

106TH CONGRESS
1ST SESSION

H. R. 1587

To encourage States to establish competitive retail markets for electricity, to clarify the roles of the Federal Government and the States in retail electricity markets, to remove certain Federal barriers to competition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 1999

Mr. STEARNS introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Resources, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To encourage States to establish competitive retail markets for electricity, to clarify the roles of the Federal Government and the States in retail electricity markets, to remove certain Federal barriers to competition, 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 “Electric Energy Em-
5 powerment Act of 1999”.

1 **SEC. 2. COMPETITIVE RETAIL ELECTRICITY MARKETS.**

2 (a) PURPOSE.—It is the purpose of this section to
3 ensure that the States have the authority to order electric
4 utilities subject to their jurisdiction to provide trans-
5 mission and local distribution services to retail customers
6 within their States, and to encourage States to proceed
7 expeditiously to enact such legislation as may be necessary
8 to establish competitive retail electricity markets.

9 (b) STATE AUTHORITY TO ORDER RETAIL WHEEL-
10 ING.—(1) Section 201 of the Federal Power Act (16
11 U.S.C. 824) is amended by adding the following new sub-
12 section at the end thereof:

13 “(h) STATE AUTHORITY TO ORDER RETAIL WHEEL-
14 ING.—(1) Subject to the conditions set forth in paragraph
15 (2), notwithstanding any other provision of law, the States
16 have the authority to order electric utilities subject to their
17 jurisdiction to provide nondiscriminatory open access
18 through functionally unbundled transmission and local
19 distribution services, as defined by the Commission by
20 rule, to retail customers within their borders.

21 “(2) CONDITIONS.—

22 “(A) RECIPROCITY CONDITION.—A State shall
23 order an electric utility subject to its jurisdiction to
24 provide nondiscriminatory open access through func-
25 tionally unbundled transmission and local distribu-
26 tion services to retail customers within its borders

1 only on the condition that such services need only be
2 provided to transmit electricity produced in States
3 which have ordered their electric utilities to provide
4 nondiscriminatory open access through functionally
5 unbundled transmission and local distribution serv-
6 ices to retail customers within their borders.

7 “(B) NONREGULATED UTILITIES.—If, as of the
8 date of the enactment of this paragraph, a State has
9 not established ratemaking authority with respect to
10 an electric utility in the State, the State may not—

11 “(i) prohibit the utility from selling
12 electric energy at retail in interstate com-
13 merce in any other State; or

14 “(ii) establish any disincentives to the
15 development in the State of effective com-
16 petition in the market for selling electric
17 energy at retail.

18 Any such utility may sell electric energy at re-
19 tail in interstate commerce in another State
20 only if the utility provides nondiscriminatory
21 open access (including the functional
22 unbundling of services) to the local distribution
23 facilities of the utility and to any transmission
24 facilities of the utility that are not subject to
25 the jurisdiction of the Federal Energy Regu-

1 latory Commission under sections 205 and 206
2 of this Act.”.

3 (c) BYPASS.—(1) Notwithstanding any provision of
4 this Act or any other law, a State or a State regulatory
5 authority (in carrying out its authority to regulate facili-
6 ties used for the local distribution of electric energy or
7 for the provision of local distribution service) may require,
8 as a condition for the purchase by any person or munici-
9 pality of retail electric energy services, the payment of a
10 charge deemed necessary by the State or State regulatory
11 authority for any of the following:

12 (A) To recover costs incurred by an electric
13 utility that become unrecoverable due to the avail-
14 ability of retail electric service choice.

15 (B) To ensure that adequate electric service is
16 available to all customers served by the retail dis-
17 tribution system concerned.

18 (C) To ensure and enhance the reliability of re-
19 tail electric service.

20 (D) To fund assistance to low-income cus-
21 tomers.

22 (E) To encourage environmental, renewable en-
23 ergy, energy efficiency, conservation programs, or
24 any combination of such programs.

1 (F) To provide for retraining of electric employ-
2 ees.

3 (G) To provide payment of all reasonable costs
4 associated with Federal and State requirements re-
5 garding the decommissioning of nuclear generating
6 units.

