

107TH CONGRESS
1ST SESSION

H. R. 2814

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. SAWYER (for himself and Mr. BURR of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation 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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Interstate Transmission Act”.

1 (b) TABLE OF CONTENTS.—The table of contents is
 2 as follows:

- 3 Sec. 1. Short title and table of contents.
- 4 Sec. 2. Findings.
- 5 Sec. 3. Economically efficient transmission service and expansion of trans-
 mission networks.
- 6 Sec. 4. Electric energy transmission reliability.
- 7 Sec. 5. Disposition of property.
- 8 Sec. 6. Promotion of voluntary development of regional transmission organiza-
 tions.
- 9 Sec. 7. State and Federal authority to site transmission facilities.
- 10 Sec. 8. Public exemption for RTOs.
- 11 Sec. 9. Independent transmission companies.

12 **SEC. 2. FINDINGS.**

13 Congress finds as follows:

14 (1) Transmission networks are the backbone of
 15 competitive power markets and increased interstate
 16 commerce in electricity.

17 (2) Wholesale electric competition, already in
 18 effect across the nation, and retail electric competi-
 19 tion, adopted by nearly half of the States, depend on
 adequate transmission networks to benefit electric
 consumers.

(3) The expansion, enhancement, and improve-
 ment of transmission facilities are necessary to
 maintain and improve reliability of electric service.

(4) To support competitive power markets and
 to maintain and improve reliability of electric serv-
 ice, the regulation of transmission service must be
 reformed.

1 **SEC. 3. ECONOMICALLY EFFICIENT TRANSMISSION SERV-**
2 **ICE AND EXPANSION OF TRANSMISSION NET-**
3 **WORKS.**

4 Part II of the Federal Power Act is amended by add-
5 ing at the end thereof the following new section:

6 **“SEC. 215. STANDARDS FOR ESTABLISHING RATES FOR**
7 **TRANSMISSION SERVICE.**

8 “(a) CERTAIN REQUIREMENTS.—Rates, charges,
9 terms and conditions established for transmission service
10 pursuant to this Part shall—

11 “(1) promote the economically efficient trans-
12 mission of electricity, the enlargement of trans-
13 mission networks, the introduction of new trans-
14 mission technologies to increase capacity of existing
15 transmission networks, and the provision of trans-
16 mission services by regional transmission organiza-
17 tions;

18 “(2) encourage the efficient and reliable oper-
19 ation of transmission facilities and supply of trans-
20 mission services through performance-based or in-
21 centive ratemaking, and other measures;

22 “(3) provide for a return on equity that—

23 “(A) assures confidence in the financial
24 soundness of the utility and maintains and sup-
25 ports its credit, taking into consideration risks

1 associated with changes in regulatory or eco-
2 nomic circumstances;

3 “(B) in the case of rates proposed by a re-
4 gional transmission organization, is commensu-
5 rate with the financial, operational and other
6 risks of turning facilities over to a regional
7 transmission organization and reflects other
8 changes in the structure of the industry; and

9 “(C) enables the utility to raise the money
10 necessary for the proper discharge of its public
11 duties and to protect public interests, both ex-
12 isting and foreseeable, in reliable, high-capacity
13 transmission networks; and

14 “(4) comply with applicable procedural require-
15 ments of sections 205 and 206 and the requirement
16 that rates, charges, terms and conditions be just and
17 reasonable and not unduly discriminatory or pref-
18 erential.

19 “(b) INNOVATIVE TRANSMISSION PRICING POLICIES
20 GENERALLY.—The Commission shall encourage innova-
21 tive transmission pricing policies for a regional trans-
22 mission organization, a comparable transmission organiza-
23 tion approved by the Commission before the enactment of
24 this Act, a transmitting utility whose facilities are con-
25 trolled but not owned by either such entity, or an inde-

1 pendent transmission company. Such transmission pricing
2 shall—

3 “(1) provide incentives to transmitting utilities
4 to promote the voluntary participation and forma-
5 tion of regional transmission organizations, without
6 having the effect of forcing transmitting utilities to
7 join regional transmitting organizations and extend
8 such incentives to transmitting utilities that already
9 have formed a regional transmission organization;

10 “(2) limit separate, additive access charges for
11 transmission service over the transmission facilities
12 operated by the regional transmission organization,
13 except that a reasonable transition mechanism or pe-
14 riod may be used before eliminating such separate,
15 additive access charges;

16 “(3) minimize the shifting of costs among exist-
17 ing customers of the transmitting utilities within the
18 regional transmission organization, including permit-
19 ting the use of transmission rates based on a single
20 transmitting utility’s costs for transmission services
21 provided within the regional transmission organiza-
22 tion;

23 “(4) encourage the efficient and reliable oper-
24 ation of the transmission grid and supply of trans-
25 mission services through congestion management,

1 performance-based or incentive ratemaking, and
2 other measures;

3 “(5) encourage efficient and adequate invest-
4 ment in and expansion of the transmission facilities
5 owned or controlled by the regional transmission or-
6 ganization; and

7 “(6) provide enhanced returns on equity for in-
8 vesting in transmission and related facilities that im-
9 prove the operational reliability of the transmission
10 grid.

