

106TH CONGRESS  
1ST SESSION

# H. R. 1828

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1999

Mr. BLILEY (for himself and Mr. DINGELL) (both by request) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Resources, Agriculture, Transportation and Infrastructure, and the Judiciary, 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

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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.

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- Sec. 402. Federal renewable portfolio standard.
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- Sec. 405. Interconnections for certain facilities.
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#### TITLE VI—ELECTRIC RELIABILITY

- Sec. 601. Electric reliability organization and oversight.
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- Sec. 701. Nitrogen oxides cap and trade program.

#### TITLE VIII—FEDERAL POWER SYSTEMS

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- Sec. 802. Application of Federal Power Act.
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- Sec. 804. TVA power sales.
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- Sec. 811. Definitions.
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- Sec. 821. Definitions.
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TITLE IX—OTHER PROVISIONS

- Sec. 901. Treatment of nuclear decommissioning costs in bankruptcy.
- Sec. 902. Energy Information Administration study of impacts of competition in electricity markets.
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- Sec. 905. Environmental laws savings clause.
- Sec. 906. Generating plant efficiency study.
- Sec. 907. Conforming amendments.

1           **TITLE I—RETAIL ELECTRIC**  
 2   **SERVICE**

3   **SEC. 101. RETAIL COMPETITION.**

4           (a) RETAIL COMPETITION.—The Public Utility Regu-  
 5 latory Policies Act of 1978 (referred to in this Act as  
 6 PURPA) is amended by adding after section 608 the fol-  
 7 lowing new section:

8   **“SEC. 609. RETAIL COMPETITION.**

9           “(a) DEFINITIONS.—For purposes of this section,  
 10 ‘retail stranded costs’ means the amount of net costs in-

1 incurred or obligations undertaken before the date of enact-  
2 ment of the Comprehensive Electricity Competition Act by  
3 a distribution utility that—

4 “(1) were incurred or undertaken by that dis-  
5 tribution utility in order to comply with a legal obli-  
6 gation on that utility to provide electricity to electric  
7 consumers in its service territory, and

8 “(2) cannot be recovered because of implemen-  
9 tation of retail competition under subsection (b).

10 “(b) RETAIL COMPETITION REQUIREMENT.—Except  
11 as provided in subsection (c), not later than January 1,  
12 2003, any distribution utility that has the capability to  
13 deliver electric energy to an electric consumer over its fa-  
14 cilities shall offer open access to those facilities for the  
15 sale of electric energy to the consumer and shall do so  
16 at rates, terms, and conditions that are not unduly dis-  
17 criminatory or preferential, as determined by the appro-  
18 priate regulatory authority.

19 “(c) OPT OUT.—(1) A State regulatory authority  
20 (with respect to a distribution utility for which it has rate-  
21 making authority) may direct a distribution utility not to  
22 implement the retail competition requirement described in  
23 subsection (b) if the State regulatory authority finds, after  
24 notice and opportunity for hearing, that implementation  
25 of the retail competition requirement by the distribution

1 utility will have a negative impact on a class of customers  
2 of that utility that cannot be mitigated.

3 “(2) A nonregulated distribution utility may deter-  
4 mine not to implement the retail competition requirement  
5 described in subsection (b) if it finds, after notice and op-  
6 portunity for hearing, that implementation of the retail  
7 competition requirement by the distribution utility will  
8 have a negative impact on a class of customers of that  
9 utility that cannot be mitigated.

10 “(3) The State regulatory authority (with respect to  
11 a distribution utility for which it has ratemaking author-  
12 ity) or nonregulated distribution utility shall publish the  
13 determination and its basis and shall file a notice with  
14 the Commission of its determination by January 1, 2002.

15 “(d) NOTICE OF RETAIL COMPETITION.—A State  
16 regulatory authority (with respect to a distribution utility  
17 for which it has ratemaking authority) or nonregulated  
18 distribution utility shall file with the Commission a notice  
19 that the distribution utility has implemented or will imple-  
20 ment retail competition consistent with subsection (b).  
21 The notice shall describe the implementation of retail com-  
22 petition. The notice is effective for purposes of section  
23 118, 119, 119A, and 119B of this Act and sections  
24 212(h), 216, and 217 of the Federal Power Act on the  
25 date the notice is filed or the date of implementation of

1 retail competition consistent with subsection (b), which-  
2 ever is later.

3       “(e) CONSIDERATION OF RECOVERY OF RETAIL  
4 STRANDED COSTS.—(1) If a State regulatory authority or  
5 nonregulated distribution utility conducts a public pro-  
6 ceeding before a distribution utility implements retail com-  
7 petition as required under subsection (b), as part of this  
8 proceeding, the State regulatory authority or nonregulated  
9 distribution utility shall consider the appropriate mecha-  
10 nism to address recovery by a distribution utility for which  
11 it has ratemaking authority of retail stranded costs that  
12 are legitimate, prudent, and verifiable, if the utility has  
13 taken all reasonable steps to mitigate the costs, including  
14 assistance for workers who are employed or were most re-  
15 cently employed by an electric utility and who may become  
16 or have become unemployed as a result of the implementa-  
17 tion of retail competition. A charge imposed for purposes  
18 of recovering retail stranded costs or providing assistance  
19 for unemployed workers should be imposed in a manner  
20 so as to minimize to the fullest extent possible any effect  
21 on an electric consumer’s choice among competing sup-  
22 pliers or products.

23       “(2) If a State regulatory authority or nonregulated  
24 utility imposes or allows a charge to recover retail strand-  
25 ed costs under paragraph (1), it shall consider reducing

1 the charge on an electric consumer who uses electric en-  
2 ergy produced on-site when the charge results from the  
3 use of new on-site generation produced by—

4           “(A) a fuel cell,

5           “(B) a facility with an efficiency rate of at least  
6       50 percent,

7           “(C) a facility that uses a single fuel source to  
8       produce at the point of use either electric or me-  
9       chanical power and thermal energy and that has a  
10       combined efficiency rate of at least 50 percent, or

11          “(D) a renewable resource.

12          “(f) ENFORCEMENT.—Any person may bring an ac-  
13       tion in the appropriate State court against a State regu-  
14       latory authority, a distribution utility, or a nonregulated  
15       distribution utility for failure to comply with this section.  
16       Filing an action challenging whether retail competition is  
17       being implemented consistent with subsection (b) makes  
18       a notice of retail competition ineffective for purposes of  
19       section 118, 119, 119A, and 199B of this Act and sections  
20       212(h), 216, and 217 of the Federal Power Act until final  
21       resolution of the action. Notwithstanding any other law,  
22       a court created under Article III of the Constitution does  
23       not have jurisdiction over an action arising under this sec-  
24       tion.”.

1 (b) DEFINITIONS.—Section 3 of PURPA is amended  
2 by adding after paragraph (21) the following new para-  
3 graphs:

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

6 “(23) The term ‘distribution utility’ means a  
7 person, State agency, or any other non-federal entity  
8 that owns or operates a local distribution facility  
9 used for the sale of electric energy to an electric con-  
10 sumer.

11 “(24) The term ‘nonregulated distribution util-  
12 ity’ means a distribution utility not subject to the  
13 ratemaking authority of a State regulatory author-  
14 ity.”

15 **SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**  
16 **MENTS.**

17 PURPA is amended by adding the following new sec-  
18 tion after section 117:

19 **“SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**  
20 **MENTS.**

21 “(a) STATE REGULATORY AUTHORITY.—If a State  
22 regulatory authority files a notice of retail competition  
23 with respect to a distribution utility, beginning on the ef-  
24 fective date of the notice, the State regulatory authority  
25 may prohibit any other distribution utility located in the



1 United States over which it does not have ratemaking au-  
2 thority (and any affiliate of such a utility, as defined  
3 under the Public Utility Holding Company Act of 1999)  
4 from selling electric energy to electric consumers of a dis-  
5 tribution facility covered by the notice of retail competi-  
6 tion, unless a notice of retail competition has been filed  
7 with respect to the other distribution utility.

8 “(b) NONREGULATED DISTRIBUTION UTILITY.—If a  
9 nonregulated distribution utility files a notice of retail  
10 competition, beginning on the effective date of the notice,  
11 it may prohibit any other distribution utility located in the  
12 United States (and any affiliate of such a utility, as de-  
13 fined under the Public Utility Holding Company Act of  
14 1999) from selling electric energy to electric consumers  
15 of the nonregulated distribution utility covered by the no-  
16 tice unless a notice of retail competition has been filed  
17 with respect to the other distribution utility.”.

18 **SEC. 103. AGGREGATION FOR PURCHASE OF RETAIL ELEC-**  
19 **TRIC ENERGY.**

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

22 **“SEC. 119. AGGREGATION FOR PURCHASE OF RETAIL ELEC-**  
23 **TRIC ENERGY.**

24 “Notwithstanding any other provision of Federal or  
25 State law, and subject to legitimate and nondiscriminatory

1 State requirements imposed on retail electric suppliers, a  
2 group of customers or any entity acting on behalf of such  
3 group may acquire retail electric energy on an aggregate  
4 basis if the group of customers is served by one or more  
5 distribution utilities for which a State regulatory authority  
6 or nonregulated distribution utility has filed a notice of  
7 retail competition under section 609 of this Act for each  
8 distribution utility.”.

9 **TITLE II—CONSUMER**  
10 **PROTECTION**

11 **SEC. 201. CONSUMER INFORMATION.**

12 PURPA is amended by adding the following new sec-  
13 tion after section 119 as added by section 103 of this Act:

14 **“SEC. 119A. CONSUMER INFORMATION DISCLOSURE.**

15 “(a) **DISCLOSURE RULES.**—Not later than six  
16 months after the date of enactment of this Act, the Sec-  
17 retary, in consultation with the Commission, the Adminis-  
18 trator of the Environmental Protection Agency, and the  
19 Federal Trade Commission, shall issue rules prescribing  
20 the form, content, placement, and timing of the supplier  
21 disclosure required under subsections (b) and (c) of this  
22 section. The rules shall be prescribed in accordance with  
23 section 553 of title 5, United States Code.

24 “(b) **DISCLOSURE TO ELECTRIC CONSUMERS.**—An  
25 electric utility that offers to sell electric energy to an elec-

1 tric consumer shall provide the electric consumer, to the  
2 extent practicable and in accordance with rules issued  
3 under subsection (a), a statement containing the following  
4 information:

5           “(1) The nature of the service being offered, in-  
6 cluding information about interruptibility or curtail-  
7 ment of service;

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

10           “(3) A description of all other charges associ-  
11 ated with the service being offered including, but not  
12 limited to, access charges, exit charges, back-up  
13 service charges, stranded cost recovery charges, and  
14 customer service charges;

15           “(4) Information concerning the type of energy  
16 resource used to generate the electric energy and the  
17 environmental attributes of the generation (including  
18 air emissions characteristics); and

19           “(5) Any other information the Secretary deter-  
20 mines can be provided feasibly and would be useful  
21 to consumers in making purchasing decisions.

22           “(c) DISCLOSURE TO WHOLESALE CUSTOMERS.—In  
23 every sale of electric energy for resale, the seller shall pro-  
24 vide to the purchaser the information respecting the type  
25 of energy resource used to generate the electric energy and

1 the environmental attributes of the generation required by  
2 rules established under subsection (a).

3       “(d) FEDERAL TRADE COMMISSION ENFORCE-  
4 MENT.—A violation of a rule prescribed under this section  
5 shall constitute an unfair or deceptive act or practice in  
6 violation of section 5 of the Federal Trade Commission  
7 Act (15 U.S.C. 45) and shall be treated as a violation of  
8 a rule under section 18 of the Federal Trade Commission  
9 Act (15 U.S.C. 57a). All functions and powers of the Fed-  
10 eral Trade Commission under the Federal Trade Commis-  
11 sion Act are available to enforce compliance with this sec-  
12 tion notwithstanding jurisdictional limitations in the Fed-  
13 eral Trade Commission Act.

14       “(e) AUTHORITY TO OBTAIN INFORMATION.—Au-  
15 thority to obtain information under section 11 of the En-  
16 ergy Supply and Environmental Coordination Act of 1974  
17 (15 U.S.C. 796) is available to the Secretary to administer  
18 this section and to the Federal Trade Commission to en-  
19 force this section. In order to carry out its duties under  
20 this section, the Federal Trade Commission may use any  
21 of its powers under sections 3, 6, 9, and 20 of the Federal  
22 Trade Commission Act (15 U.S.C. 43, 46, 49, and 57b–  
23 2) without regard to the limitations contained in section  
24 20(b) of that Act (15 U.S.C. 57b–2(b)) or any jurisdic-  
25 tional limitations contained in that Act.

1       “(f) ENFORCEMENT BY STATES.—(1) When a State  
2 determines that the interests of its residents have been  
3 or are being threatened or adversely affected because any  
4 person is violating or has violated a rule of the Secretary  
5 under this section, the State may bring a civil action on  
6 behalf of its residents in an appropriate district court of  
7 the United States to—

8               “(A) enjoin the violation;

9               “(B) enforce compliance with the rule of the  
10       Secretary;

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

13               “(D) obtain other relief the court considers ap-  
14       propriate.

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

23               “(A) intervene in the action, and

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

1       “(3) For purposes of bringing any civil action under  
2 this subsection, this section does not prevent a State offi-  
3 cial from exercising the powers conferred by State law to  
4 conduct investigations, administer oaths or affirmations,  
5 or compel the attendance of witnesses or the production  
6 of documentary and other evidence.

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

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

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

1 **SEC. 202. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME**  
2 **CONSUMERS.**

3 PURPA is amended by adding the following new sec-  
4 tion after section 119A as added by section 201 of this  
5 Act.

6 **“SEC. 119B. ACCESS TO ELECTRIC SERVICE FOR LOW-IN-**  
7 **COME CONSUMERS.**

8 “(a) **DEFINITIONS.**—For purposes of this section  
9 ‘low-income residential consumer’ is a household, as de-  
10 fined in section 2603(4) of the Low-Income Energy Assist-  
11 ance Act of 1981 (42 U.S.C. 8622(4)), with an annual  
12 income that—

13 “(1) does not exceed 60 percent of the State  
14 median income, as defined in section 2603(9) of the  
15 Low-Income Home Energy Assistance Act of 1981  
16 (42 U.S.C. 8622(9)), of the State where the house-  
17 hold is located, or

18 “(2) meets the eligibility criteria for a low-in-  
19 come energy program operated by the State where  
20 the household is located.

21 “(b) **APPLICABILITY.**—Each State regulatory author-  
22 ity and nonregulated distribution utility that files a notice  
23 of retail competition under section 609 of this Act shall  
24 conduct a proceeding to determine whether to apply the  
25 principles of subsection (c).

1       “(c) PRINCIPLES.—The following are principles for  
2 providing electric service to low-income residential con-  
3 sumers:

4           “(1) A State regulatory authority or nonregu-  
5 lated distribution utility shall assure that its low-in-  
6 come residential consumers obtain benefits from re-  
7 tail competition comparable to its other residential  
8 consumers.

9           “(2) As a condition of offering retail service to  
10 residential consumers in a State, a retail electric  
11 supplier shall agree to—

12           “(A) offer, promote, and provide, upon re-  
13 quest, retail electric service to a low-income res-  
14 idential consumer on rates, terms, and condi-  
15 tions comparable to those offered to other resi-  
16 dential consumers located in the same area  
17 where the low-income residential consumer is lo-  
18 cated, and

19           “(B) share equitably with other retail elec-  
20 tric suppliers in the State any costs necessary  
21 to provide service to low-income residential con-  
22 sumers under subparagraph (A).”.



1 **SEC. 203. UNFAIR TRADE PRACTICES.**

2 The Federal Trade Commission Act (15 U.S.C. 41  
3 et seq.) is amended by inserting the following new section  
4 after section 5:

5 **“SEC. 5A. ELECTRICITY SUPPLY UNFAIR TRADE PRAC-**  
6 **TICES.**

7 “(a) DEFINITION.—For purposes of this section, ‘re-  
8 tail electric supplier’ has the meaning given that term in  
9 section 3(25) of the Public Utility Regulatory Policies Act  
10 of 1978.

11 “(b) SLAMMING.—(1) The Federal Trade Commis-  
12 sion shall establish rules in accordance with section 553  
13 of title 5, United States Code for the submittal and  
14 verification of a retail electric customer’s selection or  
15 change in selection of a retail electric supplier and for the  
16 assessment of penalties for violation of these rules. These  
17 rules shall ensure that the customer receives electric serv-  
18 ice from the retail electric supplier of the customer’s  
19 choice.