7 (H) Any combination of the purposes described
8 in subparagraphs (A) through (G).

9 (2) For purposes of this subsection, the term “local
10 distribution service” includes the receipt of electric energy
11 by an end user whether or not such receipt requires the
12 use of local distribution facilities.

13 **SEC. 3. CLARIFICATION OF JURISDICTION.**

14 (a) DECLARATION OF POLICY.—Section 201(a) of
15 the Federal Power Act (16 U.S.C. 824(a)) is amended as
16 follows:

17 (1) By inserting after “transmission of electric
18 energy in interstate commerce” the following: “, in-
19 cluding the unbundled transmission of electric en-
20 ergy sold at retail,”.

21 (2) By striking “such Federal regulation, how-
22 ever, to extend only to those matters which are not
23 subject to regulation by the States.” and inserting
24 the following: “such Federal regulation shall not ex-
25 tend, however, to the bundled retail sale of electric

1 energy or to unbundled local distribution service
2 which are subject to regulation by the States.”.

3 (b) APPLICATION OF PART.—Section 201(b) of the
4 Federal Power Act (16 U.S.C. 824(b)) is amended as fol-
5 lows:

6 (1) By inserting after “the transmission of elec-
7 tric energy in interstate commerce” the following: “,
8 including the unbundled transmission of electric en-
9 ergy sold at retail,”.

10 (2) By adding at the end the following:

11 “(3) The Commission shall, by rule or order, after
12 giving notice to and consulting with the appropriate State
13 regulatory authorities, determine which facilities used for
14 the transmission and delivery of electric energy are used
15 for transmission in interstate commerce subject to the ju-
16 risdiction of the Commission, under this part, and which
17 are used for local distribution subject to State jurisdic-
18 tion.”.

19 (c) DEFINITION OF INTERSTATE COMMERCE.—Sec-
20 tion 201(c) of the Federal Power Act (16 U.S.C. 824(c))
21 is amended by inserting after “outside thereof” the fol-
22 lowing: “(including consumption in a foreign country).”.

23 (d) DEFINITION OF TYPES OF SALES.—Section
24 201(d) of the Federal Power Act (16 U.S.C. 824(d)) is
25 amended as follows:

1 (1) By inserting “(1)” after “(d)”.

2 (2) By adding at the end the following:

3 “(2) For purposes of this section, the term ‘bundled
4 retail sale of electric energy’ means the sale of electric en-
5 ergy to an ultimate consumer in which the generation and
6 transmission service are not sold separately.

7 “(3) The term ‘unbundled local distribution service’
8 means the delivery of electric energy to an ultimate con-
9 sumer if—

10 “(A) the electric energy and the service of deliv-
11 ering it are sold separately, and

12 “(B) the delivery uses facilities for local dis-
13 tribution as determined by the Commission under
14 subsection (b)(3).

15 “(4) The term ‘unbundled transmission of electric en-
16 ergy sold at retail’ means the transmission of electric en-
17 ergy to an ultimate consumer if—

18 “(A) the electric energy and the service of
19 transmitting it are sold separately, and

20 “(B) the transmission uses facilities for trans-
21 mission in interstate commerce as determined by the
22 Commission under subsection (b)(3).”.

1 **SEC. 4. ENCOURAGEMENT OF INDEPENDENT TRANS-**
2 **MISSION SYSTEM OPERATORS.**

3 The creation of Independent Transmission System
4 Operators is encouraged in order to ensure that all sellers
5 and buyers of electricity in the United States have access
6 to nondiscriminatory transmission services. Nothing in
7 this section shall be construed as affecting any authority
8 of the Federal Energy Regulatory Commission under any
9 other provision of law to order the creation of Independent
10 Transmission System Operators.