11 “(c) NEGOTIATED RATES.—The Commission may
12 permit the charging of negotiated rates for transmission
13 services under this section without regard to costs when-
14 ever an individual company or companies are willing to
15 pay such negotiated rates. The costs associated with such
16 negotiated rates shall not be recovered from transmission
17 customers.

18 “(d) RULEMAKING.—Within 180 days of the enact-
19 ment of this section, the Commission shall establish by
20 rule definitions and standards for implementing sub-
21 section (a) and subsection (b). With respect to perform-
22 ance-based rates or incentive rates, the definitions and
23 standards shall include, but not be limited to—

1 “(1) a method for calculating initial trans-
2 mission rates (including price caps that would in-
3 clude discounting);

4 “(2) an index mechanism for adjusting initial
5 rates;

6 “(3) time periods for redetermining initial
7 rates; and

8 “(4) costs to be excluded from performance
9 based rates.

10 “(c) REPORT.—Within 180 days after enactment of
11 the section, and each year thereafter, the Commission
12 shall submit to Congress a report on all policies adopted
13 by the Commission to encourage the economic use and ex-
14 pansion of the transmission network through incentive
15 rates or other similar market-oriented approaches and
16 their effectiveness in doing so.”.

17 **SEC. 4. ELECTRIC ENERGY TRANSMISSION RELIABILITY.**

18 (a) ELECTRIC RELIABILITY ORGANIZATION AND
19 OVERSIGHT.—

20 (1) IN GENERAL.—The Federal Power Act is
21 amended by inserting at the end thereof the fol-
22 lowing new section:

23 **“SEC. 216. ELECTRIC RELIABILITY ORGANIZATION AND**
24 **OVERSIGHT.**

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

1 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
2 TY.—The term ‘affiliated regional reliability entity’
3 means an entity delegated authority under the provi-
4 sions of subsection (h).

5 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
6 power system’ means all facilities and control sys-
7 tems necessary for operating an interconnected
8 transmission grid (or any portion thereof), including
9 high-voltage transmission lines; substations; control
10 centers; communications; data, and operations plan-
11 ning facilities; and the output of generating units
12 necessary to maintain transmission system reli-
13 ability.

14 “(3) ELECTRIC RELIABILITY ORGANIZATION, OR
15 ORGANIZATION.—The term ‘Electric Reliability Or-
16 ganization’ or ‘Organization’ means the organization
17 approved by the Commission under subsection
18 (d)(4).

19 “(4) ENTITY RULE.—The term ‘entity rule’
20 means a rule adopted by an affiliated regional reli-
21 ability entity for a specific region and designed to
22 implement or enforce 1 or more Organization Stand-
23 ards. An entity rule shall be approved by the organi-
24 zation and once approved, shall be treated as an Or-
25 ganization Standard.

1 “(5) INDUSTRY SECTOR.—The term ‘industry
2 sector’ means a group of users of the bulk power
3 system with substantially similar commercial inter-
4 ests, as determined by the Board of the Electric Re-
5 liability Organization.

6 “(6) INTERCONNECTION.—The term ‘inter-
7 connection’ means a geographic area in which the
8 operation of bulk-power system components is syn-
9 chronized such that the failure of 1 or more of such
10 components may adversely affect the ability of the
11 operators of other components within the inter-
12 connection to maintain safe and reliable operation of
13 the facilities within their control.

14 “(7) ORGANIZATION STANDARD.—The term
15 ‘Organization Standard’ means a policy or standard
16 duly adopted by the Electric Reliability Organization
17 to provide for the reliable operation of a bulk-power
18 system.

19 “(8) PUBLIC INTEREST GROUP.—The term
20 ‘public interest group’ means any nonprofit private
21 or public organization that has an interest in the ac-
22 tivities of the Electric Reliability Organization, in-
23 cluding, but not limited to, ratepayer advocates, en-
24 vironmental groups, and State and local government

1 organizations that regulate market participants and
2 promulgate government policy.

