4 means any entity that sells, purchases, or transmits  
5 electric power over the bulk-power system; owns, op-  
6 erates or maintains facilities of the bulk-power sys-  
7 tem; or is a system operator.

8 “(b) COMMISSION AUTHORITY.—(1) The Commission  
9 has jurisdiction over the electric reliability organization,  
10 all system operators, and all users of the bulk-power sys-  
11 tem for purposes of approving and enforcing compliance  
12 with standards in the United States.

13 “(2) The Commission may register an electric reliability  
14 organization and approve and oversee the activities in the  
15 United States of that electric reliability organization.

16 “(c) COMPLIANCE WITH EXISTING RELIABILITY  
17 STANDARDS.—A user of the bulk-power system shall com-  
18 ply with standards established by the North American  
19 Electric Reliability Council and the regional reliability  
20 councils that exist on the date of enactment of the Com-  
21 prehensive Electricity Competition Act, consistent with  
22 any agreement entered into under subsection (f). Each  
23 standard remains in effect unless modified under this sub-  
24 section or superseded by standards approved under sub-  
25 section (e). The Commission, upon its own motion or upon

1 request and consistent with any agreements entered into  
2 pursuant to subsection (f), may modify or suspend the ap-  
3 plication of a standard and may enforce a standard exer-  
4 cising the same authority that the electric reliability orga-  
5 nization may exercise under subsection (k). The North  
6 American Electric Reliability Council and the regional reli-  
7 ability councils may monitor compliance with these stand-  
8 ards.

9       “(d) ORGANIZATION REGISTRATION AND ESTABLISH-  
10 MENT OF STANDARDS.—(1) Not later than 90 days after  
11 the date of enactment of this section, the Commission  
12 shall issue proposed rules specifying the procedures and  
13 requirements for an organization to apply for registration  
14 and file existing reliability standards. The Commission  
15 shall provide adequate opportunity for comment on the  
16 proposed rules. The Commission shall issue final rules  
17 under this subsection within 180 days after the date of  
18 enactment of this section.

19       “(2) Following the issuance of final Commission rules  
20 under paragraph (1), an electric reliability organization  
21 may apply for registration with the Commission. The orga-  
22 nization shall include in its application its governance,  
23 procedures, and funding mechanism, and shall file the  
24 standards in effect under subsection (c).

1       “(3) The Commission shall provide public notice of  
2 the application and the standards filed under this sub-  
3 section and afford interested parties an opportunity to  
4 comment on the application and filing.

5       “(4) The Commission shall register the organization  
6 if the Commission determines that the organization—

7           “(A) has the ability to provide for an adequate  
8 level of reliability of the bulk-power system;

9           “(B) permits voluntary membership to any  
10 users of the bulk-power system or interested cus-  
11 tomer class or public interest group;

12           “(C) assures fair representation of its members  
13 in the selection of its directors and fair management  
14 of its affairs, taking into account the need for effi-  
15 ciency and effectiveness in decisionmaking and oper-  
16 ations and the requirements for technical com-  
17 petency in the development of standards and the ex-  
18 ercise of oversight of the reliability system, and  
19 assures that no single class of market participants  
20 has the ability to control the organization’s dis-  
21 charge of its responsibilities;

22           “(D) assesses reasonable dues, fees, or other  
23 charges necessary to support the organization and  
24 the purposes of this section and has a funding mech-  
25 anism that is fair and not unduly discriminatory;

1           “(E) establishes procedures for standards devel-  
2           opment that provide reasonable notice and oppor-  
3           tunity for public comment, taking into account the  
4           need for efficiency and effectiveness in decision-  
5           making and operations and the requirements for  
6           technical competency in the development of stand-  
7           ards;

8           “(F) establishes fair and impartial procedures  
9           for enforcement of standards, including penalties;  
10          limitation of activity, function, or operations; or  
11          other appropriate sanctions;

12          “(G) establishes procedures for notice and op-  
13          portunity for public observation of all meetings, ex-  
14          cept that the procedures for public observation may  
15          include alternative procedures for emergencies or for  
16          the discussion of information the directors determine  
17          should take place in closed session, including the dis-  
18          cussion of information with respect to proposed en-  
19          forcement or disciplinary action; and

20          “(H) addresses other matters that the Commis-  
21          sion considers necessary or appropriate.