11 **SEC. 5. APPLICATION OF FERC OPEN ACCESS RULES TO**
12 **NONJURISDICTIONAL ENTITIES.**

13 (a) DEFINITION OF PUBLIC UTILITY.—Section
14 201(e) of the Federal Power Act (16 U.S.C. 824) is
15 amended to read as follows:

16 “(e) The term ‘public utility’ when used in this part
17 or in the part next following means—

18 “(1) any person who owns or operates facilities
19 subject to the jurisdiction of the Commission under
20 this part (other than facilities subject to such juris-
21 diction solely by reasons of section 210, 211, or
22 212); or

23 “(2) any electric utility or Federal power mar-
24 keting agency not otherwise subject to the jurisdic-
25 tion of the Commission under this part, including—

26 “(A) the Tennessee Valley Authority;

1 “(B) a Federal power marketing agency;

2 “(C) a State or any political subdivision of
3 a State or any agency, authority, or instrumen-
4 tality of a State or political subdivision;

5 “(D) a corporation or association that has
6 ever received a loan for the purpose of pro-
7 viding electric service from the Administrator of
8 the Rural Electrification Administration or the
9 Rural Utilities Service under the Rural Elec-
10 trification Act of 1936; or

11 “(E) any corporation or association which
12 is wholly owned, directly or indirectly, by any
13 one or more of the foregoing, but only with re-
14 spect to determining, fixing, and otherwise reg-
15 ulating the rates, terms, and conditions for the
16 transmission of electric energy under this
17 part.”.

18 (b) APPLICATION OF PART TO GOVERNMENT UTILI-
19 TIES.—Section 201(f) of the Federal Power Act (16
20 U.S.C. 824(f)) is amended by striking “No provision” and
21 inserting “Except as provided in subsection (e)(2) and sec-
22 tion 3(23), no provision”.

23 (c) DEFINITION OF TRANSMITTING UTILITY.—Para-
24 graph (23) of section 3 of the Federal Power Act (16
25 U.S.C. 796) is amended to read as follows:

1 “(23) TRANSMITTING UTILITY.—The term ‘transmit-
2 ting utility’ means any electric utility, qualifying cogenera-
3 tion facility, qualifying small power production facility,
4 Federal power marketing agency, or any public utility, as
5 defined in section 201(e)(2), that owns or operates electric
6 power transmission facilities which are used for the sale
7 of electric energy.”.

8 **SEC. 6. REMOVAL OF FEDERAL BARRIERS TO COMPETI-**
9 **TION.**

10 (a) REPEAL OF SECTION 210 OF PURPA.—

11 (1) NEW CONTRACTS.—After the date of the
12 enactment of this Act, no electric utility shall be re-
13 quired to enter into a new contract or obligation to
14 purchase or to sell electric energy or capacity pursu-
15 ant to section 210 of the Public Utility Regulatory
16 Policies Act of 1978.

17 (2) EXISTING RIGHTS AND REMEDIES NOT AF-
18 FECTED.—Nothing in this subsection affects the
19 rights or remedies of any party with respect to the
20 purchase or sale of electric energy or capacity from
21 or to a facility determined to be a qualifying small
22 power production facility or a qualifying cogenera-
23 tion facility under section 210 of the Public Utility
24 Regulatory Policies Act of 1978 pursuant to any
25 contract or obligation to purchase or to sell electric

1 energy or capacity in effect on the date of the enact-
2 ment of this Act, including the right to recover the
3 costs of purchasing such electric energy or capacity.

4 (3) INTERPRETATIONS AND ACTIONS TAKEN.—

5 Nothing in this subsection may be deemed or con-
6 strued as implying congressional ratification of any
7 interpretation of, or any action taken pursuant to,
8 the Public Utility Regulatory Policies Act of 1978.

9 (b) RECOVERY OF COSTS.—In order to assure recov-
10 ery by electric utilities purchasing electric energy or capac-
11 ity from a qualifying facility pursuant to any legally en-
12 forceable obligation entered into or imposed pursuant to
13 section 210 of the Public Utility Regulatory Policies Act
14 of 1978 prior to the date of the enactment of this Act,
15 of all costs associated with such purchases, the Commis-
16 sion shall promulgate and enforce such regulations as may
17 be required to assure that no utility shall be required di-
18 rectly or indirectly to absorb the costs associated with such
19 purchases from a qualifying facility. Such regulations shall
20 be treated as a rule enforceable under the Federal Power
21 Act (16 U.S.C. 791a–825r).

22 (c) DEFINITIONS.—For purposes of this section—

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

1 (2) The term “electric utility” means any per-
2 son, State agency, or Federal agency, which sells
3 electric energy.