3 “(9) VARIANCE.—The term ‘variance’ means an
4 exception or variance from the requirements of an
5 Organization Standard (including a proposal for an
6 Organization Standard where there is no Organiza-
7 tion Standard) that is adopted by an affiliated re-
8 gional reliability entity and applicable to all or a
9 part of the region for which the affiliated regional
10 reliability entity is responsible. A variance shall be
11 approved by the organization and once approved,
12 shall be treated as an Organization Standard.

13 “(10) SYSTEM OPERATOR.—The term ‘system
14 operator’ means any entity that operates or is re-
15 sponsible for the operation of a bulk-power system,
16 including but not limited to a control area operator,
17 an independent system operator, a regional trans-
18 mission organization, a transmission company, a
19 transmission system operator, or a regional security
20 coordinator.

21 “(11) USER OF THE BULK-POWER SYSTEM.—
22 The term ‘user of the bulk-power system’ means any
23 entity that sells, purchases, or transmits electric
24 power over a bulk-power system, or that owns, oper-
25 ates, or maintains facilities or control systems that

1 are part of a bulk-power system, or that is a system
2 operator.

3 “(b) COMMISSION AUTHORITY.—

4 “(1) Within the United States, the Commission
5 shall have jurisdiction over the Electric Reliability
6 Organization, all affiliated regional reliability enti-
7 ties, all system operators, and all users of the bulk-
8 power system, for purposes of approving and enforce-
9 ing compliance with the requirements of this section.

10 “(2) The Commission may, by rule, define any
11 other term used in this section, provided such defini-
12 tion is consistent with the definitions in, and the
13 purpose and intent of, this Act.

14 “(3) Not later than 90 days after the date of
15 enactment of this section, the Commission shall
16 issue a proposed rule for implementing the require-
17 ments of this section. The Commission shall provide
18 notice and opportunity for comment on the proposed
19 rule. The Commission shall issue a final rule under
20 this subsection within 180 days after the date of en-
21 actment of this section.

22 “(4) Nothing in this section shall be construed
23 as limiting or impairing any authority of the Com-
24 mission under any other provision of this Act, in-
25 cluding its exclusive authority to determine rates,

1 terms, and conditions of transmission services sub-
2 ject to its jurisdiction.

3 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
4 lowing enactment of this section, and prior to the approval
5 of an organization under subsection (d), any entity, in-
6 cluding the North American Electric Reliability Council
7 and its member regional reliability councils, may file any
8 reliability standard, guidance, or practice that such entity
9 would propose to be made mandatory and enforceable. The
10 Commission, after allowing an opportunity to submit com-
11 ments, may approve any such proposed mandatory stand-
12 ard, guidance, or practice, or any amendment thereto, if
13 it finds that the standard, guidance, or practice, or
14 amendment is just, reasonable, not unduly discriminatory
15 or preferential, and in the public interest. The Commission
16 may, without further proceeding or finding, grant its ap-
17 proval to any standard, guidance, or practice for which
18 no substantive objections are filed in the comment period.
19 Filed standards, guidances, or practices, including any
20 amendments thereto, shall be mandatory and applicable
21 according to their terms following approval by the Com-
22 mission and shall remain in effect until (1) withdrawn,
23 disapproved, or superseded by an Organization Standard,
24 issued or approved by the Electric Reliability Organization
25 and made effective by the Commission under subsection

1 (e); or (2) disapproved by the Commission if, upon com-
2 plaint or upon its own motion and after notice and an
3 opportunity for comment, the Commission finds the stand-
4 ard, guidance, or practice unjust, unreasonable, unduly
5 discriminatory, or preferential or not in the public inter-
6 est. Standards, guidances, or practices in effect pursuant
7 to the provisions of this subsection shall be enforceable
8 by the Commission.

9 “(d) ORGANIZATION APPROVAL.—

10 “(1) Following the issuance of a final Commis-
11 sion rule under subsection (b)(3), an entity may sub-
12 mit an application to the Commission for approval
13 as the Electric Reliability Organization. The appli-
14 cant shall specify in its application its governance
15 and procedures, as well as its funding mechanism
16 and initial funding requirements.

17 “(2) The Commission shall provide public no-
18 tice of the application and afford interested parties
19 an opportunity to comment.