22          “(5) The Commission shall approve only one electric  
23          reliability organization. If the Commission receives timely  
24          applications from two or more applicants that satisfy the  
25          requirements of this subsection, the Commission shall ap-

1 prove only the application it concludes will best ensure a  
2 reliable bulk-power system.

3       “(e) REVIEW AND CHANGES OR MODIFICATIONS TO  
4 STANDARDS.—(1) The Commission shall review the stand-  
5 ards submitted under subsection (d)(2), concurrent with  
6 its review of the application under subsection (d), and each  
7 standard remains effective if the Commission determines  
8 that it is just, reasonable, and not unduly discriminatory  
9 or preferential; is in the public interest; and provides for  
10 an adequate level of reliability of the bulk-power system.

11       “(2) With respect to a standard that the Commission  
12 determines should not remain effective under paragraph  
13 (1), the Commission shall refer that standard to the elec-  
14 tric reliability organization for development of a new or  
15 modified standard under the organization’s procedures as  
16 approved by the Commission.

17       “(3)(A) The electric reliability organization shall file  
18 with the Commission any new standard developed under  
19 paragraph (2) or a new standard or modification of a  
20 standard effective under paragraph (1) for review and ap-  
21 proval. A new standard or modification does not take ef-  
22 fect unless the Commission determines, after notice and  
23 opportunity for comment, that the standard or modifica-  
24 tion is just, reasonable, and not unduly discriminatory or  
25 preferential; is in the public interest; and provides for an

1 adequate level of reliability of the bulk-power system, tak-  
2 ing into account the purposes of this section to assure reli-  
3 ability of the bulk-power system and giving due weight to  
4 the technical competency of the registered electric reliabil-  
5 ity organization, and is consistent with any agreement en-  
6 tered into pursuant to subsection (f).

7       “(B) Any standard or modification that does not be-  
8 come effective under this paragraph shall be referred to  
9 the electric reliability organization for development of a  
10 new or modified standard under the organization’s proce-  
11 dures as approved by the Commission.

12       “(C) The Commission, on its own motion, may re-  
13 quire that the electric reliability organization develop a  
14 new or revised standard if the Commission considers a new  
15 or revised standard necessary or appropriate to further the  
16 purposes of this section. The organization shall file the  
17 new or revised standard in accordance with this para-  
18 graph.

19       “(D) On its own motion or at the request of the elec-  
20 tric reliability organization, the Commission may develop  
21 and, consistent with any agreement under subsection (f),  
22 require immediate implementation by the organization of  
23 a new or modified standard if it determines that imme-  
24 diate implementation is required to avoid a significant dis-  
25 ruption of reliability that would affect public safety or wel-

1 fare. If immediate implementation is required, the Com-  
2 mission shall not delay implementation for notice and com-  
3 ment but shall publish the standard for notice and com-  
4 ment in a timely manner.

5 “(4) A user of the bulk power system shall comply  
6 with any new or modified standard that takes effect under  
7 paragraph (1) or (3).

8 “(f) COORDINATION WITH CANADA AND MEXICO.—  
9 The United States may enter into international agree-  
10 ments with the governments of Canada and Mexico to pro-  
11 vide for effective compliance with standards and to provide  
12 for the effectiveness of the electric reliability organization  
13 in carrying out its mission and responsibilities.

14 “(g) CHANGES IN ORGANIZATION PROCEDURES,  
15 GOVERNANCE, OR FUNDING.—(1) The electric reliability  
16 organization shall file with the Commission any proposed  
17 change in its procedures, governance, or funding and ac-  
18 companying the filing with an explanation of the basis and  
19 purpose for the change.

20 “(2)(A) A proposed procedural change may take ef-  
21 fect 90 days after filing with the Commission if the  
22 change—

23 “(i) constitutes a statement of policy, practice,  
24 or interpretation with respect to the meaning, ad-

1       ministration, or enforcement of an existing proce-  
2       dure; or

3               “(ii) is concerned solely with administration of  
4       the organization.

5 A proposed procedural change that does not qualify under  
6 clause (i) or (ii) takes effect only upon a finding by the  
7 Commission that the change is just, reasonable, not pref-  
8 erential, and in the public interest.

9       “(B) The Commission, by order, either upon com-  
10      plaint or upon its own motion, may suspend an existing  
11      procedure or procedural change if it determines the pro-  
12      cedure or the proposed change is unjust, unreasonable, un-  
13      duly discriminatory or preferential, or is otherwise not in  
14      the public interest.