20 “(2) A person shall not submit or change the selec-  
21 tion made by a retail electric customer except in accord-  
22 ance with procedures established in paragraph (1).

23 “(c) CRAMMING.—(1) The Federal Trade Commis-  
24 sion shall establish rules in accordance with section 553  
25 of title 5, United States Code for obtaining the consent  
26 of a retail electric customer for purchase of goods and

1 services other than those expressly authorized by law or  
2 by the customer's electricity supply and metering agree-  
3 ment and for the assessment of penalties for violation of  
4 these rules.

5       “(2) A person shall not charge a retail electric cus-  
6 tomer for a particular service except in accordance with  
7 procedures established in paragraph (1).

8       “(d) FEDERAL TRADE COMMISSION ENFORCE-  
9 MENT.—Violation of this section or of a rule prescribed  
10 under this section constitutes an unfair and deceptive act  
11 or practice in violation of section 5 of this Act and shall  
12 be treated as a violation of a rule under section 18 of this  
13 Act. All functions and powers of the Federal Trade Com-  
14 mission under this Act are available to the Federal Trade  
15 Commission to enforce compliance with this section not-  
16 withstanding any jurisdictional limitations in this Act.

17       “(e) STATE PROCEEDINGS AND OTHER REMEDIES.—  
18 (1) This section does not preclude a State or State com-  
19 mission from prescribing and enforcing additional laws,  
20 regulations, or procedures regarding the practices which  
21 are the subject of this section, so long as such laws, regu-  
22 lations or procedures do not conflict with the provisions  
23 of this section or with any rule prescribed by the FTC  
24 pursuant to it.

1 “(2) The remedies provided by this section are in ad-  
2 dition to any other remedies available by law.”.

3 **SEC. 204. RESIDENTIAL ELECTRICITY CONSUMER DATA-**  
4 **BASE.**

5 PURPA is amended by adding the following new sec-  
6 tion after section 119B as added by section 202 of this  
7 Act:

8 **“SEC. 119C. RESIDENTIAL ELECTRICITY CONSUMER DATA-**  
9 **BASE.**

10 “(a) DATABASE.—The Secretary is authorized to  
11 compile a database to provide residential electric con-  
12 sumers with information to compare the offers of various  
13 retail electric suppliers.

14 “(b) INFORMATION.—A retail electric supplier who  
15 provides electric consumers with information under section  
16 119A shall provide the Secretary the same information  
17 and any other information the Secretary considers appro-  
18 priate for purposes of this section.

19 “(c) CONTENT.—The database under this program  
20 shall—

21 “(1) compare the rates, terms, and conditions  
22 of the service offered by the various retail electric  
23 suppliers based on the information provided under  
24 subsection (b);

1           “(2) disseminate the comparison to consumers  
2           through various communications channels, including  
3           the Internet; and

4           “(3) provide other information the Secretary  
5           considers appropriate to carry out the purposes of  
6           this section.”.

7   **SEC. 205. MODEL RETAIL SUPPLIER CODE.**

8           PURPA is amended by adding the following new sec-  
9           tion after section 119C as added by section 204 of this  
10          Act:

11   **“SEC. 119D. MODEL CODE FOR RETAIL SUPPLIERS.**

12          “The Secretary shall develop by rule and circulate  
13          among the States for their consideration a model code for  
14          the regulation of retail electric suppliers for the protection  
15          of electric consumers.”.

16   **SEC. 206. MODEL ELECTRIC UTILITY WORKER CODE.**

17          PURPA is amended by adding the following new sec-  
18          tion after section 119D as added by section 205 of this  
19          Act:

20   **“SEC. 119E. MODEL CODE FOR ELECTRIC UTILITY WORK-**  
21                                   **ERS.**

22          “(a) The Secretary shall develop by rule and circulate  
23          among the States for their consideration a model code con-  
24          taining standards for electric facility workers to ensure  
25          electric facility safety and reliability. The Secretary, in de-

1 veloping these standards, shall consult with all interested  
 2 parties, including representatives of electric facility work-  
 3 ers.

4 “(b) In issuing a model code under this section, the  
 5 Secretary shall not, for purposes of section 653 of title  
 6 29, be deemed to be exercising statutory authority to pre-  
 7 scribe or enforce standards or regulations affecting occu-  
 8 pational safety and health.”.

## 9 **TITLE III—FACILITATING STATE** 10 **AND REGIONAL REGULATION**

### 11 **SEC. 301. CLARIFICATION OF STATE AND FEDERAL AU-** 12 **THORITY OVER RETAIL TRANSMISSION SERV-** 13 **ICES.**

14 (a) NONPREEMPTION OF STATE AND NONREGU-  
 15 LATED UTILITY AUTHORITY TO ORDER RETAIL WHEEL-  
 16 ING AND TO IMPOSE LOCAL DELIVERY CHARGES.—Sec-  
 17 tion 201(b) of the Federal Power Act (referred to in this  
 18 Act as “the FPA”) is amended by adding the following  
 19 new paragraph after paragraph (2):

20 “(3) This Act does not preempt or otherwise affect  
 21 any authority under the law of a State or municipality  
 22 to—

23 “(A) require unbundled transmission and local  
 24 distribution services for the delivery of electric en-  
 25 ergy directly to an ultimate consumer, but if

1 unbundled transmission is in interstate commerce,  
2 the rates, terms, and conditions of the transmission  
3 are subject to the exclusive jurisdiction of the Com-  
4 mission under this Part, or

5 “(B) impose a delivery charge on an ultimate  
6 consumer’s receipt of electric energy.”.

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

9 (1) APPLICABILITY OF OPEN ACCESS TRANS-  
10 MISSION RULES.—Section 206 of the FPA is amend-  
11 ed by adding the following new subsection after sub-  
12 section (d):

13 “(e) OPEN ACCESS TRANSMISSION SERVICES.—(1)  
14 Under section 205 and this section, the Commission may  
15 require, by rule or order, public utilities to provide open  
16 access transmission services, subject to section 212(h),  
17 and may authorize recovery of stranded costs, as defined  
18 by the Commission, arising from any requirement to pro-  
19 vide open access transmission services. This section ap-  
20 plies to any rule or order issued by the Commission before  
21 the date of enactment of the Comprehensive Electricity  
22 Competition Act.”.

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

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

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

4 (C) by striking from redesignated para-  
5 graph (1)(B)(ii) “the date of enactment of this  
6 subsection” and inserting “October 24, 1992,”  
7 in its place; and

8 (D) by adding at the end a new paragraph  
9 as follows:

10 “(2) Notwithstanding paragraph (1), the Com-  
11 mission may issue an order that requires the trans-  
12 mission of electric energy directly or indirectly to an  
13 ultimate consumer if a notice of retail competition  
14 under section 609 of the Public Utility Regulatory  
15 Policies Act of 1978 has been filed and is in effect  
16 with respect to the ultimate consumer’s distribution  
17 utility or if a distribution utility offers open access  
18 to its delivery facilities to the ultimate consumer.”.

19 (3) CONFORMING AMENDMENTS.—

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

22 “(23) ‘transmitting utility’ means any entity  
23 that owns, controls, or operates electric power trans-  
24 mission facilities that are used for the sale of electric  
25 energy in the 48 contiguous States and the District

1 of Columbia, notwithstanding section 201(f) of this  
2 Act;”.

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

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

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

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

12 (e) **APPLICABILITY OF COMMISSION JURISDICTION**  
13 **TO TRANSMITTING UTILITIES.**—Section 206(e) of the  
14 FPA as added by subsection (b)(1) of this section is  
15 amended by adding the following new paragraphs after  
16 paragraph (1):

17 “(2)(A) The Commission has jurisdiction over the  
18 rates, terms, and conditions for transmission services pro-  
19 vided by a transmitting utility that is not a public utility  
20 or covered by section 201A, subject to section 212(h), and  
21 may authorize recovery of stranded costs, as defined by  
22 the Commission, by such transmitting utility. The Com-  
23 mission may require, by rule or order, a transmitting util-  
24 ity that is not a public utility or covered by section 201A



1 to provide open access transmission services, subject to  
2 section 212(h).

3 “(B) In exercising its authority under this Act, the  
4 Commission—

5 “(i) shall take into account the different struc-  
6 tural and operating characteristics of transmitting  
7 utilities, including the multi-tier structure and the  
8 not-for-profit operations of electric cooperatives;

9 “(ii) with respect to any transmitting utility  
10 that has outstanding loans made or guaranteed by  
11 the Rural Utilities Service, shall take into account  
12 the policies of the Department of Agriculture in im-  
13 plementing the Rural Electrification Act of 1936  
14 and shall assure, to the extent practicable, that the  
15 utility will be able to meet any loan obligations  
16 under that Act; and

17 “(iii) shall not approve rates, terms, or condi-  
18 tions the Commission determines would have the ef-  
19 fect of jeopardizing the tax exempt status of non-  
20 profit electric cooperatives under the Internal Rev-  
21 enue Code of 1986.

22 “(C) Notwithstanding any other law, section 205,  
23 this section, and part III apply to a transmitting utility  
24 that is not a public utility or covered by section 201A for  
25 purposes of this section.

1       “(3) Any electric utility that owns, directly or indi-  
2 rectly, generation facilities financed in whole or in part  
3 with outstanding loans made or guaranteed by the Rural  
4 Utilities Service may apply to the Commission to impose  
5 a charge for the recovery of stranded costs as defined by  
6 the Commission. If the Commission determines that the  
7 proposed charge is just, reasonable, and not unduly dis-  
8 criminatory or preferential, the Commission may issue an  
9 order providing for the imposition of the charge on trans-  
10 mission service by the applicant or by another transmit-  
11 ting utility or on any electric utility or transaction subject  
12 to the Commission’s jurisdiction.”.

13       (d) NOTICE TO AND INTERVENTION OF SECRETARY  
14 OF AGRICULTURE IN FERC PROCEEDINGS.—The FPA is  
15 amended by adding after section 218, as added by section  
16 601 of this Act, the following new section:

17       “NOTICE TO AND INTERVENTION OF SECRETARY OF  
18               AGRICULTURE IN COMMISSION PROCEEDINGS

19       “SEC. 219. Any person filing a complaint or petition  
20 for rulemaking under part II of the FPA that directly af-  
21 fects an electric utility with loans made or guaranteed  
22 under the Rural Electrification Act of 1936 shall provide  
23 notice of such complaint or petition to the Secretary of  
24 Agriculture. The Secretary of Agriculture may as a matter  
25 of right intervene or otherwise participate in any pro-  
26 ceeding before the Commission that directly affects an

1 electric utility with loans made or guaranteed under the  
2 Rural Electrification Act of 1936. The Secretary of Agri-  
3 culture shall comply with rules of procedure of general ap-  
4 plicability governing the timing of intervention or partici-  
5 pation in such proceeding or activity and, upon inter-  
6 vening or participating therein, shall comply with rules of  
7 procedure of general applicability governing the conduct  
8 thereof.”.

9 **SEC. 302. INTERSTATE COMPACTS ON REGIONAL TRANS-**  
10 **MISSION PLANNING.**

11 The FPA is amended by adding after section 214 the  
12 following new section:

13 “INTERSTATE COMPACTS ON REGIONAL TRANSMISSION  
14 PLANNING

15 “SEC. 215. (a) The consent of Congress is given for  
16 an agreement to establish a regional transmission plan-  
17 ning agency, if the Commission determines that the agree-  
18 ment would—

19 “(1) facilitate coordination among the States  
20 within a particular region with regard to the plan-  
21 ning of future transmission, generation, and dis-  
22 tribution facilities,

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

1           “(3) meet the other requirements of this section  
2           and rules prescribed by the Commission under this  
3           section, and

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

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

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

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

19                 “(A) criteria for determining whether a regional  
20                 transmission planning agreement meets subsection  
21                 (a), and

22                 “(B) standards for the administration of a re-  
23                 gional transmission planning agency established  
24                 under the agreement.

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

3           “(A) a regional transmission planning agency  
4       must operate within a region that includes all tribal  
5       governments and all or part of each State that is a  
6       party to the agreement,

7           “(B) a regional transmission planning agency  
8       must be composed of one or more members from  
9       each State and tribal government that is a party to  
10      the agreement,

11          “(C) each participating State and tribal govern-  
12      ment must vest in the regional transmission plan-  
13      ning agency the authority necessary to carry out the  
14      agreement and this section, and

15          “(D) the agency must follow workable and fair  
16      procedures in making its decisions, in governing  
17      itself, and in regulating parties to the agreement  
18      with respect to matters covered by the agreement,  
19      including a requirement that all decisions of the  
20      agency be made by majority vote (or majority of  
21      weighted votes) of the members present and voting.

22          “(3) The criteria may include any other requirement  
23      for meeting subsection (a) that the Commission deter-  
24      mines is necessary to ensure that the regional trans-  
25      mission planning agency’s organization, practices, and

1 procedures are sufficient to carry out this section and the  
2 rules issued under it.

3 “(d) The Commission, after notice and opportunity  
4 for comment, may terminate the approval of an agreement  
5 under this section at any time if it determines that the  
6 regional transmission planning agency fails to comply with  
7 this section or Commission prescriptions under subsection  
8 (c) or that the agreement is contrary to the public interest.

9 “(e) Section 313 applies to a rehearing before a re-  
10 gional transmission planning agency and judicial review  
11 of any action of a regional transmission planning agency.  
12 For this purpose, when section 313 refers to ‘Commis-  
13 sion’, substitute ‘regional transmission planning agency’  
14 and when section 313(b) refers to ‘licensee or public util-  
15 ity’, substitute ‘entity’.”.

16 **SEC. 303. BACKUP AUTHORITY TO IMPOSE A CHARGE ON**  
17 **AN ULTIMATE CONSUMER’S RECEIPT OF**  
18 **ELECTRIC ENERGY.**

19 The FPA is amended by adding the following new  
20 section after section 215 as added by section 302 of this  
21 Act:

22 “BACKUP AUTHORITY FOR CHARGE ON RECEIPT OF  
23 ELECTRIC ENERGY

24 “SEC. 216. (a) If a State regulatory authority that  
25 has provided notice of retail competition under section 609  
26 of the Public Utility Regulatory Policies Act of 1978 for

1 a distribution utility determines that the utility should be  
2 authorized or required to impose a charge on an ultimate  
3 consumer's receipt of electric energy but the State regu-  
4 latory authority lacks authority to authorize or require im-  
5 position of such a charge, the State regulatory authority  
6 may apply to the Commission for an order providing for  
7 the imposition of the charge. If the Commission deter-  
8 mines that the imposition of the charge is just, reasonable,  
9 and not unduly discriminatory or preferential; is con-  
10 sistent with the State regulatory authority's policy regard-  
11 ing the imposition of the charge; and is not prohibited by  
12 State law, the Commission may issue an order providing  
13 for the imposition of the charge.

14       “(b) If a nonregulated utility that has outstanding  
15 loans made or guaranteed by the Rural Utilities Service  
16 and that has filed a notice of retail competition under sec-  
17 tion 609 of the Public Utilities Regulatory Policies Act  
18 of 1978 determines that it is appropriate to impose a  
19 charge on an ultimate consumer's receipt of electric en-  
20 ergy, but lacks the authority to impose such a charge  
21 under State law, the utility may apply to the Commission  
22 for an order providing for the imposition of a charge. If  
23 the Commission determines that the proposed charge is  
24 just, reasonable, and not unduly discriminatory or pref-

1 erential, the Commission may issue an order providing for  
2 the imposition of the charge.”.