20 “(3) The Commission shall approve the applica-
21 tion if the Commission determines that the
22 applicant—

23 “(A) has the ability to develop, implement,
24 and enforce standards that provide for an ade-

1 quate level of reliability of the bulk-power sys-
2 tem;

3 “(B) permits voluntary membership to any
4 user of the bulk-power system or public interest
5 group;

6 “(C) assures fair representation of its
7 members in the selection of its directors and
8 fair management of its affairs, taking into ac-
9 count the need for efficiency and effectiveness
10 in decisionmaking and operations and the re-
11 quirements for technical competency in the de-
12 velopment of Organization Standards and the
13 exercise of oversight of bulk-power system reli-
14 ability;

15 “(D) assures that no 2 industry sectors
16 have the ability to control, and no 1 industry
17 sector has the ability to veto, the Electric Reli-
18 ability Organization’s discharge of its respon-
19 sibilities (including actions by committees rec-
20 ommending standards to the board or other
21 board actions to implement and enforce stand-
22 ards);

23 “(E) provides for governance by a board
24 wholly comprised of independent directors;

1 “(F) provides a funding mechanism and
2 requirements that are just, reasonable, and not
3 unduly discriminatory or preferential and are in
4 the public interest, and which satisfy the re-
5 quirements of subsection (l);

6 “(G) establishes procedures for develop-
7 ment of Organization Standards that provide
8 reasonable notice and opportunity for public
9 comment, taking into account the need for effi-
10 ciency and effectiveness in decisionmaking and
11 operations and the requirements for technical
12 competency in the development of Organization
13 Standards, and which standards development
14 process has the following attributes:

15 “(i) Openness.

16 “(ii) Balance of interests.

17 “(iii) Due process, except that the
18 procedures may include alternative proce-
19 dures for emergencies;

20 “(H) establishes fair and impartial proce-
21 dures for implementation and enforcement of
22 Organization Standards, either directly or
23 through delegation to an affiliated regional reli-
24 ability entity, including the imposition of pen-

1 alties, limitations on activities, functions, or op-
2 erations, or other appropriate sanctions;

3 “(I) establishes procedures for notice and
4 opportunity for public observation of all meet-
5 ings, except that the procedures for public ob-
6 servation may include alternative procedures for
7 emergencies or for the discussion of information
8 the directors determine should take place in
9 closed session, such as litigation, personnel ac-
10 tions, or commercially sensitive information;

11 “(J) provides for the consideration of rec-
12 ommendations of States and State commissions;
13 and

14 “(K) addresses other matters that the
15 Commission may deem necessary or appropriate
16 to ensure that the procedures, governance, and
17 funding of the Electric Reliability Organization
18 are just, reasonable, not unduly discriminatory
19 or preferential, and are in the public interest.

20 “(4) The Commission shall approve only 1 Elec-
21 tric Reliability Organization. If the Commission re-
22 ceives 2 or more timely applications that satisfy the
23 requirements of this subsection, the Commission
24 shall approve only the application it concludes will
25 best implement the provisions of this section.

1 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
2 ORGANIZATION STANDARDS.—

3 “(1) The Electric Reliability Organization shall
4 file with the Commission any new or modified orga-
5 nization standards, including any variances or entity
6 rules, and the Commission shall follow the proce-
7 dures under paragraph (2) for review of that filing.

8 “(2) Submissions under paragraph (1) shall
9 include—

10 “(A) a concise statement of the purpose of
11 the proposal, and

12 “(B) a record of any proceedings con-
13 ducted with respect to such proposal.

14 The Commission shall provide notice of the filing of such
15 proposal and afford interested entities 30 days to submit
16 comments. The Commission, after taking into consider-
17 ation any submitted comments, shall approve or dis-
18 approve such proposal not later than 60 days after the
19 deadline for the submission of comments, except that the
20 Commission may extend the 60-day period for an addi-
21 tional 90 days for good cause, and except further that if
22 the Commission does not act to approve or disapprove a
23 proposal within the foregoing periods, the proposal shall
24 go into effect subject to its terms, without prejudice to
25 the authority of the Commission thereafter to modify the

1 proposal in accordance with the standards and require-
2 ments of this section. Proposals approved by the Commis-
3 sion shall take effect according to their terms but not ear-
4 lier than 30 days after the effective date of the Commis-
5 sion's order, except as provided in paragraph (3) of this
6 subsection.

7 “(3)(A) In the exercise of its review responsibil-
8 ities under this subsection, the Commission shall
9 give due weight to the technical expertise of the
10 Electric Reliability Organization with respect to the
11 content of a new or modified organization standard,
12 but shall not defer to the organization with respect
13 to the effect of the standard on competition. The
14 Commission shall approve a proposed new or modi-
15 fied organization standard if it determines the pro-
16 posal to be just, reasonable, not unduly discrimina-
17 tory or preferential, and in the public interest.

18 “(B) An existing or proposed organization
19 standard which is disapproved in whole or in part by
20 the Commission shall be remanded to the Electric
21 Reliability Organization for further consideration.