15       “(3) A change in the organization’s governance or  
16      funding does not take effect unless the Commission finds  
17      that the change is consistent with any agreement under  
18      subsection (f) and is just, reasonable, not unduly discrimi-  
19      natory or preferential, and in the public interest.

20       “(4) The Commission may require that the electric  
21      reliability organization amend its procedures, governance,  
22      or funding if the Commission considers the amendment  
23      necessary or appropriate to ensure the fair administration  
24      of the organization, conform the organization to the re-  
25      quirements of this section, or further the purposes of this



1 section, consistent with any agreement entered into under  
2 subsection (f). The organization shall file the amendment  
3 in accordance with paragraph (1).

4 “(h) ORGANIZATION DELEGATIONS OF AUTHOR-  
5 ITY.—(1) The organization may enter into an agreement  
6 under which it may delegate some or all of its authority  
7 to any person.

8 “(2) The organization shall file with the Commission  
9 any agreement entered into under this subsection and any  
10 information the Commission requires with respect to the  
11 person to whom authority is to be delegated. The Commis-  
12 sion may approve the agreement, following public notice  
13 and an opportunity for comment, if it finds that the agree-  
14 ment is consistent with the requirements of this section.  
15 The agreement shall not take effect without Commission  
16 approval.

17 “(3)(A) The Commission may direct a modification  
18 to or suspend an agreement entered into under this sub-  
19 section if it determines that—

20 “(i) the person to whom authority is delegated  
21 no longer has the capacity to carry out effectively or  
22 efficiently the person’s implementation responsibil-  
23 ities under that agreement, or

24 “(ii) the rules, practices, or procedures of the  
25 person to whom authority is delegated no longer pro-

1       vide for fair and impartial discharge of the person's  
2       implementation responsibilities under the agreement.

3       “(B) If the agreement is suspended, the electric reli-  
4       ability organization shall assume the previously delegated  
5       responsibilities.

6       “(i) ORGANIZATION MEMBERSHIP.—Every system  
7       operator shall be a member of the electric reliability orga-  
8       nization. The organization rules shall provide for vol-  
9       untary membership to other users of the bulk-power sys-  
10      tem and any interested customer class or public interest  
11      group. A person required to become a member of the orga-  
12      nization who fails to do so is subject to sections 314 and  
13      316A of this Act upon notification from the organization  
14      to the Commission.

15      “(j) FAILURE TO APPLY FOR REGISTRATION.—(1) If  
16      an organization fails to apply for registration with the  
17      Commission within six months after the issuance date of  
18      final Commission rules for such a filing, or the Commis-  
19      sion does not register an agreement within twelve months  
20      after the issuance date of final Commission rules for such  
21      filing, the Commission shall convene a process to register  
22      an electric reliability organization.

23      “(2) Until an electric reliability organization is reg-  
24      istered, the Commission has the same authority to enforce

1 existing or modified standards that the electric reliability  
2 organization has under subsection (k).

3 “(k) DISCIPLINARY ACTION AND PENALTIES.—(1)  
4 Consistent with the range of actions approved by the Com-  
5 mission under subsection (d)(4)(F), the electric reliability  
6 organization may impose a penalty, take injunctive action,  
7 or impose other disciplinary action the organization finds  
8 appropriate against a user of the bulk-power system lo-  
9 cated in the United States if the organization finds, after  
10 notice and opportunity for a hearing, that the user has  
11 violated an organization procedure or standard.

12 “(2) An action taken under subparagraph (1) takes  
13 effect 30 days after the finding unless the Commission,  
14 on its own motion or upon application by the user of the  
15 bulk-power system who was the subject of the action, sus-  
16 pends the action. The action shall remain in effect or re-  
17 main suspended until the Commission, after notice and op-  
18 portunity for comment, sets aside, modifies, or reinstates  
19 the action.

20 “(3) The Commission, on its own motion, may impose  
21 a penalty, issue an injunction, or impose other disciplinary  
22 action the Commission finds appropriate against a user  
23 of the bulk power system located in the United States if  
24 the Commission finds, after notice and opportunity for a

1 hearing, that the user has violated a procedure or stand-  
2 ard of the electric reliability organization.

3 “(l) ADEQUACY, RELIABILITY, AND REPORTS.—The  
4 electric reliability organization shall conduct periodic as-  
5 sessments of the reliability and adequacy of the inter-  
6 connected bulk-power system in North America and shall  
7 report annually to the Commission its findings and rec-  
8 ommendations for monitoring or improving system reli-  
9 ability or adequacy.”.