4 (3) The term “qualifying small power produc-
5 tion facility” has the same meaning as provided in
6 section 3(17)(C) of the Federal Power Act.

7 (4) The term “qualifying cogeneration facility”
8 has the same meaning as provided in section
9 3(18)(A) of the Federal Power Act.

10 (5) The term “qualifying facility” means either
11 a small power production facility or a qualifying co-
12 generation facility.

13 (d) REPEAL OF THE PUBLIC UTILITY HOLDING
14 COMPANY ACT OF 1935.—The Public Utility Holding
15 Company Act of 1935 is hereby repealed, effective one
16 year from the date of enactment of this Act.

17 **SEC. 7. ENACTMENT OF THE PUBLIC UTILITY HOLDING**
18 **COMPANY REGULATION.**

19 (a) PURPOSE.—Limited Federal regulation is nec-
20 essary to supplement the work of State commissions for
21 the continued rate protection of electric and gas utility
22 consumers. This section is intended to address these con-
23 cerns by providing for Federal and State access to books
24 and records of all companies in a holding company system

1 and for federal oversight of affiliate transactions, to the
2 extent that such activities affect rates.

3 (b) DEFINITIONS.—When used in this section:

4 (1) “Person” means an individual or company.

5 (2) “Company” means a corporation, joint
6 stock company, partnership, association, business
7 trust, organized group of persons, whether incor-
8 porated or not, or a receiver or receivers, trustee or
9 trustees of any of the foregoing.

10 (3) “Electric utility company” means any com-
11 pany that owns or operates facilities used for the
12 generation, transmission, or distribution of electric
13 energy for sale.

14 (4) “Gas utility company” means any company
15 that owns or operates facilities used for distribution
16 at retail (other than the distribution only in enclosed
17 portable containers) of natural or manufactured gas
18 for heat, light or power.

19 (5) “Public utility company” means an electric
20 utility company or gas utility company but does not
21 mean a qualifying facility as defined in the Public
22 Utility Regulatory Policies Act of 1992, or an ex-
23 empt wholesale generator or a foreign utility com-
24 pany defined by the Energy Policy Act of 1992.

1 (6) “Holding company” means (A) any com-
2 pany that directly or indirectly owns, controls, or
3 holds with power to vote, 10 percent or more of the
4 outstanding voting securities of a public utility com-
5 pany or of a holding company of any public utility
6 company; and (B) any person, determined by the
7 Commission, after notice and opportunity for hear-
8 ing, to exercise directly or indirectly (either alone or
9 pursuant to an arrangement or understanding with
10 one or more persons) such a controlling influence
11 over the management or policies of any public utility
12 or holding company as to make it necessary or ap-
13 propriate for the protection of consumers with re-
14 spect to rates that such person be subject to the ob-
15 ligations, duties, and liabilities imposed in this title
16 upon holding companies.

17 (7) “Subsidiary company” of a holding com-
18 pany means (A) any company 10 percent or more of
19 the outstanding voting securities of which are di-
20 rectly or indirectly owned, controlled, or held with
21 power to vote, by such holding company; and (B)
22 any person the management or policies of which the
23 Commission, after notice and opportunity for hear-
24 ing, determines to be subject to a controlling influ-
25 ence, directly or indirectly, by such holding company

1 (either alone or pursuant to an arrangement or un-
2 derstanding with one or more other persons) so as
3 to make it necessary for the protection of consumers
4 with respect to rates that such person be subject to
5 the obligations, duties, and liabilities imposed in this
6 title upon subsidiary companies of holding compa-
7 nies.

8 (8) “Holding company system” means a hold-
9 ing company together with its subsidiary companies.

10 (9) “Associate company” of a company means
11 any company in the same holding company system
12 with such company.

13 (10) “Affiliate” of a company means any com-
14 pany 5 percent or more of whose outstanding voting
15 securities are owned, controlled, or held with power
16 to vote, directly or indirectly, by such company.

17 (11) “Voting security” means any security pres-
18 ently entitling the owner or holder thereof to vote in
19 the direction or management of the affairs of a com-
20 pany.