22 “(C) The Commission, on its own motion or
23 upon complaint, may direct the Electric Reliability
24 Organization to develop an organization standard,
25 including modification to an existing organization

1 standard, addressing a specific matter by a date cer-
2 tain if the Commission considers such new or modi-
3 fied organization standard necessary or appropriate
4 to further the purposes of this section. The Electric
5 Reliability Organization shall file any such new or
6 modified organization standard in accordance with
7 this subsection.

8 “(D) An affiliated regional reliability entity
9 may propose a variance or entity rule to the Electric
10 Reliability Organization. The affiliated regional reli-
11 ability entity may request that the Electric Reli-
12 ability Organization expedite consideration of the
13 proposal, and may file a notice of such request with
14 the Commission, if expedited consideration is nec-
15 essary to provide for bulk-power system reliability. If
16 the Electric Reliability Organization fails to adopt
17 the variance or entity rule, either in whole or in
18 part, the affiliated regional reliability entity may re-
19 quest that the Commission review such action. If the
20 Commission determines, after its review of such a
21 request, that the action of the Electric Reliability
22 Organization did not conform to the applicable
23 standards and procedures approved by the Commis-
24 sion, or if the Commission determines that the vari-
25 ance or entity rule is just, reasonable, not unduly

1 discriminatory or preferential, and in the public in-
2 terest, and that the Electric Reliability Organization
3 has unreasonably rejected the proposed variance or
4 entity rule, then the Commission may remand the
5 proposed variance or entity rule for further consider-
6 ation by the Electric Reliability Organization or may
7 direct the Electric Reliability Organization or the af-
8 filiated regional reliability entity to develop a vari-
9 ance or entity rule consistent with that requested by
10 the affiliated regional reliability entity. Any such
11 variance or entity rule proposed by an affiliated re-
12 gional reliability entity shall be submitted to the
13 Electric Reliability Organization for review and fil-
14 ing with the Commission in accordance with the pro-
15 cedures specified in this subsection.

16 “(E) Notwithstanding any other provision of
17 this subsection, a proposed organization standard or
18 amendment shall take effect according to its terms
19 if the Electric Reliability Organization determines
20 that an emergency exists requiring that such pro-
21 posed organization standard or amendment take ef-
22 fect without notice or comment. The Electric Reli-
23 ability Organization shall notify the Commission im-
24 mediately following such determination and shall file
25 such emergency organization standard or amend-

1 ment with the Commission not later than 5 days fol-
2 lowing such determination and shall include in such
3 filing an explanation of the need for such emergency
4 standard. Subsequently, the Commission shall pro-
5 vide notice of the organization standard or amend-
6 ment for comment, and shall follow the procedures
7 set out in paragraphs (2) and (3) for review of the
8 new or modified organization standard.

9 “(4) All users of the bulk-power system shall
10 comply with any organization standard that takes ef-
11 fect under this section.

12 “(f) COORDINATION WITH CANADA AND MEXICO.—
13 The Electric Reliability Organization shall take all appro-
14 priate steps to gain recognition in Canada and Mexico.
15 The United States shall use its best efforts to enter into
16 international agreements with the appropriate govern-
17 ments of Canada and Mexico to provide for effective com-
18 pliance with organization standards and to provide for the
19 effectiveness of the Electric Reliability Organization in
20 carrying out its mission and responsibilities. All actions
21 taken by the Electric Reliability Organization, any affli-
22 ated regional reliability entity, and the Commission shall
23 be consistent with the provisions of such international
24 agreements.

1 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
2 FUNDING.—

3 “(1) The Electric Reliability Organization shall
4 file with the Commission any proposed change in its
5 procedures, governance, or funding, or any changes
6 in the affiliated regional reliability entity’s proce-
7 dures, governance, or funding relating to delegated
8 functions, and shall include with the filing an expla-
9 nation of the basis and purpose for the change.

10 “(2) A proposed procedural change may take
11 effect 90 days after filing with the Commission if
12 the change constitutes a statement of policy, prac-
13 tice, or interpretation with respect to the meaning or
14 enforcement of an existing procedure. Otherwise, a
15 proposed procedural change shall take effect only
16 upon a finding by the Commission, after notice and
17 opportunity for comments, that the change is just,
18 reasonable, not unduly discriminatory or pref-
19 erential, is in the public interest, and satisfies the
20 requirements of subsection (d)(4).

21 “(3) A change in governance or funding shall
22 not take effect unless the Commission finds that the
23 change is just, reasonable, not unduly discriminatory
24 or preferential, in the public interest, and satisfies
25 the requirements of subsection (d)(4).