3 **SEC. 304. AUTHORITY TO ESTABLISH AND REQUIRE INDE-**  
4 **PENDENT REGIONAL SYSTEM OPERATION.**

5 Section 202 of the FPA is amended by adding the  
6 following new subsections after subsection (g):

7 “(h) Upon its own motion or upon application or  
8 complaint and after notice and an opportunity for a hear-  
9 ing, the Commission may order the establishment of enti-  
10 ties for the purpose of independent operation, control, and  
11 planning of interconnected transmission facilities; order a  
12 transmitting utility to relinquish control over operation of  
13 its transmission facilities to an entity for the purpose of  
14 independent operation, control, and planning of inter-  
15 connected transmission facilities; subject generators to the  
16 control of such entity consistent with other laws to the  
17 extent necessary to permit reliable operation of the trans-  
18 mission facilities; or take any combination of these actions,  
19 if the Commission finds that—

20 “(1) this action is appropriate to promote com-  
21 petitive electricity markets and efficient, economical,  
22 and reliable operation of the interstate transmission  
23 grid;

24 “(2) the entity established for the purpose of  
25 independent operation, control, and planning of



1 interconnected transmission facilities will operate,  
2 control, and plan the transmission facilities in a  
3 manner that assures that—

4 “(A) ownership of transmission facilities  
5 provides no advantage in competitive electricity  
6 markets;

7 “(B) the transmission customers of the  
8 Tennessee Valley Authority (TVA), the Bonne-  
9 ville Power Administration, the Southwestern  
10 Power Administration (SWPA), and the West-  
11 ern Area Power Administration (WAPA) will  
12 not pay an unreasonable share of the entity’s  
13 costs and will not experience unreasonable  
14 transmission rate increases resulting from the  
15 establishment of the entity; and

16 “(C) as applicable, the respective statutory  
17 and treaty obligations and contractual obliga-  
18 tions existing on the date of enactment of this  
19 Act of the TVA Board of Directors, the Bonne-  
20 ville Administrator, the SWPA Administrator,  
21 the WAPA Administrator, the Bureau of Rec-  
22 lamation, and the Corps of Engineers can be  
23 met;

24 “(3) any transmitting utility ordered to transfer  
25 control of its transmission facilities will receive just

1 and reasonable compensation for the use of its facili-  
2 ties, consistent with section 201A where applicable;  
3 and

4 “(4) adequate reliability of the affected trans-  
5 mission facilities will be maintained. Nothing in this  
6 section limits States from addressing transmission  
7 facility maintenance, planning, siting, and other util-  
8 ity functions in a manner consistent with this Act or  
9 Commission action under this Act.

10 “(i) If not ordered under subsection (h), TVA, the  
11 Bonneville Administrator, the SWPA Administrator, or  
12 the WAPA Administrator are authorized to participate in  
13 a regional transmission system operation after conducting  
14 a public process in the relevant service area to receive com-  
15 ments. Notwithstanding any other law, participation may  
16 include delegation of operation and control of the Author-  
17 ity or Administration’s transmission system to that entity,  
18 or other method of participation, under terms and condi-  
19 tions the Authority or Administrator determines necessary  
20 or appropriate, including being bound by operational and  
21 other orders of the entity and by the results of arbitration  
22 of disputes with the entity or with other participants.”.

1       **TITLE IV—PUBLIC BENEFITS**

2       **SEC. 401. 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 Joint Board  
9 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 48 con-  
10                  tiguous States and the District of Columbia.

11                  “(b) JOINT BOARD.—(1) A Joint Board is estab-  
12                  lished whose membership is composed of two officers or  
13                  employees of the United States Government appointed by  
14                  the Secretary, four State commissioners appointed by the  
15                  national organization of State commissions, and one mem-  
16                  ber of an Indian tribal government appointed by the Sec-  
17                  retary. The Secretary shall designate the Chair of the  
18                  Board.

19                  “(2) The Board shall—

20                         “(A) establish a Public Benefits Fund  
21                         upon petition of States and tribal governments  
22                         wishing to participate in the program under  
23                         this section,

1           “(B) appoint a fiscal agent, from persons  
2           nominated by the States and tribal governments  
3           petitioning to establish the Fund, and

4           “(C) administer the Fund as set forth in  
5           this section.

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

9           “(d) SECRETARY.—The Secretary shall prescribe  
10          rules for—

11           “(1) the determination of charges under sub-  
12          section (e);

13           “(2) the collection of amounts for the Fund, in-  
14          cluding provisions for overcollection or undercollec-  
15          tion;

16           “(3) distribution of amounts from the Fund;  
17          and

18           “(4) the criteria under which the Board deter-  
19          mines whether a State or tribal government’s pro-  
20          gram is an eligible public purpose program, includ-  
21          ing a rural assistance program. A rural assistance  
22          program shall be an eligible public purpose program  
23          to the extent that the Secretary, in consultation with  
24          the Secretary of Agriculture, determines by rule that  
25          significant adverse economic effects on rural cus-

1       tomers have occurred or will occur as a result of  
2       electricity restructuring that meets the retail com-  
3       petition requirements of this Act. After such a deter-  
4       mination is made, the Secretary, in consultation with  
5       the Secretary of Agriculture, shall specify by rule  
6       the mechanism for distribution of funds to rural as-  
7       sistance programs, amounts to be provided, and  
8       variances to the overall requirements to the Public  
9       Benefits Fund under this section, if any. For the  
10      purposes of funding rural assistance programs, the  
11      Secretary shall increase the charge for the Public  
12      Benefit Fund as necessary, up to a maximum of .17  
13      mills per kilowatt hour. Funding for rural assistance  
14      programs under this section shall be provided exclu-  
15      sively from this increase in the charge.

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

1 utility in the United States, shall pay this same charge  
2 for imported electric energy. The transmitting utility shall  
3 pay the amounts collected to the fiscal agent at the close  
4 of each month, and the fiscal agent shall deposit the  
5 amounts into the Fund as offsetting collections.

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

10 “(B) The Commission shall calculate the rate for the  
11 public benefits charge for each calendar year at an  
12 amount, not in excess of 1 mill per kilowatt-hour, equal  
13 to the sum of the requests of all States and tribal govern-  
14 ments under subsection (f) for programs described in sub-  
15 section (a)(2)(A) through (a)(2)(D), but not to exceed \$3  
16 billion per year, divided by the estimated kilowatt hours  
17 of electric energy to be generated by generators subject  
18 to the charge. Amounts collected in excess of \$3 billion  
19 in a fiscal year shall be retained in the fund and the as-  
20 sessment in the following year shall be reduced by that  
21 amount. If there are more than de minimis receipts from  
22 the sale of Renewable Energy Credits under section 611,  
23 the Secretary shall direct the Commission to reduce the  
24 charge to reflect the amount of receipts received from the  
25 sale of Credits. The amount of the receipts from the sale

1 of Renewable Energy Credits deposited in the Public Ben-  
2 efits Fund may not exceed \$3 billion per year adjusted  
3 for inflation. Receipts from the sale of Renewable Energy  
4 Credits in excess of \$3 billion per year adjusted for infla-  
5 tion shall be deposited in the General Fund of the Treas-  
6 ury.

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

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

20 “(2) To the extent a State or tribal government gen-  
21 erates all or part of its funds for eligible public purpose  
22 programs through a wires charge on an ultimate con-  
23 sumer’s receipt of electric energy, the State or tribal gov-  
24 ernment shall impose the charge on a non-discriminatory



1 basis on all consumers within the State or tribal govern-  
2 ment jurisdiction.

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

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

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

16 “(g) DISBURSAL FROM THE FUND.—(1) The Board  
17 shall review State and tribal government submissions and  
18 determine whether programs designated by the State or  
19 tribal government are eligible public purpose programs,  
20 using the criteria prescribed under subsection (d), and  
21 whether there is reasonable assurance that spending quali-  
22 fying as State or tribal government matching funds will  
23 occur.

24 “(2) The fiscal agent shall disburse amounts in the  
25 Fund to participating States and tribal governments to

1 carry out eligible public programs in accordance with this  
2 subsection and rules prescribed under subsection (d).

3 “(3) To the extent the aggregate amount of funds  
4 requested by the States and tribal governments exceeds  
5 the maximum aggregate revenues eligible to be collected  
6 under subsection (e) and deposited as payment for Renew-  
7 able Energy Credits under section 611, the fiscal agent  
8 shall reduce each participating State and tribal govern-  
9 ment’s request proportionately.

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

21 “(B) The fiscal agent shall make distributions to the  
22 State or tribal government or to an entity designated by  
23 the State or tribal government to receive payments. The  
24 State or tribal government may designate a nonregulated  
25 utility as an entity to receive payments under this section.

1 “(C) A State or tribal government may use amounts  
2 received only for the eligible public purpose programs the  
3 State or tribal government designated in its submission  
4 to the Board and the Board determined eligible.

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

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

14 **SEC. 402. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

15 (a) STANDARD.—PURPA is amended by adding after  
16 section 610, as added by section 401 of this Act, the fol-  
17 lowing new section:

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

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

1 tric supplier shall make this submission before April 1 of  
2 the following calendar year.

3 “(2) For purposes of this section a ‘renewable energy’  
4 resource means solar energy, wind, geothermal, or bio-  
5 mass.

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

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

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

24 “(3) For calendar years 2010–2015, the required an-  
25 nual percentage is 7.5 percent.

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

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

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

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

17       “(d) ISSUANCE OF CREDIT.—(1) The Secretary shall  
18 establish, not later than one year after the date of enact-  
19 ment of this section, a program to issue, monitor the sale  
20 or exchange of, and track Renewable Energy Credits.

21           “(2) Under the program, an entity that generates  
22 electric energy through the use of a renewable energy re-  
23 source may apply to the Secretary for the issuance of Re-  
24 newable Energy Credits. The application shall indicate—

1           “(A) the type of renewable energy resource used  
2           to produce the electricity,

3           “(B) the State in which the electric energy was  
4           produced, and

5           “(C) any other information the Secretary deter-  
6           mines appropriate.

7           “(3)(A) Except as provided in paragraph (B), the  
8           Secretary shall issue to an entity one Renewable Energy  
9           Credit for each kilowatt-hour of electric energy the entity  
10          generates through the use of a renewable energy resource  
11          in any State in 2000 and any succeeding year.

12          “(B) The Secretary shall issue two Renewable En-  
13          ergy Credits for each kilowatt-hour of electric energy gen-  
14          erated through the use of a renewable energy resource in  
15          any State in 2000 and any succeeding year, if the gener-  
16          ating facility is located on Indian land. For purposes of  
17          this paragraph, renewable energy generated by biomass  
18          cofired with other fuels is eligible for two credits only if  
19          the biomass was grown on the land eligible under this  
20          paragraph.

21          “(C) To be eligible for a Renewable Energy Credit,  
22          the unit of a electricity generated through the use of a  
23          renewable energy resource may be sold or may be used  
24          by the generator. If both a renewable energy resource and  
25          a non-renewable energy resource are used to generate the

1 electric energy, the Secretary shall issue credits based on  
2 the proportion of the renewable energy resource used. The  
3 Secretary shall identify Renewable Energy Credits by type  
4 of generation and by the State in which the generating  
5 facility is located.

6       “(4) In order to receive a Renewable Energy Credit,  
7 the recipient of a Renewable Energy Credit shall pay a  
8 fee, calculated by the Secretary, in an amount that is  
9 equal to the administrative costs of issuing, recording,  
10 monitoring the sale or exchange of, and tracking the Cred-  
11 it or does not exceed five percent of the dollar value of  
12 the Credit, whichever is lower. The Secretary shall retain  
13 the fee and use it to pay these administrative costs.

14       “(5) When a generator sells electric energy generated  
15 through the use of a renewable energy resource to a retail  
16 electric supplier under a contract subject to section 210  
17 of this Act, the retail electric supplier is treated as the  
18 generator of the electric energy for the purposes of this  
19 section for the duration of the contract.

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

24       “(7) If a generator using a renewable energy resource  
25 receives matching funds under section 610, the Secretary

1 shall reduce the number of Renewable Energy Credits the  
2 generator receives under paragraphs (3) so that the aggregate  
3 value of those Credits plus the matching funds received  
4 under section 610 equals the aggregate value of the  
5 Credits the generator would have received absent this  
6 paragraph. For purposes of this paragraph, the Secretary  
7 shall value a Credit at a price that is representative of  
8 the price of a Credit in private transactions. In no event  
9 shall the Secretary use a price to establish values for purposes  
10 of this paragraph that exceeds the cost cap established  
11 under subsection (f).

12       “(e) SALE OR EXCHANGE.—A Renewable Energy  
13 Credit may be sold or exchanged by the entity to whom  
14 issued or by any other entity who acquires the Credit. A  
15 Renewable Energy Credit for any year that is not used  
16 to satisfy the minimum renewable generation requirement  
17 of subsection (a) for that year may be carried forward for  
18 use in another year.

19       “(f) RENEWABLE ENERGY CREDIT COST CAP.—Beginning  
20 January 1, 2000, the Secretary shall offer Renewable  
21 Energy Credits for sale. The Secretary shall charge  
22 1.5 cents for each Renewable Energy Credit sold during  
23 calendar year 2000, and on January 1 of each following  
24 year, the Secretary shall adjust for inflation, based on the  
25 Consumer Price Index, the price charged per Credit for



1 that calendar year. The Secretary shall deposit in the Pub-  
2 lic Benefits Fund established under section 610 the  
3 amount received from a sale under this subsection.

4 “(g) ENFORCEMENT.—The Secretary may bring an  
5 action in the appropriate United States district court to  
6 impose a civil penalty on a retail electric supplier that does  
7 not comply with subsection (a). A retail electric supplier  
8 who does not submit the required number of Renewable  
9 Energy Credits under subsection (a) is subject to a civil  
10 penalty of not more than three times the value of the Re-  
11 newable Energy Credits not submitted. For purposes of  
12 this subsection, the value of a Renewable Energy Credit  
13 is the price of a Credit determined under subsection (f)  
14 for the year the Credits were not submitted.

15 “(h) INFORMATION COLLECTION.—The Secretary  
16 may collect the information necessary to verify and  
17 audit—

18 “(1) the annual electric energy generation and  
19 renewable energy generation of any entity applying  
20 for Renewable Energy Credits under this section,

21 “(2) the validity of Renewable Energy Credits  
22 submitted by a retail electric supplier to the Sec-  
23 retary, and

24 “(3) the quantity of electricity sales of all retail  
25 electric suppliers.

1       “(i) SUNSET.—This section expires December 31,  
2 2015.”.

3       (b) DEFINITIONS.—Section 3 of PURPA is amended  
4 by adding after paragraph (24) as added by section 101  
5 of this Act the following new paragraph:

6           “(25) The term ‘retail electric supplier’ means  
7 a person, State agency, or Federal agency that sells  
8 electric energy to an electric consumer.

9           “(26) The term ‘Indian land’ means (A) any  
10 land within the limits of any Indian reservation,  
11 pueblo or rancheria, (B) any land not within the lim-  
12 its of any Indian reservation, pueblo or rancheria  
13 title to which was on the date of passage of the  
14 Comprehensive Electricity Competition Act either  
15 held in trust by the United States for the benefit of  
16 any Indian tribe or individual or held by any Indian  
17 tribe or individual subject to restriction by the  
18 United States against alienation, (C) any dependent  
19 Indian community, and (D) any land conveyed to  
20 any Alaska Native corporation under the Alaska Na-  
21 tive Claims Settlement Act.

22           “(27) The term ‘Indian tribe’ means any Indian  
23 tribe, band, group, or nation, including Alaska Indi-  
24 ans, Aleuts, or Eskimos, or any Alaskan Native Vil-  
25 lage of the United States, which is considered an eli-

1 eligible recipient under the Indian Self Determination  
2 and Education Assistance Act (Public Law 93–638)  
3 or was considered an eligible recipient under chapter  
4 67 of title 31, United States Code, prior to the re-  
5 peal of such chapter.”.

6 **SEC. 403. NET METERING.**

7 PURPA is amended by adding the following new sec-  
8 tion after section 611 as added by section 402 of this Act:

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

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

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

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

18 “(3) The term ‘net metering service’ means  
19 service to an electric consumer under which elec-  
20 tricity generated by that consumer from an eligible  
21 on-site generating facility and delivered to the dis-  
22 tribution system through the same meter through  
23 which purchased electricity is received may be used  
24 to offset electricity provided by the retail electric  
25 supplier to the electric consumer during the applica-

1 ble billing period so that an electric consumer is  
2 billed only for the net electricity consumed during  
3 the billing period, but in no event shall the net be  
4 less than zero during the applicable billing period.

5 “(b) REQUIREMENT TO PROVIDE NET METERING  
6 SERVICE.—Each retail electric supplier shall make avail-  
7 able upon request net metering service to any retail elec-  
8 tric consumer whom the supplier currently serves or solie-  
9 its for service.