21 (12) “Commission” means the Federal Energy
22 Regulatory Commission.

23 (13) “State Commission” means any commis-
24 sion, board, agency, or officer, by whatever name
25 designated, of a State, municipality, or other polit-

1 ical subdivision of a State that under the law of such
2 State has jurisdiction to regulate public utility com-
3 panies.

4 (c) GOVERNMENTS.—No provision in this section
5 shall apply to, or be deemed to include: (1) the United
6 States, (2) a State or any political subdivision of a State,
7 (3) any foreign governmental authority not operating in
8 the United States, (4) any agency, authority, or instru-
9 mentality of any of the foregoing, or (5) any officer, agent,
10 or employee of any of the foregoing acting as such in the
11 course of his official duty.

12 (d) EXEMPTIONS.—(1) The provisions of this section
13 shall not apply to any person previously exempted, by rule
14 or order, from regulation under the Public Utility Holding
15 Company Act of 1935 and such person shall continue to
16 be exempted from the provisions of this section, except
17 that the Commission may institute proceedings to termi-
18 nate such exemption if the termination of such exemption
19 would be necessary for regulating the rates of a public
20 utility company and necessary for the protection of con-
21 sumers.

22 (2) The Commission, by rules and regulations, or by
23 order upon application, may conditionally or uncondition-
24 ally exempt any person or transaction, or any class or
25 classes of persons or transactions, from any provision or

1 provisions of this title or of any rule or regulation there-
2 under, if the Commission finds that regulation of such per-
3 son or transaction is not relevant to the rates of a public
4 utility company; in considering whether to grant such an
5 exemption, the Commission shall consult with the affected
6 State commissions.

7 (e) FEDERAL ACCESS TO BOOKS AND RECORDS.—

8 (1) Every holding company and subsidiary company there-
9 of shall maintain, and make available to the Commission,
10 such books, records, accounts, and other documents as the
11 Commission deems relevant to costs incurred by a public
12 utility company that is an associate company of such hold-
13 ing company and necessary or appropriate for the protec-
14 tion of consumers with respect to rates.

15 (2) Every affiliate of a holding company or of any
16 subsidiary company thereof shall maintain, and make
17 available to the Commission, such books, records, ac-
18 counts, and other documents with respect to any trans-
19 action with another affiliate, as the Commission deems rel-
20 evant to costs incurred by a public utility company that
21 is an associate company of such holding company and nec-
22 essary or appropriate for the protection of consumers with
23 respect to rates.

24 (3) The Commission may examine the books and
25 records of any company in a holding company system, or

1 any affiliate thereof, as the Commission deems relevant
2 to costs incurred by a public utility company within such
3 holding company system and necessary or appropriate for
4 the protection of consumers with respect to rates.

5 (4) No member, officer, or employee of the Commis-
6 sion shall divulge any fact or information that may come
7 to his knowledge during the course of examination of
8 books, accounts, or other information as herein before pro-
9 vided, except insofar as he may be directed by the Com-
10 mission or by a court.

11 (f) STATE ACCESS TO BOOKS AND RECORDS.—(1)
12 Upon the written request of a State commission having
13 jurisdiction to regulate a public utility company in a hold-
14 ing company system, and subject to such terms and condi-
15 tions as may be necessary and appropriate to safeguard
16 against unwarranted disclosure to the public of any trade
17 secrets or sensitive commercial information, a holding
18 company or its associate company or affiliate thereof,
19 wherever located, shall produce for inspection such books
20 and records as have been identified in reasonable detail
21 in a proceeding before the State commission, are relevant
22 to costs incurred by such public utility company and are
23 necessary for the effective discharge of the State commis-
24 sion's responsibilities with respect to such proceeding.

1 (2) Nothing in this section shall preempt applicable
2 State law concerning the provision of records and other
3 information, or in any way limit a State's rights to obtain
4 books and records and other information under Federal
5 law, contract, or otherwise.

6 (g) AFFILIATE TRANSACTIONS.—Nothing in this sec-
7 tion shall preclude the Commission or a State commission
8 from exercising its jurisdiction under otherwise applicable
9 law to determine whether a public utility company may
10 recover in rates any costs of an activity performed by an
11 associate company, or any costs of goods or services ac-
12 quired by such public utility company from an associate
13 company.