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

9 “(h) DELEGATIONS OF AUTHORITY.—

10 “(1) The Electric Reliability Organization shall,
11 upon request by an entity, enter into an agreement
12 with such entity for the delegation of authority to
13 implement and enforce compliance with organization
14 standards in a specified geographic area if the orga-
15 nization finds that the entity requesting the delega-
16 tion satisfies the requirements of subparagraphs (A),
17 (B), (C), (D), (F), (J), and (K) of subsection (d)(4),
18 and if the delegation promotes the effective and effi-
19 cient implementation and administration of bulk-
20 power system reliability. The Electric Reliability Or-
21 ganization may enter into an agreement to delegate
22 to the entity any other authority, except that the
23 Electric Reliability Organization shall reserve the
24 right to set and approve standards for bulk-power
25 system reliability.

1 “(2) The Electric Reliability Organization shall
2 file with the Commission any agreement entered into
3 under this subsection and any information the Com-
4 mission requires with respect to the affiliated re-
5 gional reliability entity to which authority is to be
6 delegated. The Commission shall approve the agree-
7 ment, following public notice and an opportunity for
8 comment, if it finds that the agreement meets the
9 requirements of paragraph (1), and is just, reason-
10 able, not unduly discriminatory or preferential, and
11 is in the public interest. A proposed delegation
12 agreement with an affiliated regional reliability enti-
13 ty organized on an interconnection-wide basis shall
14 be rebuttably presumed by the Commission to pro-
15 mote the effective and efficient implementation and
16 administration of bulk-power system reliability. No
17 delegation by the Electric Reliability Organization
18 shall be valid unless approved by the Commission.

19 “(3)(A) A delegation agreement entered into
20 under this subsection shall specify the procedures for
21 an affiliated regional reliability entity to propose en-
22 tity rules or variances for review by the Electric Re-
23 liability Organization. With respect to any such pro-
24 posal that would apply on an interconnection-wide
25 basis, the Electric Reliability Organization shall pre-

1 sume such proposal valid if made by an interconnec-
2 tion-wide affiliated regional reliability entity unless
3 the Electric Reliability Organization makes a written
4 finding that the proposal—

5 “(i) was not developed in a fair and open
6 process that provided an opportunity for all in-
7 terested parties to participate;

8 “(ii) has a significant adverse impact on
9 reliability or commerce in other interconnec-
10 tions;

11 “(iii) fails to provide a level of reliability of
12 the bulk-power system within the interconnec-
13 tion such that it would constitute a serious and
14 substantial threat to public health, safety, wel-
15 fare, or national security; or

16 “(iv) creates a serious and substantial bur-
17 den on competitive markets within the inter-
18 connection that is not necessary for reliability.

19 “(B) With respect to any such proposal that
20 would apply only to part of an interconnection, the
21 Electric Reliability Organization shall find such pro-
22 posal valid if the affiliated regional reliability entity
23 or entities making the proposal demonstrate that
24 it—

1 “(i) was developed in a fair and open proc-
2 ess that provided an opportunity for all inter-
3 ested parties to participate;

4 “(ii) would not have an adverse impact on
5 commerce that is not necessary for reliability;

6 “(iii) provides a level of bulk-power system
7 reliability adequate to protect public health,
8 safety, welfare, and national security, and
9 would not have a significant adverse impact on
10 reliability; and

11 “(iv) in the case of a variance, is based on
12 legitimate differences between regions or be-
13 tween subregions within the affiliated regional
14 reliability entity’s geographic area.

15 The Electric Reliability Organization shall approve
16 or disapprove such proposal within 120 days, or the
17 proposal shall be deemed approved. Following ap-
18 proval of any such proposal under this paragraph,
19 the Electric Reliability Organization shall seek Com-
20 mission approval pursuant to the procedures pre-
21 scribed under subsection (e)(3). Affiliated regional
22 reliability entities may not make requests for ap-
23 proval directly to the Commission except pursuant to
24 subsection (e)(3)(D).

1 “(4) If an affiliated regional reliability entity
2 requests, consistent with paragraph (1) of this sub-
3 section, that the Electric Reliability Organization
4 delegate authority to it, but is unable within 180
5 days to reach agreement with the Electric Reliability
6 Organization with respect to such requested delega-
7 tion, such entity may seek relief from the Commis-
8 sion. If, following notice and opportunity for com-
9 ment, the Commission determines that a delegation
10 to the entity would meet the requirements of para-
11 graph (1) above, and that the delegation would be
12 just, reasonable, not unduly discriminatory or pref-
13 erential, and in the public interest, and that the
14 Electric Reliability Organization has unreasonably
15 withheld such delegation, the Commission may, by
16 order, direct the Electric Reliability Organization to
17 make such delegation.