10 “(c) STATE AUTHORITY.—This section does not pre-  
11 clude a State from imposing additional requirements con-  
12 sistent with the requirements in this section, including the  
13 imposition of a cap limiting the amount of net metering  
14 available in the State. Nothing in this Act or any other  
15 Federal law preempts or otherwise affects authority under  
16 State law to require a retail electric supplier to make avail-  
17 able net metering service to a retail electric consumer  
18 whom the supplier serves or offers to serve.”.

19 **SEC. 404. REFORM OF SECTION 210 OF PURPA.**

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

22 “(m) REPEAL OF MANDATORY PURCHASE REQUIRE-  
23 MENT.—After the date of enactment of the Comprehensive  
24 Electricity Competition Act, an electric utility shall not be

1 required to enter into a new contract or obligation to pur-  
2 chase electric energy under this section.”.

3 **SEC. 405. INTERCONNECTIONS FOR CERTAIN FACILITIES.**

4 PURPA is amended by adding the following new sec-  
5 tion after section 612 as added by section 403 of this Act:

6 **“SEC. 613. INTERCONNECTIONS FOR CERTAIN FACILITIES.**

7 “(a) DEFINITION.—As used in this section ‘facility’  
8 means—

9 “(1) a small-scale electric power generation fa-  
10 cility that is designed to serve customers at or near  
11 the facility, or

12 “(2) a facility using a single fuel source to  
13 produce at the point of use either electric or me-  
14 chanical power and thermal energy.

15 “(b) INTERCONNECTION.—A distribution utility shall  
16 allow a facility to interconnect with the distribution utility  
17 if the facility owner is located in the distribution utility’s  
18 service territory and complies with the final rule issued  
19 under subsection (c).

20 “(c) Within one year from the date of enactment of  
21 this section, the Secretary shall issue a final rule to imple-  
22 ment subsection (b) and issue related safety and power  
23 quality standards. To the extent feasible, the Secretary  
24 shall develop the standards through a process involving in-  
25 terested parties.

1 “(d) The Commission shall enforce the rule estab-  
2 lished under subsection (c) using its authority under this  
3 Act.”.

4 **SEC. 406. RURAL AND REMOTE COMMUNITIES ELEC-**  
5 **TRIFICATION GRANTS.**

6 Section 313 of the Rural Electrification Act of 1936  
7 (7 U.S.C. 940e) is amended by adding after subsection  
8 (b) the following new subsections:

9 “(c) RURAL AND REMOTE COMMUNITIES ELEC-  
10 TRIFICATION GRANTS.—The Secretary, in consultation  
11 with the Secretary of Energy and the Secretary of the In-  
12 terior, may provide grants to eligible borrowers under this  
13 Act for the purpose of increasing energy efficiency, low-  
14 ering, or stabilizing electric rates to end users, or pro-  
15 viding or modernizing electric facilities for:

16 “(1) a unit of local government of a State or  
17 territory, or

18 “(2) an Indian tribe  
19 that has an average cost per kilowatt hour of electricity  
20 that is at least 150 percent of the average retail price per  
21 kilowatt hour for all consumers in the United States, as  
22 determined by the Secretary using data provided by the  
23 Department of Energy. The Secretary shall issue the  
24 grants based on a determination of cost-effectiveness and

1 most effective use of the funds to achieve the stated pur-  
2 poses of this section.

3 “(d) DEFINITION.—For purposes of this section, the  
4 term ‘Indian tribe’ means any Indian tribe, band, group,  
5 or nation, including Alaska Indians, Aleuts, or Eskimos,  
6 or any Alaskan Native Village of the United States, which  
7 is considered an eligible recipient under the Indian Self  
8 Determination and Education Assistance Act (Public Law  
9 93–638) or was considered an eligible recipient under  
10 chapter 67 of title 31, United States Code, prior to the  
11 repeal of such chapter.

12 “(e) AUTHORIZATION.—There is authorized to be ap-  
13 propriated for purposes of subsection (c) \$20,000,000 for  
14 each of the seven fiscal years following enactment of this  
15 section.”.

16 **SEC. 407. INDIAN TRIBE ASSISTANCE.**

17 Title XXVI of the Energy Policy Act of 1992 (25  
18 U.S.C. 3501–3506) is amended by adding after section  
19 2606 the following new section:

20 **“SEC. 2607. TRIBAL ELECTRICITY ASSISTANCE.**

21 “(a) The Secretary of Energy, in consultation with  
22 the Secretary of the Interior and the Secretary of Agri-  
23 culture, shall establish a program to assist an Indian tribe  
24 to meet its electricity needs. Under the program, the Sec-

1 retary shall provide, subject to appropriations, to an In-  
2 dian tribe—

3           “(1) technical assistance and grants to analyze  
4 tribal electricity needs, the availability of natural re-  
5 sources for tribal generation of electricity, the oppor-  
6 tunities for the improvement of transmission of elec-  
7 tricity to the tribe, and the effect on the tribe of re-  
8 tail competition in the sale or transmission of elec-  
9 tricity, and

10           “(2) in an area that is not served or served in-  
11 adequately by an electric utility, as defined in sec-  
12 tion 3(4) of the Public Utility Regulatory Policies  
13 Act of 1978, or distribution utility, as defined in sec-  
14 tion 3(23) of the Public Utility Regulatory Policies  
15 Act of 1978, grants to plan and construct or im-  
16 prove facilities to generate, transmit, and distribute  
17 electricity to serve tribal needs.

18 In exercising authority under this section, the Secretary  
19 shall take into account the ability of entities with loans  
20 made or guaranteed under the Rural Electrification Act  
21 of 1936 to repay those loans. The Secretary shall issue  
22 the grants based on a determination of cost-effectiveness  
23 and most effective use of funds to achieve the stated pur-  
24 poses of this section.



1           “(b) DEFINITION.—For purposes of this section, the  
2 term ‘Indian tribe’ means any Indian tribe, band, group,  
3 or nation, including Alaska Indians, Aleuts, or Eskimos,  
4 or any Alaskan Native Village of the United States, which  
5 is considered an eligible recipient under the Indian Self  
6 Determination and Education Assistance Act (Public Law  
7 93–638) or was considered an eligible recipient under  
8 chapter 67 of title 31, United States Code, prior to the  
9 repeal of such chapter.

10           “(c) There are authorized to be appropriated to the  
11 Department of Energy for each of the seven fiscal years  
12 following enactment of this section, \$5,000,000 to carry  
13 out subsection (a)(1), and \$15,000,000 to carry out sub-  
14 section (a)(2).”.

15 **SEC. 408. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
16 **GRAMS.**

17           Title II of the Department of Energy Organization  
18 Act is amended by adding the following new section after  
19 section 212:

20 **“SEC. 213. OFFICE OF INDIAN ENERGY POLICY AND PRO-**  
21 **GRAMS.**

22           “(a) The Secretary may establish within the Depart-  
23 ment an Office of Indian Energy Policy and Programs.  
24 The Office shall be headed by a Director appointed by the  
25 Secretary.

1       “(b) Subject to the supervision of the Secretary, the  
2 Office is authorized to establish a program to provide, di-  
3 rect, foster, coordinate and implement energy, energy  
4 management, and energy conservation programs to—

5               “(1) promote tribal energy efficiency;

6               “(2) modernize tribal electric infrastructure;

7               “(3) preserve tribal sovereignty and self deter-  
8 mination related to energy matters;

9               “(4) lower or stabilize energy costs; and

10              “(5) electrify tribal members’ homes.

11       “(c) There are authorized to be appropriated such  
12 sums as may be necessary to implement this section.”.

13 **SEC. 409. SOUTHEAST ALASKA ELECTRICAL POWER.**

14       There are authorized to be appropriated to the De-  
15 partment of Energy up to a total sum of \$20,000,000 for  
16 the purpose of providing financial assistance to the State  
17 of Alaska as necessary to ensure the availability of ade-  
18 quate electrical power to the greater Ketchikan area in  
19 southeast Alaska, including the construction of an intertie.

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

4 **SEC. 501. 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 1999’.

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 sections 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 abilities 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 affil-  
14 iate, 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 enti-  
13 ty referred to in paragraph (1), (2), or (3) acting as  
14 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. 502. ELECTRIC COMPANY MERGERS.**

9 Section 203(c) 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 fol-  
14 lowing: “Except as the Commission otherwise pro-  
15 vides, a holding company in a holding company sys-  
16 tem that includes an electric utility company shall  
17 not, directly or indirectly, purchase, acquire, or take  
18 any security of an electric utility company or of a  
19 holding company in a holding company system that  
20 includes an electric utility company, with first secur-  
21 ing an order of the Commission authorizing it to do  
22 so.”;

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

25 (4) adding after “public interest” the following:  
26 “including consideration of the effects on competi-

1 tion in wholesale and retail electricity markets,”;  
2 and

3 (5) adding at the end the following: “For pur-  
4 poses of this subsection, the terms ‘electric utility  
5 company’, ‘holding company’, and ‘holding company  
6 system’ have the meaning given them in the Public  
7 Utility Holding Company Act of 1999.

8 Notwithstanding section 201(b)(1), generation facilities  
9 are subject to the jurisdiction of the Commission for pur-  
10 poses of this section, except as the Commission otherwise  
11 may provide, provided that an entity that has existing  
12 loans made or guaranteed under the Rural Electrification  
13 Act of 1936 (5 U.S.C. 901 et seq.) is not jurisdictional  
14 for purposes of this section.”.

15 **SEC. 503. REMEDIAL MEASURES FOR MARKET POWER.**

16 The FPA is amended by adding the following new  
17 section after section 216 as added by section 303 of this  
18 Act:

19 “REMEDIAL MEASURES FOR MARKET POWER

20 “SEC. 217. (a) DEFINITIONS.—As used in this  
21 section—

22 “(1) ‘market power’ means the ability of a pub-  
23 lic utility or electric utility profitably to maintain  
24 prices above competitive levels for a significant pe-  
25 riod of time, and

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

4           “(b) COMMISSION JURISDICTIONAL SALES.—(1) If  
5           the Commission determines that there are markets in  
6           which a public utility that owns or controls generation fa-  
7           cilities has market power in sales of electric energy for  
8           resale in interstate commerce, the Commission shall order  
9           that utility to submit a plan for taking necessary actions  
10          to remedy its market power, which may include, but is  
11          not limited to, conditions respecting operation or dispatch  
12          of generation, independent operation of transmission fa-  
13          cilities, or divestiture of ownership of one or more genera-  
14          tion facilities.

15          “(2) in consultation with the Attorney General and  
16          the Federal Trade Commission, the Commission shall re-  
17          view the plan to determine if its implementation would  
18          adequately mitigate the adverse competitive effects of  
19          market power. The Commission may approve the plan  
20          with or without modification. The plan takes effect upon  
21          approval by the Commission. Notwithstanding any State  
22          law, regulation, or order to the contrary and notwith-  
23          standing any other provision of this Act or any other law,  
24          the Commission has jurisdiction to order divestiture or



1 other transfer of control of generation assets pursuant to  
2 the plan.

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

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

22 “(3) After consultation with the Attorney General  
23 and the Federal Trade Commission, the Commission may  
24 approve the plan with or without modification. The plan  
25 shall take effect upon approval by the Commission.

1 “(4) Notwithstanding any State law, regulation, or  
2 order to the contrary and notwithstanding any other provi-  
3 sion of this Act or any other law, the Commission has ju-  
4 risdiction to order divestiture or other transfer of control  
5 of generation assets pursuant to the plan.”.

## 6 **TITLE VI—ELECTRIC** 7 **RELIABILITY**

### 8 **SEC. 601. ELECTRIC RELIABILITY ORGANIZATION AND** 9 **OVERSIGHT.**

10 (a) **ELECTRIC RELIABILITY ORGANIZATION AND**  
11 **OVERSIGHT.**—The Federal Power Act is amended by add-  
12 ing the following new section after section 217:

13 “**ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT**

14 “**SEC. 218. (a) PURPOSE.**—The purpose of this sec-  
15 tion is to provide for the establishment and enforcement  
16 of mandatory reliability standards in order to ensure the  
17 reliable operation of the bulk-power system.

18 “(b) **DEFINITIONS.**—As used in this section:

19 “(1) The term ‘Affiliated Regional Reliability  
20 Entity’ means an entity delegated authority under  
21 the provisions of subsection (i).

22 “(2) The term ‘Bulk-Power System’ means all  
23 facilities and control systems necessary for operating  
24 an interconnected transmission grid (or any portion  
25 thereof), including high-voltage transmission lines,  
26 substations, control centers, communications, data,

1 and operations planning facilities, and the output of  
2 generating units necessary to maintain transmission  
3 system reliability.

4 “(3) The term ‘Electric Reliability Organiza-  
5 tion’ or ‘Organization’ means the organization ap-  
6 proved by the Commission under subsection (e)(4).

7 “(4) The term ‘Entity Rule’ means a rule  
8 adopted by an Affiliated Regional Reliability Entity  
9 for a specific region and designed to implement or  
10 enforce one or more Organization Standards. An  
11 Entity Rule shall be subject to approval by the Or-  
12 ganization, and once approved, shall be treated as  
13 an Organization Standard.

14 “(5) The term ‘Industry Sector’ means a group  
15 of Users of the Bulk Power System with substan-  
16 tially similar commercial interests, as determined by  
17 the board of the Electric Reliability Organization.

18 “(6) The term ‘Interconnection’ means a geo-  
19 graphic area in which the operation of Bulk-Power  
20 System components is synchronized such that the  
21 failure of one or more of such components may ad-  
22 versely affect the ability of the operators of other  
23 components within the Interconnection to maintain  
24 safe and reliable operation of the facilities within  
25 their control.

1           “(7) The term ‘Organization Standard’ means a  
2 policy or standard duly adopted by the Electric Reli-  
3 ability Organization to provide for the reliable oper-  
4 ation of a Bulk-Power System.

5           “(8) The term ‘Public Interest Group’ means  
6 any non-profit private or public organization that  
7 has an interest in the activities of the Electric Reli-  
8 ability Organization, including, but not limited to,  
9 ratepayer advocates, environmental groups, and  
10 State and local government organizations that regu-  
11 late market participants and promulgate government  
12 policy.

13           “(9) The term ‘Variance’ means an exception or  
14 variance from the requirements of an Organization  
15 Standard (including a proposal for an Organization  
16 standard where there is no Organization Standard)  
17 that is adopted by an Affiliated Regional Reliability  
18 Entity and applicable to all or a part of the region  
19 for which the Affiliated Regional Reliability Entity is  
20 responsible. A Variance shall be subject to approval  
21 by the Organization, and once approved, shall be  
22 treated as an Organization Standard.

23           “(10) The term ‘System Operator’ means any  
24 entity that operates or is responsible for the oper-  
25 ation of a Bulk-Power System, including but not

1 limited to a control area operator, an independent  
2 system operator, a transmission company, a trans-  
3 mission system operator, or a regional security coor-  
4 dinator.

5 “(11) The term ‘User of the Bulk-Power Sys-  
6 tem’ means any entity that sells, purchases, or  
7 transmits electric power over a Bulk-Power System,  
8 or that owns, operates or maintains facilities or con-  
9 trol systems that are part of a Bulk-Power System,  
10 or that is a System Operator.

11 “(c) COMMISSION AUTHORITY.—Notwithstanding  
12 any other provision of the Federal Power Act, within the  
13 United States the Commission has jurisdiction over the  
14 Electric Reliability Organization, all Affiliated Regional  
15 Reliability Entities, all System Operators, and all Users  
16 of the Bulk-Power System, for purposes of approving and  
17 enforcing compliance with the requirements of this section.

18 “(d) EXISTING RELIABILITY STANDARDS.—Fol-  
19 lowing enactment of this section, and prior to the approval  
20 of an Organization under subsection (e), any person, in-  
21 cluding the North American Electric Reliability Council  
22 and its member Regional Reliability Councils, may file  
23 with the Commission any reliability standard, guidance,  
24 or practice, or any amendment thereto, that the person  
25 would propose to be made mandatory and enforceable. The

1 Commission, after allowing interested persons an oppor-  
2 tunity to submit comments, may approve the proposed  
3 mandatory standard, guidance, or practice, or any amend-  
4 ment thereto, if it finds that the standard, guidance, or  
5 practice, or amendment is just, reasonable, not unduly dis-  
6 criminatory or preferential, and in the public interest.  
7 Filed standards, guidance, or practices, including any  
8 amendments thereto, shall be mandatory and applicable  
9 according to their terms following approval by the Com-  
10 mission and shall remain in effect until—

11           “(1) withdrawn, disapproval or superseded by  
12           an Organization Standard, issued or approved by the  
13           Electric Reliability Organization and made effective  
14           by the Commission under section (f); or

15           “(2) disapproved or suspended by the Commis-  
16           sion if, upon complaint or upon its own motion and  
17           after notice and an opportunity for comment, the  
18           Commission finds the standard, guidance, or prac-  
19           tice unjust, unreasonable, unduly discriminatory or  
20           preferential, or not in the public interest.