14 (h) EFFECT ON OTHER REGULATION.—Nothing in
15 this section shall preclude a State commission from exer-
16 cising its jurisdiction under otherwise applicable law to
17 protect utility consumers.

18 (i) ENFORCEMENT.—The Commission shall have the
19 same powers as set forth in Sections 306 through 317 of
20 the Federal Power Act (16 U.S.C. 825d–825p) to enforce
21 the provisions of this section.

22 (j) SAVINGS PROVISION.—Nothing in this section
23 prohibits a person from engaging in activities in which it
24 is legally engaged or authorized to engage on the effective
25 date of the Public Utility Holding Company Act of 1996,

1 provided that it continues to comply with the terms of any
2 authorization, whether by rule or by order.

3 (k) IMPLEMENTATION.—The Commission shall pro-
4 mulgate regulations necessary or appropriate to imple-
5 ment this section not later than one year after the date
6 of the enactment of this Act.

7 (l) RESOURCES.—All books and records that relate
8 primarily to the function hereby vested in the Commission
9 shall be transferred from the Securities and Exchange
10 Commission to the Commission. It is the sense of the Con-
11 gress that, subject to the approval of the Director of the
12 Office of Management and Budget and the Chairman of
13 the Securities and Exchange Commission all personnel of
14 the Office of Public Utility Regulation of the Securities
15 and Exchange Commission as of the date of enactment
16 of this title should be transferred to the Commission.

17 (m) EFFECTIVE DATE.—This section shall take ef-
18 fect one year after the date of enactment of this Act.

19 (n) SEVERABILITY.—If any provision of this section,
20 or the application of such provision to any person or cir-
21 cumstance, shall be held invalid, the remainder of the sec-
22 tion, and the application of such provision to persons or
23 circumstances other than those as to which it is held in-
24 valid, shall not be affected thereby.

1 (o) FEDERAL POWER ACT.—Section 318 of the Fed-
2 eral Power Act (16 U.S.C. 285g) is hereby repealed.

3 **SEC. 8. RELIABILITY COUNCIL.**

4 Part III of the Federal Power Act is amended by in-
5 serting the following after section 319:

6 **“SEC. 319A. ELECTRIC RELIABILITY COUNCIL.**

7 “(a) CONSENT OF CONGRESS; FORMATION AND OP-
8 ERATION OF COUNCIL; PURPOSES.—The consent of Con-
9 gress is hereby given for the formation and operation of
10 the Electric Reliability Council. The Council shall be a
11 body composed of all electricity industry participants, as
12 specified in this section, and shall carry out its functions
13 and responsibilities in accordance with this section. The
14 Council shall continue in force as specified in this section
15 and shall not be construed to be an agency or instrumen-
16 tality of the United States for the purpose of any Federal
17 law. The Council shall provide the best technical electricity
18 industry advice and recommendations to the Commission,
19 regarding the reliability of—

20 “(1) wholesale sales of electricity in interstate
21 commerce, and

22 “(2) the transmission of electricity in interstate
23 commerce,

1 in order to ensure that the competitive restructuring of
2 the Nation's electricity industry does not lessen the high
3 reliability of traditional electric service.

4 “(b) CERTAIN FEDERAL LAWS NOT APPLICABLE.—
5 No Federal law relating to the making of contracts, con-
6 flicts of interest, financial disclosure, open meetings of the
7 Council, advisory committees, disclosure of information,
8 and related matters shall apply to the Council. No con-
9 tract, obligation, or other action of the Council shall be
10 construed as an obligation of the United States or an obli-
11 gation secured by the full faith and credit of the United
12 States. For the purpose of judicial review of any action
13 of the Council or challenging any provision of this Act re-
14 lating to functions and responsibilities of the Council, not-
15 withstanding any other provision of law, the courts of the
16 United States shall have exclusive jurisdiction of any such
17 review.

18 “(c) RESPONSIBILITY.—The Council shall be respon-
19 sible for proposing to the Commission advice and regula-
20 tions setting forth not unduly discriminatory criteria re-
21 specting the reliability of wholesale sales of electricity in
22 interstate commerce and the transmission of electricity in
23 interstate commerce.