10 (b) Sections 316 and 316A of the FPA are amended  
11 by striking “or 214” each place it appears and inserting  
12 “214, or 218”.

13 **SEC. 502. STATUTORY PRESUMPTION.**

14 (a) FEDERAL POWER ACT.—Any reliability standard  
15 developed by the reliability organization, and any actions  
16 taken in good faith to comply with a reliability standard  
17 under section 218 of the FPA, are rebuttably presumed  
18 just and reasonable and not unduly discriminatory or pref-  
19 erential for purposes of that Act.

20 (b) ANTITRUST LAWS.—Notwithstanding section 703  
21 of this Act, the following activities are rebuttably pre-  
22 sumed to be in compliance with the antitrust laws of the  
23 United States:

24 (1) activities undertaken by the electric reliabil-  
25 ity organization under section 218 of the FPA or

1 delegated person operating under an agreement in  
2 effect under section 218(h) of the FPA, and

3 (2) activities of a member of the electric reli-  
4 ability organization in pursuit of organization objec-  
5 tives under section 218 of the FPA undertaken in  
6 good faith under the rules of the organization.

## 7 **TITLE VI—ENVIRONMENTAL** 8 **PROTECTION**

### 9 **SEC. 601. NITROGEN OXIDES CAP AND TRADE PROGRAM.**

10 (a) PURPOSE.—The purpose of this section is to fa-  
11 cilitate the implementation of a regional strategy for re-  
12 ducing ambient concentrations of ozone through regional  
13 reductions in emissions of NO<sub>x</sub>.

14 (b) DEFINITIONS.—For purposes of this section—

15 (1) the term “Administrator” means the Ad-  
16 ministrator of the Environmental Protection Agency,

17 (2) the term “NO<sub>x</sub>” means oxides of nitrogen,

18 (3) the term “NO<sub>x</sub> allowance” means an au-  
19 thorization to emit a specified amount of NO<sub>x</sub> into  
20 the atmosphere, and

21 (4) the term “NO<sub>x</sub> allowance cap and trade  
22 program” means a program under which, in accord-  
23 ance with regulations issued by the Administrator,  
24 the Administrator establishes the maximum number  
25 of NO<sub>x</sub> allowances that may be allocated for speci-

1       fied control periods, allocates or authorizes a State  
2       to allocate NO<sub>x</sub> allowances, allows the transfer of  
3       NO<sub>x</sub> allowances for use in States subject to such a  
4       program, requires monitoring and reporting of NO<sub>x</sub>  
5       emissions that meet the requirements of section 412  
6       of the Clean Air Act, and prohibits, and requires  
7       penalties and offsets for, any emissions of NO<sub>x</sub> in  
8       excess of the number of NO<sub>x</sub> allowances held.

9       (c) PROGRAM IMPLEMENTATION.—(1) If the Admin-  
10       istrator determines under section 110(a)(2)(D) of the  
11       Clean Air Act that any source or other type of emissions  
12       activity in a State emits NO<sub>x</sub> in amounts that will contrib-  
13       ute significantly to nonattainment in, or interfere with  
14       maintenance by, any other State with respect to any na-  
15       tional ambient air quality standard for ozone, the Admin-  
16       istrator shall establish by regulation, within 12 months of  
17       the determination for primary standards and as expedi-  
18       tiously as practicable for secondary standards, and shall  
19       administer a NO<sub>x</sub> allowance cap and trade program in  
20       all States in which such a source or other type of emissions  
21       activity is located.

22       (2) Any NO<sub>x</sub> allowance cap and trade program shall  
23       contribute to providing for emissions reductions that miti-  
24       gate adequately the contribution or interference and shall  
25       be taken into account by the Administrator in determining

1 compliance with section 110(a)(2)(D) of the Clean Air  
2 Act.

3 (3) For purposes of sections 113, 114, 304, and 307  
4 of the Clean Air Act, regulations promulgated under this  
5 section shall be treated as regulations promulgated under  
6 title IV of the Clean Air Act (entitled Acid Deposition  
7 Control). A requirement of regulations promulgated under  
8 this section is considered an “emission standard” or  
9 “emission limitation” within the meaning of section 302  
10 of the Clean Air Act and an “emission standard or limita-  
11 tion under this Act” within the meaning of section 304  
12 of the Clean Air Act.