21 Standards, guidance, or practices in effect pursuant to the  
22 provisions of this subsection shall be enforceable by the  
23 Commission under Part III of this Act.

24           “(e) ORGANIZATION APPROVAL.—(1) Not later than  
25 90 days after the date of enactment of this section, the

1 Commission shall issue proposed rules specifying proce-  
2 dures and requirements for an entity to apply for approval  
3 as the Electric Reliability Organization. The Commission  
4 shall provide notice and opportunity for comment on the  
5 proposed rules. The Commission shall issue a final rule  
6 under this subsection within 180 days after the date of  
7 enactment of this section.

8       “(2) Following the issuance of a final Commission  
9 rule under paragraph (1), an entity may submit an appli-  
10 cation to the Commission for approval as the Electric Reli-  
11 ability Organization. The applicant shall specify in its ap-  
12 plication its governance and procedures, as well as its  
13 funding mechanism and initial funding requirements.

14       “(3) The Commission shall provide public notice of  
15 the application and afford interested parties an oppor-  
16 tunity to comment.

17       “(4) The Commission shall approve the application  
18 if the Commission determines that the applicant—

19               “(A) has the ability to develop, implement, and  
20 enforce standards that provide for an adequate level  
21 of reliability of the Bulk-Power System;

22               “(B) permits voluntary membership to any  
23 User of the Bulk-Power System or Public Interest  
24 Group;

1           “(C) assures fair representation of its members  
2           in the selection of its directors and fair management  
3           of its affairs, taking into account the need for effi-  
4           ciency and effectiveness in decisionmaking and oper-  
5           ation and requirements for technical competency in  
6           the development of Organization Standards and the  
7           exercise of oversight of Bulk-Power System reli-  
8           ability;

9           “(D) assures that no two Industry Sectors have  
10          the ability to control, and no one Industry Sector  
11          has the ability to veto, the Electric Reliability Orga-  
12          nization’s discharge of its responsibilities (including  
13          actions by committees recommending standards to  
14          the board or other board actions to implement and  
15          enforce standards);

16          “(E) provides for governance by a board of no  
17          more than eleven members, one of whom shall be ap-  
18          pointed by the Secretary of Energy;

19          “(F) provides a funding mechanism and re-  
20          quirements that are just, reasonable, and not unduly  
21          discriminatory or preferential and are in the public  
22          interest, and which satisfies the requirements of sub-  
23          section (n);

24          “(G) establishes procedures for development of  
25          Organization Standards that provide reasonable no-



1       tice and opportunity for public comment, taking into  
2       account the need for efficiency and effectiveness in  
3       decisionmaking and operations and the requirements  
4       for technical competency in the development of Or-  
5       ganization Standards, and which standards develop-  
6       ment process has the following attributes: (i) open-  
7       ness, (ii) balance of interests, and (iii) due process,  
8       except that the procedures may include alternative  
9       procedures for emergencies;

10               “(H) establishes fair and impartial procedures  
11       for implementation and enforcement of Organization  
12       Standards, either directly or through delegation to  
13       an Affiliated Regional Reliability Entity, including  
14       the imposition of penalties, limitations on activities,  
15       functions, or operations, or other appropriate sanc-  
16       tions;

17               “(I) establishes procedures for notice and op-  
18       portunity for public observation of all meetings, ex-  
19       cept that the procedures for public observation may  
20       include alternative procedures for emergencies or for  
21       the discussion of information the directors determine  
22       should take place in closed session, such as litiga-  
23       tion, personnel actions, or commercially sensitive in-  
24       formation;

1           “(J) provides for the consideration of rec-  
2           ommendations of States and State commissions; and

3           “(K) addresses other matters that the Commis-  
4           sion may deem necessary or appropriate to ensure  
5           that the procedures, governances, and funding of the  
6           Electric Reliability Organization are just, reason-  
7           able, not unduly discriminatory or preferential, and  
8           are in the public interest.

9           “(5) The Commission shall approve only one Electric  
10          Reliability Organization. If the Commission receives two  
11          or more timely applications that satisfy the requirements  
12          of this subsection, the Commission shall approve only the  
13          application it concludes will best implement the provisions  
14          of this section.

15          “(f) ESTABLISHMENT OF AND MODIFICATIONS OF  
16          ORGANIZATION STANDARDS.—(1) The Electric Reliability  
17          Organization shall file with the Commission any new or  
18          modified Organization Standards, including any Variances  
19          or Entity Rules, and the Commission shall follow the pro-  
20          cedures under paragraph (2) for review of that filing. Sub-  
21          missions shall include:

22                  “(A) a concise statement of the purpose of the  
23                  proposal, and

24                  “(B) a record of any proceedings conducted  
25                  with respect to the proposal.

1           “(2) The Commission shall provide notice of the filing  
2 of the proposal and afford interested persons a reasonable  
3 time, but not more than 30 days, to submit comments.  
4 The Commission, after taking into consideration any sub-  
5 mitted comments, shall approve or disapprove the proposal  
6 not later than 60 days after the deadline for the submis-  
7 sion of comments except that—

8           “(A) the Commission may extend the 60-day  
9 period for an additional 90 days for good cause, and

10           “(B) if the Commission does not act to approve  
11 or disapprove a proposal within the periods set forth  
12 in this paragraph, the proposal shall go into effect,  
13 without prejudice to the authority of the Commission  
14 thereafter to suspend or modify the proposal in ac-  
15 cordance with the standards and requirements of  
16 this section.

17 Proposals approved by the Commission take effect accord-  
18 ing to their terms but not earlier than 30 days after the  
19 effective date of the Commission’s order, except as pro-  
20 vided in paragraph (3).

21           “(3)(A) In the exercise of its review responsibilities  
22 under this subsection, the Commission shall give due  
23 weight to the technical expertise of the Electric Reliability  
24 Organization with respect to the content of a new or modi-  
25 fied Organization Standard, but shall not defer to the Or-

1 ganization with respect to the effect of the standard on  
2 competition. The Commission shall approve a proposed  
3 new or modified Organization Standard if it determines  
4 the proposal to be just, reasonable, not unduly discrimina-  
5 tory or preferential, and in the public interest.

6       “(B) The Commission, either upon complaint or upon  
7 its own motion, shall suspend an existing Organization  
8 Standard, if it determines the standard to be unjust, un-  
9 reasonable, unduly discriminatory or preferential, or not  
10 in the public interest.

11       “(C) An existing or proposed Organization Standard  
12 which is disapproved or suspended in whole or in part by  
13 the Commission shall be remanded to the Electric Reli-  
14 ability Organization for further consideration.

15       “(D) The Commission, on its own motion or upon  
16 complaint, may direct the Electric Reliability Organization  
17 to develop an Organization Standard, including modifica-  
18 tion to an existing Organization Standard, addressing a  
19 specific matter by a date certain if the Commission con-  
20 siders a new or modified Organization Standard necessary  
21 or appropriate to further the purposes of this section. The  
22 Electric Reliability Organization shall file any new or  
23 modified Organization Standard in accordance with this  
24 subsection.

1       “(E) An Affiliated Regional Reliability Entity may  
2 propose a Variance or Entity Rule to the Electric Reli-  
3 ability Organization under subsection (i)(3). The Affili-  
4 ated Regional Reliability Entity may request that the  
5 Electric Reliability Organization expedite consideration of  
6 the proposal, and may file a notice of this request with  
7 the Commission, if expedited consideration is necessary to  
8 provide for Bulk-Power System reliability. If the Electric  
9 Reliability Organization fails to adopt the Variance or En-  
10 tity Rule, either in whole or in part, the Affiliated Re-  
11 gional Reliability Entity may request that the Commission  
12 review such action. If the Commission determines, after  
13 its review of such a request, that the action of the Electric  
14 Reliability Organization did not conform to the applicable  
15 standards and procedures approved by the Commission,  
16 or if the Commission determines that the Variance or En-  
17 tity Rule is just, reasonable, not unduly discriminatory or  
18 preferential, and in the public interest, and that the Elec-  
19 tric Reliability Organization has unreasonably rejected the  
20 proposed Variance or Entity Rule, the Commission may  
21 remand the proposed Variance or Entity Rule for further  
22 consideration by the Electric Reliability Organization or  
23 may direct the Electric Reliability Organization or the Af-  
24 filiated Regional Reliability Entity to develop a Variance  
25 or Entity Rule consistent with that requested by the Affili-

1 ated Regional Reliability Entity. Such a Variance or Enti-  
2 ty Rule proposed by an Affiliated Regional Reliability En-  
3 tity shall be submitted to the Electric Reliability Organiza-  
4 tion for review and filing with the Commission in accord-  
5 ance with the procedures specified in this subsection.

6       “(F) Notwithstanding any other provision of this sub-  
7 section, a proposed Organization Standard or amendment  
8 shall take effect according to its terms if the Electric Reli-  
9 ability Organization determines that an emergency exists  
10 requiring that the proposed Organization Standard or  
11 amendment take effect without notice or comment. The  
12 Electric Reliability Organization shall notify the Commis-  
13 sion immediately following this determination and shall  
14 file the emergency Organization Standard or amendment  
15 with the Commission not later than five days following the  
16 determination and shall include in the filing an expla-  
17 nation of the need for the emergency standard. Subse-  
18 quently, the Commission shall provide notice of the emer-  
19 gency Organization Standard or amendment for comment,  
20 and shall follow the procedures set out in paragraphs (2)  
21 and (3) for review of a new or modified Organization  
22 Standard. An emergency Organization Standard that has  
23 gone into effect shall remain in effect unless and until sus-  
24 pended or disapproved by the Commission. If the Commis-  
25 sion determines at any time that the emergency Organiza-

1 tion Standard or amendment is not necessary, the Com-  
2 mission may suspend the emergency Organization Stand-  
3 ard or amendment.

4 “(4) All Users of the Bulk-Power System shall com-  
5 ply with any Organization Standard that takes effect  
6 under this section.

7 “(g) COORDINATION WITH CANADA AND MEXICO.—  
8 The Electric Reliability Organization shall take all appro-  
9 priate steps to gain recognition in Canada and Mexico.  
10 Subject to the President’s authority with respect to for-  
11 eign policy, the United States shall use its best efforts to  
12 enter into international agreements with the appropriate  
13 governments of Canada and Mexico to provide for effective  
14 compliance with Organization Standards and to provide  
15 for the effectiveness of the Electric Reliability Organiza-  
16 tion in carrying out its mission and responsibilities. All  
17 actions taken by the Electric Reliability Organization, any  
18 Affiliated Regional Reliability Entity, and the Commission  
19 shall be consistent with the provisions of such inter-  
20 national agreements.

21 “(h) CHANGES IN PROCEDURES, GOVERNANCE, OR  
22 FUNDING.—(1) The Electric Reliability Organization shall  
23 file with the Commission any proposed change in its proce-  
24 dures, governance, or funding, or any changes in the Af-  
25 filiated Regional Reliability Entity’s procedures, govern-

1   ance or funding relating to delegated functions, and shall  
2   include with the filing an explanation of the basis and pur-  
3   pose for the change.

4       “(2) A proposed procedural change may take effect  
5   90 days after filing with Commission if the change con-  
6   stitutes a statement of policy, practice, or interpretation  
7   with respect to the meaning or enforcement of an existing  
8   procedure. Any other proposed procedural change takes ef-  
9   fect only upon a finding by the Commission, after notice  
10  and opportunity for comments, that the change is just,  
11  reasonable, not unduly discriminatory or preferential, is  
12  in the public interest, and satisfies the requirements of  
13  subsection (e)(4).

14       “(3) A change in governance or funding does not take  
15  effect unless the Commission finds that the change is just,  
16  reasonable, not unduly discriminatory or preferential, and  
17  is in the public interest, and satisfies the requirements of  
18  subsection (e)(4).

19       “(4)(A) The Commission, either upon complaint or  
20  upon its own motion, may suspend a procedure or govern-  
21  ance or funding provision if it determines the procedure  
22  or provision does not meet the requirements of subsection  
23  (e)(4) or is unjust, unreasonable, unduly discriminatory  
24  or preferential, or otherwise not in the public interest.



1           “(B) The Commission, upon complaint or upon its  
2 own motion, may require the Electric Reliability Organiza-  
3 tion to amend the procedures, governance or funding if  
4 the Commission determines that the amendment is nec-  
5 essary to meet the requirements of this section. The Elec-  
6 tric Reliability Organization shall file the amendment in  
7 accordance with paragraph (1) of this subsection.

8           “(i) DELEGATIONS OF AUTHORITY.—(1) The Elec-  
9 tric Reliability Organization shall, upon request by an en-  
10 tity, enter into an agreement with the entity for the dele-  
11 gation of authority to implement and enforce compliance  
12 with Organization Standards approved by the Commission  
13 in a specified geographic area if the Organization finds  
14 that the entity requesting the delegation satisfies the re-  
15 quirements of subsections (e)(4) (A), (B), (C), (D), (F),  
16 and (K), and if the delegation promotes the effective and  
17 efficient implementation and administration of Bulk-  
18 Power System reliability The Electric Reliability Organi-  
19 zation may enter into an agreement to delegate to the enti-  
20 ty any other authority, except that the Electric Reliability  
21 Organization shall reserve the right to set and approve  
22 standards for the Bulk-Power System reliability.

23           “(2) The Electric Reliability Organization shall file  
24 with the Commission any agreement entered into under  
25 this subsection and any information the Commission re-

1 quires with respect to the Affiliated Regional Reliability  
2 Entity to which authority is to be delegated. The Commis-  
3 sion shall approve the agreement, following public notice  
4 and an opportunity for comment, if it finds that the agree-  
5 ment meets the requirements of paragraph (1), and is  
6 just, reasonable, not unduly discriminatory or preferential,  
7 and is in the public interest. A proposed delegation agree-  
8 ment with an Affiliated Regional Reliability Entity orga-  
9 nized on an Interconnection-wide basis shall be rebuttably  
10 presumed by the Commission to promote the effective and  
11 efficient implementation and administration of Bulk-  
12 Power System reliability. No delegation by the Electric  
13 Reliability Organization shall be valid unless approved by  
14 the Commission.

15       “(3)(A) A delegation agreement entered into under  
16 this subsection shall specify the procedures for an Affili-  
17 ated Regional Reliability Entity to propose Entity Rules  
18 or Variances for review by the Electric Reliability Organi-  
19 zation.

20       “(B) With respect to any such proposal that would  
21 apply on an Interconnection-wide basis, the Electric Reli-  
22 ability Organization shall presume the proposal valid if  
23 made by an Interconnection-wide Affiliated Regional Reli-  
24 ability Entity unless the Electric Reliability Organization  
25 makes a written finding that the proposal—

1           “(i) was not developed in a fair and open proc-  
2           ess that provided an opportunity for all interested  
3           parties to participate;

4           “(ii) has a significant adverse impact on reli-  
5           ability or commerce in other Interconnections;

6           “(iii) fails to provide a level of reliability of the  
7           Bulk-Power System within the Interconnection such  
8           that it would constitute a serious and substantial  
9           threat to public health, safety, welfare, or national  
10          security; or

11          “(iv) creates a serious and substantial burden  
12          on competitive markets within the Interconnection  
13          that is not necessary for reliability.

14          “(C) With respect to a proposal that would apply only  
15          to part of an Interconnection, the Electric Reliability Or-  
16          ganization shall find the proposal valid if the Affiliated  
17          Regional Reliability Entity or Entities making the pro-  
18          posal demonstrate that it—

19               “(i) was developed in a fair and open process  
20               that provided an opportunity for all interested par-  
21               ties to participate;

22               “(ii) would not have an adverse impact on com-  
23               merce that is not necessary for reliability;

24               “(iii) provides a level of Bulk-Power System re-  
25               liability adequate to protect public health, safety,

1 welfare, and national security, and would not have  
2 a significant adverse impact on reliability; and

3 “(iv) in the case of a Variance, is based on le-  
4 gitimate differences between regions or between sub-  
5 regions within the Affiliated Regional Reliability En-  
6 tity’s geographic area.