1 “(d) MEMBERSHIP.—All electricity suppliers, trans-
2 mitting utilities, and local distribution companies shall be
3 members of the Council.

4 “(e) FUNDING.—The Commission shall determine in
5 advance the reasonable expenses of the Council for each
6 fiscal year, and shall provide funds to pay all such ex-
7 penses by assessing and collecting Council charges from
8 each Council member, on a fair and equitable basis in pro-
9 portion to each member’s annual revenues from electricity-
10 related business activities, and remitting such charges to
11 the Council.

12 “(f) GOVERNANCE.—The Council shall develop a gov-
13 ernance board which shall represent the interests of elec-
14 tric utilities, transmitting utilities, local distribution com-
15 panies, independent electricity generators, electricity con-
16 sumers, and electricity marketers and brokers. Such board
17 shall also have advisory members, one each appointed by
18 each existing electric reliability council. The members, offi-
19 cers, and employees of the Council shall be deemed not
20 to be officers or employees of the United States for any
21 purpose. Pursuant to bylaws adopted by it, the board shall
22 select from among themselves a chairman, and may pro-
23 vide for term limits for board members, staggered terms,
24 eligibility criteria, reasonable administrative procedures,

1 compensation, the assignment and delegation of duties,
2 and similar matters.

3 “(g) ACTION AND AUTHORITY OF THE BOARD.—The
4 board of the Council shall act by a majority vote, a
5 quorum of the board being present. Two-thirds of the
6 board shall constitute a quorum. The board shall have the
7 authority to hire necessary staff, establish offices, procure
8 necessary equipment, and carry out similar administrative
9 duties.

10 “(h) RECOMMENDATION TO THE COMMISSION.—Any
11 reliability criteria duly adopted by the Council shall there-
12 after be proposed by the Council to the Commission, as
13 a petition for a rulemaking under this Act. The Commis-
14 sion, pursuant to this Act, shall consider such petition,
15 provide notice of such petition as a proposed rule, and pro-
16 vide an opportunity for comment thereon, as in any other
17 Commission rulemaking proceeding; and may thereafter,
18 in accordance with this Act, adopt such petition without
19 change as a final rule under this Act; or may amend it
20 in any respect and as amended, adopt it as such a final
21 rule, or may refuse to adopt it. If adopted in any respect,
22 such final rule shall be treated for all purposes, including
23 enforcement, as a rule under this Act.

1 “(i) REPORTING BY THE COUNCIL.—The Council
2 shall submit an annual report to the President, Congress,
3 the Commission, and its members which—

4 “(1) summarizes the condition of the Nation’s
5 electric generation, transmission, and distribution
6 systems;

7 “(2) specifies the need, if any, for improve-
8 ments and upgrades in the Nation’s electric trans-
9 mission system;

10 “(3) specifies steps, if any, that are needed to
11 improve the coordination of the operations of the
12 Nation’s electric generation, transmission, and dis-
13 tribution systems;

14 “(4) identifies regions in which additional gen-
15 erating capacity may be required within 5 and 10
16 yeas; and

17 “(5) beginning 2 years after the establishment
18 of the Council, rates each Council member according
19 to its performance under the established reliability
20 criteria.

21 “(j) REPORTING BY COUNCIL MEMBERS.—All Coun-
22 cil members shall report to the Council any material elec-
23 tric generation, transmission, or distribution system emer-
24 gency, failure, or outage in the time and manner pre-
25 scribed by the Council. For purposes of this section, the

1 Council shall in advance generally identify and define the
2 circumstances constituting such a material system emer-
3 gency, failure, or outage.

4 “(k) STATE AUTHORITY RESPECTING RELI-
5 ABILITY.—Nothing in this section shall limit the authority
6 under otherwise applicable law of any State regulatory au-
7 thority or of any nonregulated electric utility or local dis-
8 tribution company, to ensure, with respect to any sale or
9 service subject to State jurisdiction under section 201(h),
10 the reliability, safety, and effective interconnection and co-
11 ordination of any State regulated or nonregulated electric
12 utility or local distribution company facilities.”.

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