## 13 **TITLE VII—OTHER REGULATORY** 14 **PROVISIONS**

### 15 **SEC. 701. TREATMENT OF NUCLEAR DECOMMISSIONING** 16 **COSTS IN BANKRUPTCY**

17 Section 523 of title 11, United States Code (section  
18 523 of the Bankruptcy Code of 1978), is amended by add-  
19 ing the following new subsection after subsection (e):

20 “(f) Obligations to comply with, and claims resulting  
21 from compliance with, Nuclear Regulatory Commission  
22 regulations or orders governing the decontamination and  
23 decommissioning of nuclear power reactors licensed under  
24 section 103 or 104 b. of the Atomic Energy Act of 1954  
25 (42 U.S.C. 2133 and 2134(b)) shall be given priority and

1 shall not be rejected, avoided, or discharged under title  
 2 11 of the United States Code or in any liquidation, reorga-  
 3 nization, receivership, or other insolvency proceeding  
 4 under State or Federal law.”.

5 **SEC. 702. STUDY OF IMPACTS OF COMPETITION IN ELEC-**  
 6 **TRICITY MARKETS BY THE ENERGY INFOR-**  
 7 **MATION ADMINISTRATION.**

8 Section 205 of the Department of Energy Organiza-  
 9 tion Act (42 U.S.C. 7135) is amended by adding after sub-  
 10 section (l) the following new subsection:

11 “(m)(1) The Administrator shall collect and publish  
 12 information regarding the impact of wholesale and retail  
 13 competition on the electric power industry. The Adminis-  
 14 trator shall prescribe forms for collecting this information.  
 15 Information to be collected may include, but is not limited  
 16 to—

17 “(A) the ownership and control of electric gen-  
 18 eration, transmission, distribution, and related facili-  
 19 ties;

20 “(B) electricity consumption and demand;

21 “(C) the transmission, distribution, and delivery  
 22 of electric services;

23 “(D) the price of competitive electric services;

24 “(E) the costs, revenues, and rates of regulated  
 25 electric services;



1           “(F) the reliability of the electric generation  
2           and transmission system, including the availability  
3           of adequate generation and transmission capacity to  
4           meet load requirements, generation and transmission  
5           capacity additions and retirements, and fuel suppli-  
6           ers and stocks for electric generation;

7           “(G) electric energy efficiency programs and  
8           services and their impacts on energy consumption;

9           “(H) the development and use of renewable  
10          electric energy resources; and

11          “(I) research, development and demonstration  
12          activities to improve the nation’s electric system.

13          “(2) In carrying out the purposes of this subsection,  
14          the Administrator shall take into account reporting bur-  
15          dens and the protection of proprietary information as re-  
16          quired by law.”.

17          **SEC. 703. ANTITRUST SAVINGS CLAUSE.**

18          This Act and the amendments made by this Act shall  
19          not be construed to modify, impair, or supersede the oper-  
20          ation of the antitrust laws. For purposes of this section,  
21          “antitrust laws” has the meaning given it in subsection  
22          (a) of the first section of the Clayton Act (15 U.S.C.  
23          12(a)), except that it includes section 5 of the Federal  
24          Trade Commission Act (15 U.S.C. 45), to the extent that  
25          section 5 applies to unfair methods of competition.

1 **SEC. 704. ELIMINATION OF ANTITRUST REVIEW BY THE NU-**  
2 **CLEAR REGULATORY COMMISSION.**

3 Section 105 of the Atomic Energy Act of 1954 (42  
4 U.S.C. 2135) is amended by adding the following after  
5 subsection e.:

6 “d. Subsection 105 e. does not apply to an application  
7 for a license to construct or operate a utilization or pro-  
8 duction facility under sections 103 or 104 b. following the  
9 date of enactment of this subsection. This Act does not  
10 affect the Commission’s authority to enforce antitrust con-  
11 ditions included in licenses issued under sections 103 or  
12 104 b. before the date of enactment of this subsection.

13 **SEC. 705. ENVIRONMENTAL LAWS SAVINGS CLAUSE.**

14 Nothing in this Act alters or affects environmental  
15 requirements imposed by Federal or State law, including,  
16 but not limited to, the Clean Air Act (42 U.S.C. 7401  
17 et seq.); the Federal Water Pollution Control Act (33  
18 U.S.C. 1251 et seq.); the Comprehensive Environmental  
19 Response, Compensation, and Liability Act of 1980 (42  
20 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C.  
21 791a et seq.); and the Endangered Species Act (16 U.S.C.  
22 1531 et seq.).

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