7 “(D) The Electric Reliability Organization shall ap-  
8 prove or disapprove the proposal within 120 days, or the  
9 proposal is deemed approved. Following approval of a pro-  
10 posal under this paragraph, the Electric Reliability Orga-  
11 nization shall seek Commission approval pursuant to sub-  
12 section (f). Affiliated Regional Reliability Entities may not  
13 make requests for approval directly to the Commission ex-  
14 cept pursuant to subsection (f)(3)(E).

15 “(4) If an Affiliated Regional Reliability Entity re-  
16 quests, consistent with paragraph (1) of this subsection,  
17 that the Electric Reliability Organization delegate author-  
18 ity to it, but is unable within 180 days to reach agreement  
19 with the Electric Reliability Organization with respect to  
20 the requested delegation, the entity may seek relief from  
21 the Commission. If, following notice and opportunity for  
22 comment, the Commission determines that the delegation  
23 to the entity would meet the requirements of paragraph  
24 (1); that the delegation would be just, reasonable, not un-  
25 duly discriminatory or preferential, and in the public inter-

1 est; and that the Electric Reliability Organization has un-  
2 reasonably withheld the delegation, the Commission may,  
3 by order, direct the Electric Reliability Organization to  
4 make the delegation.

5 “(5)(A) The Commission may, upon its own motion  
6 or upon complaint, and with notice to the appropriate Af-  
7 filiated Regional Reliability Entity or Entities, direct the  
8 Electric Reliability Organization to propose a modification  
9 to an agreement entered into under this subsection if the  
10 Commission determines that—

11 “(i) the Affiliated Regional Reliability Entity no  
12 longer has the capacity to carry out effectively or ef-  
13 ficiently its implementation or enforcement respon-  
14 sibilities under that agreement, has failed to meet its  
15 obligations under that agreement, or has violated  
16 any provision of this section,

17 “(ii) the rules, practices, or procedures of the  
18 Affiliated Regional Reliability Entity no longer pro-  
19 vide for fair and impartial discharge of its imple-  
20 mentation or enforcement responsibilities under the  
21 agreement,

22 “(iii) the geographic boundary of a transmission  
23 entity approved by the Commission is not wholly  
24 within the boundary of an Affiliated Regional Reli-  
25 ability Entity and such difference is inconsistent

1 with the effective and efficient implementation and  
2 administration of Bulk-Power System reliability, or

3 “(iv) the agreement is inconsistent with another  
4 delegation agreement as a result of actions taken  
5 under paragraph (4) of this subsection.

6 “(B) Following an order of the Commission issued  
7 under paragraph (5)(A) of this subsection, the Commis-  
8 sion may suspend the affected agreement if the Electric  
9 Reliability Organization or the Affiliated Regional Reli-  
10 ability Entity does not propose an appropriate and timely  
11 modification. If the agreement is suspended, the Electric  
12 Reliability Organization shall assume the previously dele-  
13 gated responsibilities. The Commission shall allow the  
14 Electric Reliability Organization and the Affiliated Re-  
15 gional Reliability Entity an opportunity to appeal the sus-  
16 pension.

17 “(j) ORGANIZATION MEMBERSHIP.—Every System  
18 Operator shall be a member of the Electric Reliability Or-  
19 ganization and shall be a member of any Affiliated Re-  
20 gional Reliability Entity operating under an agreement ef-  
21 fective pursuant to subsection (i) applicable to the region  
22 in which the System Operator operates or is responsible  
23 for the operation of a Bulk-Power System facility.

24 “(k) FEDERAL POWER SYSTEMS AND NUCLEAR  
25 REGULATORY COMMISSION.—Any actions taken under

1 this section by the Commission, the Electric Reliability Or-  
2 ganization, and any Affiliated Regional Reliability Entity  
3 shall be consistent with any statutory or treaty obligations  
4 of a Federal Power Marketing Administration, the Ten-  
5 nessee Valley Authority, the Bureau of Reclamation and  
6 the Corps of Engineers and any Nuclear Regulatory Com-  
7 mission requirements.

8 “(1) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)  
9 Consistent with the range of actions approved by the Com-  
10 mission under subsection (e)(4)(H), the Electric Reli-  
11 ability Organization may impose a penalty; may limit ac-  
12 tivities, functions, or operations; or may take other dis-  
13 ciplinary action the Electric Reliability Organization finds  
14 appropriate against a User of the Bulk-Power System if  
15 the Electric Reliability Organization, after notice and an  
16 opportunity for interested parties to be heard, issues a  
17 finding in writing that the User of the Bulk-Power System  
18 has violated an Organization Standard approved by the  
19 Commission. The Electric Reliability Organization shall  
20 immediately notify the Commission of any disciplinary ac-  
21 tion imposed with respect to an act or failure of a User  
22 of the Bulk-Power System that affected or threatened to  
23 affect Bulk-Power System facilities located in the United  
24 States, and the sanctioned party shall have the right to  
25 seek modification or rescission by the Commission of such

1 disciplinary action. If the Organization finds it necessary  
2 to prevent a serious threat to reliability, the Organization  
3 may seek injunctive relief in a Federal Court in the dis-  
4 trict in which the affected facilities are located.

5       “(2) A disciplinary action taken under paragraph (1)  
6 may take effect not earlier than the 30th day after the  
7 Electric Reliability Organization files with the Commission  
8 its written finding and record of proceedings before the  
9 Electric Reliability Organization and the Commission  
10 posts the Organization’s written finding, unless the Com-  
11 mission, on its own motion or upon application by the  
12 User of the Bulk-Power System which is the subject of  
13 the action, suspends the action. The action shall remain  
14 in effect or remain suspended unless and until the Com-  
15 mission, after notice and opportunity for hearing, affirms,  
16 sets aside, modifies, or reinstates the action, but the Com-  
17 mission shall conduct such a hearing under procedures es-  
18 tablished to ensure expedited consideration of the action  
19 taken.

20       “(3) The Commission, on its own motion, may order  
21 compliance with an Organization Standard and may im-  
22 pose a penalty; may limit activities, functions, or oper-  
23 ations; or may take such other disciplinary action as the  
24 Commission finds appropriate, against a User of the Bulk-  
25 Power System with respect to actions affecting or threat-



1 ening to affect Bulk-Power System facilities located in the  
2 United States if the Commission finds, after notice and  
3 opportunity for a hearing, that the User of the Bulk-  
4 Power System has violated or threatens to violate an Or-  
5 ganization Standard.

6       “(4) The Commission may take such action as is nec-  
7 essary against the Electric Reliability Organization or an  
8 Affiliated Regional Reliability Entity to assure compliance  
9 with an Organization Standard, or any Commission order  
10 affecting the Electric Reliability Organization or an Affili-  
11 ated Regional Reliability Entity.

12       “(m) RELIABILITY REPORTS.—The Electric Reli-  
13 ability Organization shall conduct periodic assessments of  
14 the reliability and adequacy of the interconnected Bulk-  
15 Power System in North America and shall report annually  
16 to the Secretary of Energy and the Commission its find-  
17 ings and recommendations for monitoring or improving  
18 system reliability and adequacy.

19       “(n) ASSESSMENT AND RECOVERY OF CERTAIN  
20 COSTS.—The reasonable costs of the Electric Reliability  
21 Organization, and the reasonable costs of each Affiliated  
22 Regional Reliability Entity that are related to implementa-  
23 tion and enforcement of Organization Standards or other  
24 requirements contained in a delegation agreement, ap-  
25 proved under subsection (i), shall be assessed by the Elec-

1 tric Reliability Organization and each Affiliated Regional  
2 Reliability Entity, respectively, taking into account the re-  
3 lationship of costs to each region and based on an alloca-  
4 tion that reflects an equitable sharing of the costs among  
5 all end-users. The Commission shall provide by rule for  
6 the review of such costs and allocations, pursuant to the  
7 standards in this subsection and subsection (e)(4)(F).

8       “(o) RULE OF REASON STANDARD.—In any action  
9 under the antitrust laws, the conduct of the Electric Reli-  
10 ability Organization, of an Affiliated Regional Reliability  
11 Entity operating under an agreement in effect under sub-  
12 section (i), or a member of the Electric Reliability Organi-  
13 zation or an Affiliated Regional Reliability Entity, to the  
14 extent such conduct is undertaken to develop or implement  
15 an Organization Standard which is approved by the Com-  
16 mission under subsection (f), shall not be deemed illegal  
17 per se. Such conduct shall be judged on the basis of its  
18 reasonableness, taking into account all relevant factors af-  
19 fecting competition. For purposes of this section, ‘anti-  
20 trust laws’ has the meaning given it in subsection (a) of  
21 the first section of the Clayton Act, except that such term  
22 includes section 5 of the Federal Trade Commission Act  
23 to the extent that such section 5 applies to unfair methods  
24 of competition.”.

1 (b) CONFORMING AMENDMENTS.—(1) Section 316 of  
2 the FPA is amended by striking “or 214” each place it  
3 appears and inserting “214, or 218”.

4 (2) Section 316A of the FPA is amended by striking  
5 “section 211, 212, 213, or 214” each time it appears and  
6 inserting “Part II of this Act”.

7 **SEC. 602. ELECTRICITY OUTAGE INVESTIGATION.**

8 Title II of the Department of Energy Organization  
9 Act is amended by adding the following new section after  
10 section 213 as added by section 408:

11 **“SEC. 214. ELECTRICITY OUTAGE INVESTIGATION BOARD.**

12 “(a) ESTABLISHMENT; MEMBERSHIP; TERMS.—The  
13 Secretary shall establish an Electricity Outage Investiga-  
14 tion Board. The Board shall consist of five members, ap-  
15 pointed by the Secretary. Each member shall serve a term  
16 of three years.

17 “(b) DUTIES.—The Board shall—

18 “(1) investigate a major bulk-power system fail-  
19 ure in the United States to determine its causes,

20 “(2) report to the Secretary the results of the  
21 investigation, and

22 “(3) recommend to the Secretary actions to  
23 minimize the possibility of a future bulk-power sys-  
24 tem failure.

1       “(c) FEDERAL ADVISORY COMMITTEE ACT.—The  
2 Board shall not be subject to the Federal Advisory Com-  
3 mittee Act (5 U.S.C. Appx.).”

4 **SEC. 603. ADDITIONAL TRANSMISSION CAPACITY.**

5       Section 209 of PURPA is amended by adding a new  
6 subsection after subsection (c):

7       “(d) CONSIDERATION OF ADDITIONAL TRANS-  
8 MISSION CAPACITY.—The Secretary may call and chair a  
9 meeting of representatives of States in a region in order  
10 to discuss provision of additional transmission capacity  
11 and related concerns in such region.”

12       **TITLE VII—ENVIRONMENTAL**  
13       **PROTECTION**

14 **SEC. 701. NITROGEN OXIDES CAP AND TRADE PROGRAM.**

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

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

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

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

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

1           (4) the term “NO<sub>x</sub> allowance cap and trade  
2           program” means a program under which, in accord-  
3           ance with regulations issued by the Administrator,  
4           the Administrator establishes the maximum number  
5           of NO<sub>x</sub> allowances that may be allocated for speci-  
6           fied control periods, allocates or authorizes a State  
7           to allocate NO<sub>x</sub> allowances, allows the transfer of  
8           NO<sub>x</sub> allowances for use in States subject to such a  
9           program, requires monitoring and reporting of NO<sub>x</sub>  
10          emissions that meet the requirements of section 412  
11          of the Clean Air Act, and prohibits, and requires  
12          penalties and offsets for, any emissions of NO<sub>x</sub> in  
13          excess of the number of NO<sub>x</sub> allowances held.

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

1 all States in which such a source or other type of emissions  
2 activity is located.

3 (2) Any NO<sub>x</sub> allowance cap and trade program shall  
4 contribute to providing for emissions reductions that miti-  
5 gate adequately the contribution or interference and shall  
6 be taken into account by the Administrator in determining  
7 compliance with section 110(a)(2)(D) of the Clean Air  
8 Act.

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

## 19 **TITLE VIII—FEDERAL POWER** 20 **SYSTEMS**

### 21 **Subtitle A—Tennessee Valley** 22 **Authority**

#### 23 **SEC. 801. DEFINITION.**

24 Section 3 of the Federal Power Act is amended by  
25 adding after paragraph (25) the following new paragraph:

1           “(26) ‘TVA’ means the Tennessee Valley Au-  
2           thority, an agency and instrumentality of the United  
3           States created by the Tennessee Valley Authority  
4           Act of 1933;”.

5 **SEC. 802. APPLICATION OF FEDERAL POWER ACT.**

6           Part II of the Federal Power Act is amended by add-  
7           ing the following new section after section 201:

8           “APPLICATION TO FEDERAL POWER SYSTEMS

9           “SEC. 201A. (a) After January 1, 2003, sections 202  
10          (h) and (i), 203 (with respect to dispositions of trans-  
11          mission facilities), 205, 206, 208, and 210 through 213  
12          of this Part and sections 301 through 304, 306, 307 (ex-  
13          cept the last sentence of paragraph (c)), 308, 309, 313,  
14          and 317 of Part III apply to TVA’s transmission facilities  
15          and transmission of electric energy and the provision of  
16          necessary associated services over the TVA Transmission  
17          System, except that any determination made by the Com-  
18          mission under those provisions as to whether an action  
19          or matter is just, reasonable, or not unduly discriminatory  
20          or preferential shall be subject to any other laws applicable  
21          to TVA, including the requirement that TVA recover its  
22          costs.”.

23 **SEC. 803. ANTITRUST COVERAGE.**

24          The Tennessee Valley Authority Act of 1933 (16  
25          U.S.C. 831–831ee) is amended by adding the following  
26          after section 21:

1 **“SEC. 21a. ANTITRUST LAWS.**

2 “(a) Subject to subsection (b), effective January 1,  
3 2003, the Tennessee Valley Authority is subject to the  
4 antitrust laws of the United States with respect to the op-  
5 eration of its electric power system. For purposes of this  
6 section, ‘antitrust laws,’ has the meaning given it in sub-  
7 section (a) of the first section of the Clayton Act (15  
8 U.S.C. 12(a)), except that it includes the Act of June 19,  
9 1936 (15 U.S.C. 13 et seq.), commonly known as the Rob-  
10 inson-Patman Act, and section 5 of the Federal Trade  
11 Commission Act (15 U.S.C. 45), to the extent that section  
12 5 applies to unfair methods of competition.

13 “(b) No damages, interest on damages, costs, or at-  
14 torney’s fees may be recovered under section 4, 4A, or 4C  
15 of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from the  
16 Tennessee Valley Authority.”

17 **SEC. 804. TVA POWER SALES.**

18 The Tennessee Valley Authority Act of 1933 (16  
19 U.S.C. 831–831ee) is amended by adding the following  
20 after section 15d:

21 **“SEC. 15e. SALE OF ELECTRIC POWER AT WHOLESALE AND**  
22 **RETAIL.**

23 “(a) For the purposes of this section:

24 “(1) ‘distributor’ means an electric power sys-  
25 tem that—



1           “(A) is owned by a cooperative organiza-  
2           tion or by a municipality or other public body  
3           (or any successor in interest), and

4           “(B) on the date of enactment of this sec-  
5           tion, purchased electric power at wholesale from  
6           the Tennessee Valley Authority under an all-re-  
7           quirements power contract; and

8           “(2) ‘distributor service area’ means the geo-  
9           graphic area within which a distributor is authorized  
10          on the date of enactment of this section to provide  
11          electric power at retail to the ultimate consumer.

12          “(b)(1) Effective January 1, 2003, the Tennessee  
13          Valley Authority may sell electric power at wholesale to  
14          any person.

15          “(2) Beginning January 1, 2003, the Tennessee Val-  
16          ley Authority shall not sell power at retail, except it may  
17          sell power to a retail customer who consumes that power  
18          within a distributor service area, if—

19                 “(A) the customer (or predecessor in interest)  
20                 purchased electric power directly from the Tennessee  
21                 Valley Authority as a retail customer on the date of  
22                 enactment of this section, or

23                 “(B) the distributor’s firm power purchases  
24                 from the Tennessee Valley Authority are 50 percent  
25                 or less of its total retail sales, or

1           “(C) the distributor agrees that the Tennessee  
2           Valley Authority can sell power to the customer.  
3 Nothing in this paragraph shall prohibit the Tennessee  
4 Valley Authority from continuing to serve a retail cus-  
5 tomer which the Tennessee Valley Authority was serving  
6 on the date of enactment of this section that is not located  
7 within a distributor service area.