18 “(5)(A) The Commission may, upon its own
19 motion or upon complaint, and with notice to the ap-
20 propriate affiliated regional reliability entity or enti-
21 ties, direct the Electric Reliability Organization to
22 propose a modification to an agreement entered into
23 under this subsection if the Commission determines
24 that—

1 “(i) the affiliated regional reliability entity
2 no longer has the capacity to carry out effec-
3 tively or efficiently its implementation or en-
4 forcement responsibilities under that agree-
5 ment, has failed to meet its obligations under
6 that agreement, or has violated any provision of
7 this section;

8 “(ii) the rules, practices, or procedures of
9 the affiliated regional reliability entity no longer
10 provide for fair and impartial discharge of its
11 implementation or enforcement responsibilities
12 under the agreement;

13 “(iii) the geographic boundary of a trans-
14 mission entity approved by the Commission is
15 not wholly within the boundary of an affiliated
16 regional reliability entity and such difference is
17 inconsistent with the effective and efficient im-
18 plementation and administration of bulk-power
19 system reliability; or

20 “(iv) the agreement is inconsistent with
21 another delegation agreement as a result of ac-
22 tions taken under paragraph (4) of this sub-
23 section.

24 “(B) Following an order of the Commission
25 issued under subparagraph (A), the Commission

1 may suspend the affected agreement if the Electric
2 Reliability Organization or the affiliated regional re-
3 liability entity does not propose an appropriate and
4 timely modification. If the agreement is suspended,
5 the Electric Reliability Organization shall assume
6 the previously delegated responsibilities. The Com-
7 mission shall allow the Electric Reliability Organiza-
8 tion and the affiliated regional reliability entity an
9 opportunity to appeal the suspension.

10 “(i) ORGANIZATION MEMBERSHIP.—Every system
11 operator shall be required to be a member of the Electric
12 Reliability Organization and shall be required also to be
13 a member of any affiliated regional reliability entity oper-
14 ating under an agreement effective pursuant to subsection
15 (h) applicable to the region in which the system operator
16 operates or is responsible for the operation of bulk-power
17 system facilities.

18 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—

19 “(1) Consistent with the range of actions ap-
20 proved by the Commission under subsection
21 (d)(4)(H), the Electric Reliability Organization may
22 impose a penalty, limitation of activities, functions,
23 operations, or other disciplinary action the Electric
24 Reliability Organization finds appropriate against a
25 user of the bulk-power system if the Electric Reli-

1 ability Organization, after notice and an opportunity
2 for interested parties to be heard, issues a finding
3 in writing that the user of the bulk-power system
4 has violated an organization standard. The Electric
5 Reliability Organization shall immediately notify the
6 Commission of any disciplinary action imposed with
7 respect to an act or failure to act of a user of the
8 bulk-power system that affected or threatened to af-
9 fect bulk-power system facilities located in the
10 United States, and the sanctioned party shall have
11 the right to seek modification or rescission of such
12 disciplinary action by the Commission. If the organi-
13 zation finds it necessary to prevent a serious threat
14 to reliability, the organization may seek injunctive
15 relief in a Federal court in the district in which the
16 affected facilities are located.

17 “(2) A disciplinary action taken under para-
18 graph (1) may take effect not earlier than the 30th
19 day after the Electric Reliability Organization files
20 with the Commission its written finding and record
21 of proceedings before the Electric Reliability Organi-
22 zation and the Commission posts its written finding,
23 unless the Commission, on its own motion or upon
24 application by the user of the bulk-power system
25 which is the subject of the action, suspends the ac-

1 tion. The action shall remain in effect or remain sus-
2 pended unless and until the Commission, after notice
3 and opportunity for hearing, affirms, sets aside,
4 modifies, or reinstates the action, but the Commis-
5 sion shall conduct such hearing under procedures es-
6 tablished to ensure expedited consideration of the
7 action taken.

8 “(3) The Commission, on its own motion or on
9 complaint, may order compliance with an organiza-
10 tion standard and may impose a penalty, limitation
11 of activities, functions, or operations, or take such
12 other disciplinary action as the Commission finds
13 appropriate, against a user of the bulk-power system
14 with respect to actions affecting or threatening to
15 affect bulk-power system facilities located in the
16 United States if the Commission finds, after notice
17 and opportunity for a hearing, that the user of the
18 bulk-power system has violated or threatens to vio-
19 late an organization standard.

20 “(4) The Commission may take such action as
21 is necessary against the Electric Reliability Organi-
22 zation or an affiliated regional reliability entity to
23 assure compliance with an organization standard, or
24 any Commission order affecting the Electric Reli-

1 ability Organization or an affiliated regional reli-
2 ability entity.