8           “(3) Notwithstanding any other provision of law, the  
9 rates, terms, and conditions of retail electric service, and  
10 rates for the use of distribution lines are not subject to  
11 regulation by the Tennessee Valley Authority.”.

12 **SEC. 805. RENEGOTIATION OF LONG-TERM POWER CON-**  
13 **TRACTS.**

14           Section 15e of the Tennessee Valley Authority Act  
15 of 1933 (16 U.S.C. 831–831ee) as added by section 804  
16 of this Act is amended by adding the following after sub-  
17 section (b):

18           “(c)(1) Within one year following the date of enact-  
19 ment of this section, the Tennessee Valley Authority and  
20 the distributors shall renegotiate their existing long-term  
21 contracts with respect to—

22                   “(A) the remaining term;

23                   “(B) the length of the termination notice;

24                   “(C) the amount of power a distributor may  
25           purchase from a supplier other than the Tennessee

1 Valley Authority beginning January 1, 2003, and ac-  
2 cess to the Tennessee Valley Authority transmission  
3 system for that power; and

4 “(D) stranded cost recovery.

5 “(2) If the parties are unable to reach agreement  
6 with regard to any of the issues under paragraph (1) with-  
7 in the one-year period set forth in paragraph (1), they  
8 shall submit the issue in dispute to the Federal Energy  
9 Regulatory Commission for final resolution.”.

10 **SEC. 806. STRANDED COST RECOVERY.**

11 (a) Section 206 of the Federal Power Act is  
12 amended by adding the following new subsection after sub-  
13 section (e) as added by section 301(b) of this Act:

14 “(f)(1) Within one year of the date of enactment of  
15 this subsection, the Commission shall promulgate regula-  
16 tions with respect to TVA’s recovery of stranded costs (as  
17 defined by the Commission) imposed on TVA resulting  
18 from wholesale or retail competition. These regulations  
19 shall provide that—

20 “(A) a customer that did not cause costs to be  
21 stranded is not obligated to pay those costs on be-  
22 half of other customers;

23 “(B) no stranded investment recovery charge  
24 shall have the effect of unfairly shifting costs among  
25 distributors or TVA retail customers;

1           “(C) for a stranded cost recovery charge TVA  
2           assesses on a retail or wholesale customer, TVA  
3           shall unbundle the charge from other retail or whole-  
4           sale rates applicable to that customer and state the  
5           charge separately on the customer’s bill; and

6           “(D) TVA shall not impose a stranded cost re-  
7           covery charge after September 30, 2007, unless the  
8           person against whom the charge is assessed agrees  
9           otherwise.

10          “(2) After notice and opportunity for comment, TVA  
11          shall submit a stranded cost recovery plan to the Commis-  
12          sion for review and approval.

13          “(3) The Commission shall review the recovery plan  
14          and shall approve the recovery plan if the Commission de-  
15          termines the plan to be just and reasonable and not un-  
16          duly discriminatory or preferential and consistent with the  
17          requirements of regulations issued under paragraph (1).  
18          TVA may recover stranded costs only pursuant to a recov-  
19          ery plan approved by the Commission.”.

20          (b) Section 15e of the Tennessee Valley Authority Act  
21          of 1933 (16 U.S.C. 831–831ee) as added by section 804  
22          of this Act is amended by adding the following after sub-  
23          section (c) as added by section 805 of this Act:

24          “(d) Amounts recovered by the Tennessee Valley Au-  
25          thority as stranded cost recovery charges under section

1 206(f) of the Federal Power Act shall be used to pay down  
2 TVA's debt to the extent determined by the TVA Board  
3 to be consistent with the proper financial management of  
4 the TVA power system, provided that TVA may not use  
5 amounts recovered to pay for additions to TVA's gener-  
6 ating capacity.”.

7 (c) Section 9106 of Title 31, United States Code, is  
8 amended by adding the following new subsection after sub-  
9 section (b):

10 “(c) Beginning in Fiscal Year 2003, as part of the  
11 annual management report submitted by the Tennessee  
12 Valley Authority (TVA) to Congress under this section,  
13 TVA shall also specifically report:

14 “(A) the status of TVA's long-range financial  
15 plans and the progress toward its goal of competi-  
16 tively priced power, and a general discussion of  
17 TVA's prospects on meeting the objectives of the  
18 Ten Year Business Outlook issued on July 22, 1997;

19 “(B) any changes in assumptions since the pre-  
20 vious report that may have a material effect on  
21 TVA's long-range financial plans;

22 “(C) the source of funds used for any capacity  
23 additions;

24 “(D) the use or other disposition of amounts re-  
25 covered by TVA under this section;

1           “(E) the amount by which TVA’s publicly-held  
2           debt was reduced; and

3           “(F) the projected amount by which TVA’s  
4           publicly-held debt will be reduced.”.

5 **SEC. 807. CONFORMING AMENDMENTS.**

6           Effective January 1, 2003—

7           (1) section 15d(a) of the Tennessee Valley Au-  
8           thority Act of 1933 (16 U.S.C. 831n-4(a)), which  
9           limits the sales or delivery of electric power by TVA  
10          or distributors outside a certain geographic area, is  
11          repealed;

12          (2) subsections (f) and (j) of section 212 of the  
13          Federal Power Act (16 U.S.C. 824k (f) and (j) are  
14          repealed; and

15          (3) the third proviso of section 10 of the Ten-  
16          nessee Valley Authority Act of 1933 (16 U.S.C.  
17          831i) and the second and third provisos of section  
18          12 of the Tennessee Valley Authority Act of 1933  
19          (16 U.S.C. 831k) do not apply to a wholesale sale  
20          of electric energy by the Tennessee Valley Authority.

1           **Subtitle B—Bonneville Power**  
2                           **Administration**

3   **SEC. 811. DEFINITIONS.**

4           Section 3 of the Federal Power Act is amended by  
5 adding the following new paragraphs after paragraph (26)  
6 as added by section 801 of this Act:

7                   “(27) ‘Bonneville Administrator’ means the Ad-  
8           ministrator of the Bonneville Power Administration;

9                   “(28) ‘Pacific Northwest’ has the meaning  
10          given that term in section 3(14) of the Pacific  
11          Northwest Electric Power Planning and Conserva-  
12          tion Act (16 U.S.C. 839a(14));

13                   “(29) ‘Bonneville Transmission System’ means  
14          transmission facilities owned or leased by the United  
15          States, acting through the Bonneville Administrator,  
16          and operated by the Bonneville Administrator or an-  
17          other entity under section 202 (h) or (i) of this  
18          Act;”.

19   **SEC. 812. APPLICATION OF FEDERAL POWER ACT.**

20          Section 201A of the Federal Power Act as added by  
21 section 802 of this Act is amended by adding the following  
22 new subsection after subsection (a):

23                   “(b) BONNEVILLE POWER ADMINISTRATION.—After  
24 September 30, 2001; sections 202 (h) and (i), 203 (with  
25 respect to dispositions of transmission facilities), 205,

1 206, 208, and 210 through 213 of this Part and sections  
2 301 through 304, 306, 307 (except the last sentence of  
3 paragraph (c)), 308, 309, 313, and 317 of Part III apply  
4 to transmission facilities and transmission of electric en-  
5 ergy and the provision of necessary associated services  
6 over the Bonneville Transmission System, provided that—

7           “(1) any determination made under those sec-  
8 tions as to whether an action or matter is just, rea-  
9 sonable, not unduly discriminatory or preferential  
10 shall be subject to—

11           “(A) phasing in Commission-ordered  
12 changes in transmission rates or charges that  
13 would cause unreasonable cost shift among  
14 users of the Bonneville Transmission System if  
15 implemented at once;

16           “(B) mitigating unreasonable adverse im-  
17 pacts on remote transmission customers in the  
18 Pacific Northwest that would otherwise result  
19 from Commission-ordered changes in the his-  
20 toric treatment of costs to acquire transmission  
21 to serve customers historically served by Gen-  
22 eral Transfer Agreements entered into between  
23 the Bonneville Administrator and other trans-  
24 mission providers;



1           “(C) complying with requirements of other  
2 laws applicable to the Bonneville Administrator;

3           “(D) assuring the Bonneville Administra-  
4 tor’s transmission rates and charges are estab-  
5 lished sufficient to—

6                   “(i) recover existing and future Fed-  
7 eral investment in the Bonneville Trans-  
8 mission System over a reasonable number  
9 of years after first meeting all the Bonne-  
10 ville Administrator’s other transmission  
11 costs and expenses; and

12                   “(ii) produce the revenues necessary  
13 to assure timely payment of all trans-  
14 mission related costs and expenses, includ-  
15 ing revenues to establish reserves;

16           “(E) rules established by the Commission  
17 to—

18                   “(i) assure transmission access is pro-  
19 vided over the Bonneville Transmission  
20 System for hydroelectric power that must  
21 be generated and transmitted at a par-  
22 ticular time in order to reduce spill and  
23 levels of dissolved nitrogen gas harmful to  
24 fish, and

1                   “(ii) govern compensation to adversely  
 2                   affected transmission users when capacity  
 3                   is made available for transmission of hy-  
 4                   droelectric power in those circumstances;  
 5                   and

6                   “(F) subsection 205(g) of this Act; and

7                   “(2) these sections shall not apply to—

8                   “(A) the Bonneville Administrator’s activi-  
 9                   ties other than transmission of electric energy  
 10                  and provision of necessary associated services  
 11                  over the facilities of the Bonneville Trans-  
 12                  mission System; or

13                  “(B) a contract in effect on the date of en-  
 14                  actment of this Section, except for rates which  
 15                  are adjustable by the Administrator under the  
 16                  contract; a Treaty of the United States; or a  
 17                  contract concerning the physical delivery of en-  
 18                  ergy and capacity entered into by entities des-  
 19                  ignated pursuant to such a Treaty.”.

20 **SEC. 813. SURCHARGE ON TRANSMISSION RATES TO RE-**  
 21 **COVER OTHERWISE NON-RECOVERABLE**  
 22 **COSTS.**

23                  Section 205 of the Federal Power Act is amended by  
 24                  adding the following after subsection (f):

1       “(g)(1) Subject to the requirements of paragraph (2),  
2 the Bonneville Administrator shall propose and the Com-  
3 mission shall establish a mechanism pursuant to this sec-  
4 tion that enables the Administrator to place a surcharge  
5 on rates or charges for transmission services over the Bon-  
6 neville Transmission System when necessary in order to  
7 recover power costs unable to be recovered through power  
8 revenues in time to meet the cost recovery requirements  
9 of section 7(a) of the Pacific Northwest Electric Power  
10 Planning and Conservation Act (16 U.S.C. 839e(a)(1)).

11       “(2) The transmission surcharge mechanism set forth  
12 in paragraph (1) shall—

13               “(A) recover not more than \$600 million in  
14 total and no more than \$100 million in any fiscal  
15 year;

16               “(B) be available only between October 1, 2001,  
17 and October 1, 2016;

18               “(C) be implemented by the Bonneville Admin-  
19 istrator only when the Bonneville Administrator  
20 projects that available financial reserves attributable  
21 to the power function will be less than \$150 million;  
22 and

23               “(D) to the fullest extent possible, be designed  
24 and established to recover the costs from trans-  
25 mission users in a manner that—

1           “(i) minimizes any effect on transmission  
2 users’ choices among competing suppliers or  
3 products,

4           “(ii) does not apply to use of the Bonne-  
5 ville Transmission System for power sales out-  
6 side the Pacific Northwest, and

7           “(iii) minimizes bypass of the Bonneville  
8 Transmission System by transmission users  
9 seeking to avoid the surcharge.

10       “(3) The Bonneville Administrator shall have sole  
11 discretion to determine whether to implement the cost re-  
12 covery mechanism established by the Commission under  
13 paragraph (1). Before imposing the surcharge, the Bonne-  
14 ville Administrator shall conduct a public process in the  
15 Pacific Northwest to receive comment on implementation  
16 of the surcharge. As a part of that public process, the  
17 Bonneville Administrator shall make available information  
18 concerning the need for and amount of the surcharge. If  
19 the Bonneville Administrator decides to implement a sur-  
20 charge, it shall take effect on the Bonneville Administra-  
21 tor’s proposed effective date, but no earlier than sixty days  
22 following the Administrator’s filing of the proposed sur-  
23 charge to the Commission for approval.

24       “(4)(A) Within 120 days after the effective date of  
25 the surcharge, the Commission shall approve, reject, or

1 modify the surcharge and communicate its decision to the  
2 Bonneville Administrator. In conducting its review, the  
3 Commission shall not consider the appropriateness of the  
4 cost recovery mechanism established by the Commission  
5 under paragraph (1).

6       “(B) If the Commission rejects or modifies the sur-  
7 charge, the Commission may order the Bonneville Admin-  
8 istrator to refund, with interest, the portion of the sur-  
9 charge the Commission found not justified or the Commis-  
10 sion may authorize the Bonneville Administrator to re-  
11 cover amounts from customers who underpaid or did not  
12 pay the surcharge. If the Commission orders modification  
13 of the Bonneville Administrator’s surcharge, such modi-  
14 fied charge shall be effective on the date and for the time  
15 period specified by the Commission.

16       “(5) Any payment of power costs through application  
17 of transmission revenues collected by surcharge or other-  
18 wise shall be treated as a loan to the Bonneville Adminis-  
19 trator’s power function. The Bonneville Administrator  
20 shall repay the loan as soon as possible from power func-  
21 tion revenues once the Bonneville Administrator is able  
22 to meet other power cost recovery and Treasury repay-  
23 ment obligations on an annual basis using power revenues  
24 and, to the extent practicable, refund such revenues to all  
25 transmission customers charged the surcharge. The bor-

1 rowed revenues shall bear interest at a rate determined  
2 appropriate by the Commission.

3 “(6) For the recovery of costs relating to any genera-  
4 tion or conservation resources financed by debt issued by  
5 a non-Federal party before October 1, 1998, and secured  
6 by an obligation of the Bonneville Administrator to make  
7 payments or net bill power and transmission service that  
8 cannot be recovered through power rates and charges and  
9 paid in accordance with the application of revenues and  
10 the priority of payments specified by Section 13(b) of the  
11 Federal Columbia River Transmission System Act of 1974  
12 (16 U.S.C. 838k(b)), the provisions of this section apply,  
13 except for the recovery limitations under paragraph (2)(A)  
14 and the time limits under paragraph (2)(B), but only to  
15 the extent such recovery would have been allow under laws  
16 applicable to the Bonneville Administrator as of October  
17 1, 1998. In reviewing this surcharge request, the Commis-  
18 sion shall apply the standard of review applicable as of  
19 October 1, 1998.”.

20 **SEC. 814. COMPLAINTS.**

21 Section 306 of the Federal Power Act is amended by  
22 inserting “agency or instrumentality of the United  
23 States,” after “person,” in the first sentence.

1 **SEC. 815. REVIEW OF COMMISSION ORDERS.**

2 Section 313 of the Federal Power Act is amended by  
3 inserting “agency or instrumentality of the United  
4 States,” after “person.” in the first sentence in subsection  
5 (a).”.

6 **SEC. 816. CONFORMING AMENDMENTS.**

7 (a) Section 201(f) of the Federal Power Act is  
8 amended by striking “No” and inserting “(1) Except as  
9 provided in sections 201A and 202(h)–(i), no”.

10 (b) Section 212(i) of the Federal Power Act (16  
11 U.S.C. 824(i)) is repealed.

12 (c) Section 6 of the Federal Columbia River Trans-  
13 mission System Act (16 U.S.C. 838d) is repealed.

14 (d) Section 9 of the Federal Columbia River Trans-  
15 mission System Act (16 U.S.C. 838g) is amended to read  
16 as follows:

17 “RATES AND CHARGES

18 “SEC. 9. Schedules of rates and charges for the sale,  
19 including dispositions to a Federal agency, of all electric  
20 power made available to the Administrator pursuant to  
21 section 8 of this Act or otherwise acquired shall be  
22 established—

23 “(1) with a view to encouraging the widest pos-  
24 sible diversified use of electric power at the lowest  
25 possible rates to consumers consistent with sound  
26 business principles;

1           “(2) having regard to the recovery (upon the  
2           basis of the application of such rate schedules to the  
3           capacity of the electric facilities of the projects) of  
4           the cost of producing such electric power, including  
5           the amortization of the capital investment allocated  
6           to power over a reasonable period of years and pay-  
7           ments provided for in section 11(b)(9) of this Act;  
8           and

9           “(3) at levels to produce such additional power  
10          revenues as may be required, in the aggregate with  
11          all other power revenues of the Administrator, to  
12          pay when due the principal of, premiums, discounts,  
13          and expenses in connection with the issuance of and  
14          interest on all bonds issued and outstanding pursu-  
15          ant to this Act for other than the construction, ac-  
16          quisition, and replacement of the Federal trans-  
17          mission system, and amounts required to establish  
18          and maintain reserve and other funds and accounts  
19          established in connection therewith.

20          Electric power rates under this section shall be established  
21          by the Administrator in accordance with section 7 of the  
22          Pacific Northwest Electric Power Planning and Conserva-  
23          tion Act.”.

24          (e) Section 10 of the Federal Columbia River Trans-  
25          mission System Act (16 U.S.C. 838h) is repealed.



1 (f) Section 6 of the Pacific Northwest Regional Pref-  
2 erence Act (16 U.S.C. 837e) is amended by striking the  
3 “Federal energy or” in the first sentence and by striking  
4 the second sentence.

5 (g) Section 7(a)(1) of the Pacific Northwest Electric  
6 Power Planning and Conservation Act (16 U.S.C.  
7 839e(a)(1)) is amended to read as follows:

8 “(a)(1) The Administrator shall establish, and peri-  
9 odically review and revise, rates for the sale and dispo-  
10 sition of electric power and shall periodically review and,  
11 if necessary, propose revisions to rates for the trans-  
12 mission of electric power. Rates for the sale and dispo-  
13 sition of electric power shall be established and, as appro-  
14 priate, revised to recover, in accordance with sound busi-  
15 ness principles, the costs associated with the acquisition  
16 and conservation of electric power, including the amortiza-  
17 tion of the Federal investment allocable to electric power  
18 rates in the Federal Columbia River Power System (in-  
19 cluding irrigation electric-power-related costs required to  
20 be repaid out of electric power revenues) over a reasonable  
21 period of years and the other costs and expenses incurred  
22 by the Administrator pursuant to this Act and other provi-  
23 sions of law. Rates for the sale and disposition of electric  
24 power shall be established in accordance with section 9  
25 of the Federal Columbia River Transmission System Act

1 (16 U.S.C. 838g), section 5 of the Flood Control Act of  
2 1944 (16 U.S.C. 825s), and this Act.”.

3 (h) Section 7(a)(2) of the Pacific Northwest Electric  
4 Power Planning and Conservation Act (16 U.S.C.  
5 839e(a)(2)) is amended by—

6 (1) striking “Rates” and inserting “Power  
7 rates”;

8 (2) inserting “and” after the comma in sub-  
9 paragraph (A);

10 (3) striking “, and” and inserting a period at  
11 the end of subparagraph (B); and

12 (4) striking subparagraph (C).

13 (i) Section 7(i) of the Pacific Northwest Electric  
14 Power Planning and Conservation Act (16 U.S.C. 839(i))  
15 is amended by inserting “power” immediately after “es-  
16 tablishing” in the first sentence.

17 (j) Section 9(d) of the Pacific Northwest Electric  
18 Power Planning and Conservation Act (16 U.S.C.  
19 839f(d)) is amended by striking “transmission access,”  
20 and inserting “power” immediately before “services” in  
21 the second sentence.

22 (k) Section 9(i)(3) of the Pacific Northwest Electric  
23 Power Planning and Conservation Act (16 U.S.C.  
24 839f(i)(3)) is amended by inserting “power” immediately

1 before “services” each time it appears, and by striking  
2 “transmission,” in the first sentence.

3 (l) Section 2(e) of the Bonneville Project Act (16  
4 U.S.C. 832a(e)) is amended by striking the colon and all  
5 that follows and inserting a period.

6 **Subtitle C—Western Area Power**  
7 **Administration and South-**  
8 **western Area Power Adminis-**  
9 **tration**

10 **SEC. 821. DEFINITIONS.**

11 Section 3 of the Federal Power Act is amended by  
12 adding the following new paragraphs after paragraph (29)  
13 as added by subsection 811:

14 “(30) ‘SWPA Administrator’ means the Admin-  
15 istrator of the Southwestern Power Administration;

16 “(31) ‘SWPA Transmission System’ means  
17 transmission facilities owned or controlled by the  
18 United States and operated by the SWPA Adminis-  
19 trator or an entity with authority over these facili-  
20 ties under section 202 (h) or (i) of this Act;

21 “(32) ‘WAPA Administrator’ means the Admin-  
22 istrator of the Western Area Power Administration;  
23 and

24 “(33) ‘WAPA Transmission System’ means  
25 transmission facilities owned or controlled by the

1 United States and operated by the WAPA Adminis-  
2 trator or an entity with authority over these facili-  
3 ties under section 202 (h) or (i) of this Act.”.

4 **SEC. 822. APPLICATION OF FEDERAL POWER ACT.**

5 Section 201A of the Federal Power Act as added by  
6 section 802 of this Act is amended by adding the following  
7 new subsection after subsection (b) as added by section  
8 812 of this Act:

9 “(c) WESTERN AREA POWER ADMINISTRATION AND  
10 SOUTHWESTERN POWER ADMINISTRATION.—After Sep-  
11 tember 30, 2001, sections 202 (h) and (i), 203 (with re-  
12 spect to dispositions of transmission facilities), 205, 206,  
13 208, and 210 through 213 of this Part and sections 301  
14 through 304, 306, 307 (except the last sentence of para-  
15 graph (c)), 308, 309, 313, and 317 of Part III apply to  
16 transmission facilities and transmission of electric energy  
17 over the SWPA and WAPA Transmission Systems and the  
18 provision of necessary associated services over the SWPA  
19 and WAPA Transmission Systems, provided that—

20 “(1) any determination made under those sec-  
21 tions as to whether an action or matter is just, rea-  
22 sonable, not unduly discriminatory or preferential  
23 shall be subject to—

24 “(A) phasing in Commission-ordered  
25 changes in transmission rates or charges that

1 would cause unreasonable cost shifts among  
2 users of the SWPA and WAPA Transmission  
3 Systems if implemented at once;

4 “(B) complying with requirements of other  
5 laws applicable to the SWPA and WAPA Ad-  
6 ministrators;

7 “(C) assuring the transmission rates and  
8 charges of the SWPA and WAPA Administra-  
9 tors are established sufficient to—

10 “(i) recover existing and future Fed-  
11 eral investment in the transmission system  
12 over a reasonable number of years after  
13 first meeting all other transmission costs  
14 and expenses; and

15 “(ii) produce the revenues necessary  
16 to assure timely payment of all trans-  
17 mission related costs and expenses, includ-  
18 ing revenues to establish reserves;

19 “(D) subsection 205(h) of this Act; and

20 “(E) permitting the WAPA Administrator  
21 to establish more than one rate for the trans-  
22 mission facilities of its regions or projects; and

23 “(2) these sections shall not apply to—

24 “(A) activities of the SWPA and WAPA  
25 Administrators other than transmission of elec-

1           tric energy and provision of necessary associ-  
2           ated services over the facilities of their respec-  
3           tive systems; or

4                   “(B) a contract in effect on the date of en-  
5           actment of this Act, except for rates which are  
6           adjustable by the Administrator under the con-  
7           tract.”.

8 **SEC. 823. SURCHARGE ON TRANSMISSION RATES TO RE-**  
9                   **COVER OTHERWISE NON-RECOVERABLE**  
10                   **COSTS.**

11           Section 205 of the Federal Power Act is amended by  
12 adding the following after subsection (g) as added by sec-  
13 tion 814 of this Act:

14           “(h)(1) the Commission shall establish rules for Com-  
15 mission approval of a surcharge on rates or charges for  
16 transmission services over the SWPA and WAPA trans-  
17 mission systems, including a reasonable limitation on  
18 amounts to be recovered under the surcharge and such  
19 other rules necessary to ensure that the surcharge mini-  
20 mizes any effect of transmission users’ choice among com-  
21 peting suppliers or products and reflects cost causation,  
22 in order to recover power costs unable to be recovered  
23 through power revenues in time to meet statutory or regu-  
24 latory cost recovery requirements.

1       “(2) The SWPA and WAPA Administrators shall  
2 have sole discretion to determine whether to implement  
3 the cost recovery mechanism established by the Commis-  
4 sion under paragraph (1) for their respective transmission  
5 systems. Before imposing the surcharge, the Adminis-  
6 trator shall conduct a public process to receive comment  
7 on implementation of the surcharge. As a part of that pub-  
8 lic process, the Administrator shall make available infor-  
9 mation concerning the need for and amount of the sur-  
10 charge. If the Administrator decides to implement a sur-  
11 charge, it shall take effect on the Administrator’s proposed  
12 effective date, but no earlier than sixty days following the  
13 Administrator’s filing of the proposed surcharge to the  
14 Commission for approval.

15       “(3)(A) Within 120 days after the effective date of  
16 the surcharge, the Commission shall approve, reject, or  
17 modify the surcharge and communicate its decision to the  
18 Administrator. In conducting its review, the Commission  
19 shall not consider the appropriateness of the cost recovery  
20 mechanism established by the Commission under para-  
21 graph (1).

22       “(B) If the Commission rejects or modifies the sur-  
23 charge, the Commission may order the Administrator to  
24 refund, with interest, the portion of the surcharge the  
25 Commission found not justified or the Commission may

1 authorize the Administrator to recover amounts from cus-  
2 tomers who underpaid or did not pay the surcharge. If  
3 the Commission orders modification of the Administrator’s  
4 surcharge, such modified charge shall be effective on the  
5 date and for the time period specified by the Commission.

6 “(4) Any payment of power costs through application  
7 of transmission revenues collected by surcharge or other-  
8 wise shall be treated as a loan to the Administrator’s  
9 power function. The Administrator shall repay the loan  
10 as soon as possible from power function revenues once the  
11 Administrator is able to meet the power cost recovery and  
12 Treasury repayment obligations on an annual basis using  
13 power revenues, and, to the extent practicable, refund  
14 such revenues to all transmission customers charged the  
15 surcharge. The borrowed revenues shall bear interest at  
16 a rate determined appropriate by the Commission.”.

17 **SEC. 824. CONFORMING AMENDMENTS.**

18 (a) Section 302(a)(1) of the Department of Energy  
19 Organization Act (42 U.S.C. 7152) is amended by—

20 (1) striking “There” and inserting in its place  
21 “Except for the authority addressed in paragraph  
22 (G) below, there”, and

23 (2) adding the following new subparagraph  
24 after subparagraph (E):



1           “(F) Authority for the approval, rejection,  
2           and modification of transmission rates for the  
3           Southwestern and Western Area Power Admin-  
4           istrations is transferred to the Federal Energy  
5           Regulatory Commission.”.

6           (b) Section 221 of the Reclamation Reform Act of  
7           1982 (43 U.S.C. 390uu) is amended by—

8           (1) striking “executed pursuant to Federal rec-  
9           lamation law”, and

10          (2) inserting “as defined in section 202 of this  
11          Act” after “contract”.

## 12       **TITLE IX—OTHER PROVISIONS**

### 13       **SEC. 901. TREATMENT OF NUCLEAR DECOMMISSIONING** 14               **COSTS IN BANKRUPTCY.**

15          Section 523 of title 11, United States Code (section  
16          523 of the Bankruptcy Code of 1978), is amended by add-  
17          ing the following new subsection after subsection (e):

18          “(f) Obligations to comply with, and claims resulting  
19          from compliance with, Nuclear Regulatory Commission  
20          regulations or orders governing the decontamination and  
21          decommissioning of nuclear power reactors licensed under  
22          section 103 or 104 b. of the Atomic Energy Act of 1954  
23          (42 U.S.C. 2133 and 2134(b)) shall be given priority and  
24          shall not be rejected, avoided, or discharged under title  
25          11 of the United States Code or in any liquidation, reorga-

1 nization, receivership, or other insolvency proceeding  
2 under State or Federal law.”.

3 **SEC. 902. ENERGY INFORMATION ADMINISTRATION STUDY**  
4 **OF IMPACTS OF COMPETITION IN ELEC-**  
5 **TRICITY MARKETS.**

6 Section 205 of the Department of Energy Organiza-  
7 tion Act (42 U.S.C. 7135) is amended by adding after sub-  
8 section (1) the following new subsection:

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

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

18 “(B) electricity consumption and demand;

19 “(C) the transmission, distribution, and delivery  
20 of electric services;

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

22 “(E) the costs, revenues, and rates of regulated  
23 electric services;

24 “(F) the reliability of the electric generation  
25 and transmission system, including the availability

1 of adequate generation and transmission capacity to  
2 meet load requirements, generation and transmission  
3 capacity additions and retirements, and fuel sup-  
4 pliers and stocks for electric generation;

5 “(G) electric energy efficiency programs and  
6 services and their impacts on energy consumption;

7 “(H) the development and use of renewable  
8 electric energy resources; and

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

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

15 **SEC. 903. ANTITRUST SAVINGS CLAUSE.**

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

1 **SEC. 904. 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 c.:

6 “d. Following the effective date of this subsection,  
7 subsection 105 c. shall not apply to any pending or future  
8 application filed for a license to construct or operate a uti-  
9 lization facility under sections 103 or 104 b. This Act shall  
10 not affect the Commission’s authority to enforce antitrust  
11 conditions included in licenses issued under sections 103  
12 or 104 b. before the date of enactment of this sub-  
13 section.”.

14 **SEC. 905. ENVIRONMENTAL LAWS SAVINGS CLAUSE.**

15 Nothing in this Act alters or affects environmental  
16 requirements imposed by Federal or State law, including,  
17 but not limited to, the Clean Air Act (42 U.S.C. 7401  
18 et seq.); the Federal Water Pollution Control Act (33  
19 U.S.C. 1251 et seq.); the Comprehensive Environmental  
20 Response, Compensation, and Liability Act of 1980 (42  
21 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C.  
22 791a et seq.); and the Endangered Species Act (16 U.S.C.  
23 1531 et seq.).

1 **SEC. 906. GENERATING PLANT EFFICIENCY STUDY.**

2 Part C of title VI of the Department of Energy Orga-  
3 nization Act is amended by adding after section 662, the  
4 following new section:

5 “GENERATING PLANT EFFICIENCY STUDY

6 “SEC. 663. Within three years following the date of  
7 enactment of this section, the Secretary shall issue a re-  
8 port comparing the impact of wholesale and retail competi-  
9 tion on the efficiency of new and existing electric gener-  
10 ating facilities.”.

11 **SEC. 907. CONFORMING AMENDMENTS.**

12 (a) The Table of Contents of PURPA is amended  
13 by—

14 (1) inserting after the listing for section 117  
15 under subtitle B of title I:

“Sec. 118. Authority to impose reciprocity requirements.

“Sec. 119. Aggregation for purchase of retail electric energy.

“Sec. 119A. Consumer information disclosure.

“Sec. 119B. Access to electric service for low-income consumers.

“Sec. 119C. Residential electricity consumer database.

“Sec. 119D. Model code for retail suppliers.

“Sec. 119E. Model code for electric utility workers.”, and

16 (2) inserting after the listing for section 608:

“Sec. 609. Retail competition.

“Sec. 610. Public Benefits Fund.

“Sec. 611. Federal renewable portfolio standard.

“Sec. 612. Net metering for renewable energy.

“Sec. 613. Interconnections for certain facilities.”.

17 (b) The Table of Contents of the Energy Policy Act  
18 of 1992 is amended by inserting after the listing for sec-  
19 tion 2606:

“Sec. 2607. Tribal electricity assistance.”.

1           (c) The Table of Contents of the Department of En-  
2   ergy Organization Act is amended by—

3                   (1) inserting after the listing for section 212:

“Sec. 213. Office of Indian Energy Policy and Programs.  
“Sec. 214. Electricity Outage Investigation Board.”, and

4                   (2) inserting after the listing for section 662:

“Sec. 663. Generating plant efficiency study.”.

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