3 “(k) RELIABILITY REPORTS.—The Electric Reli-
4 ability Organization shall conduct periodic assessments of
5 the reliability and adequacy of the interconnected bulk-
6 power system in North America and shall report annually
7 to the Secretary of Energy and the Commission its find-
8 ings and recommendations for monitoring or improving
9 system reliability and adequacy.

10 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
11 COSTS.—The reasonable costs of the Electric Reliability
12 Organization, and the reasonable costs of each affiliated
13 regional reliability entity that are related to implementa-
14 tion and enforcement of organization standards or other
15 requirements contained in a delegation agreement ap-
16 proved under subsection (h), shall be assessed by the Elec-
17 tric Reliability Organization and each affiliated regional
18 reliability entity, respectively, taking into account the rela-
19 tionship of costs to each region and based on an allocation
20 that reflects an equitable sharing of the costs among all
21 end users. The Commission shall provide by rule for the
22 review of such costs and allocations, pursuant to the
23 standards in this subsection and subsection (d)(4)(F).

24 “(m) SAVINGS PROVISIONS.—

1 “(1) The Electric Reliability Organization shall
2 have authority to develop, implement and enforce
3 compliance with standards for the reliable operation
4 of only the Bulk Power System.

5 “(2) This section does not provide the Electric
6 Reliability Organization or the Commission with the
7 authority to set and enforce compliance with stand-
8 ards for adequacy or safety of electric facilities or
9 services.

10 “(3) Nothing in this section shall be construed
11 to preempt any authority of any State to take action
12 to ensure the safety, adequacy, and reliability of
13 electric service within that State, as long as such ac-
14 tion is not inconsistent with any Organization
15 Standard.

16 “(4) Within 90 days of the application of the
17 Electric Reliability Organization or other affected
18 party, the Commission shall issue a final order de-
19 termining whether a state action is inconsistent with
20 an Organization Standard, after notice and oppor-
21 tunity for comment, taking into consideration any
22 recommendations of the Electric Reliability Organi-
23 zation.

24 “(5) The Commission, after consultation with
25 the Electric Reliability Organization, may stay the

1 effectiveness of any state action, pending the Com-
2 mission's issuance of a final order.

3 “(n) REGIONAL ADVISORY BODIES.—The Commis-
4 sion shall establish a regional advisory body on the petition
5 of at least two-thirds of the States within a region that
6 have more than one-half of their electric load served within
7 the region. A regional advisory body shall be composed of
8 1 member from each participating State in the region, ap-
9 pointed by the Governor of each State, and may include
10 representatives of agencies, States, and provinces outside
11 the United States, upon execution of an international
12 agreement or agreements described in subsection (f). A
13 regional advisory body may provide advice to the electric
14 reliability organization, an affiliated regional reliability en-
15 tity, or the Commission regarding the governance of an
16 existing or proposed affiliated regional reliability entity
17 within the same region, whether an organization standard,
18 entity rule, or variance proposed to apply within the region
19 is just, reasonable, not unduly discriminatory or pref-
20 erential, and in the public interest, and whether fees pro-
21 posed to be assessed within the region are just, reasonable,
22 not unduly discriminatory or preferential, in the public in-
23 terest, and consistent with the requirements of subsection
24 (l). The Commission may give deference to the advice of

1 any such regional advisory body if that body is organized
2 on an interconnection-wide basis.

3 “(o) COORDINATION WITH REGIONAL TRANSMISSION
4 ORGANIZATIONS.—

5 “(1) Each regional transmission organization
6 authorized by the Commission shall be responsible
7 for maintaining the short-term reliability of the
8 bulk-power system that it operates, consistent with
9 organization standards.

10 “(2) Except as provided in paragraph (5), in
11 connection with a proceeding under subsection (e) to
12 consider a proposed organization standard, each re-
13 gional transmission organization authorized by the
14 Commission shall report to the Commission, and no-
15 tify the electric reliability organization and any ap-
16 plicable affiliated regional reliability entity, regard-
17 ing whether the proposed organization standard
18 hinders or conflicts with that regional transmission
19 organization’s ability to fulfill the requirements of
20 any Commission-accepted, approved, or ordered rule,
21 regulation, order, tariff, rate schedule, or agreement.
22 Where such hindrance or conflict is identified, the
23 Commission shall address such hindrance or conflict,
24 and the need for any changes to such Commission-
25 accepted, approved, or ordered rule, order, tariff,

1 rate schedule, or agreement in its order under sub-
2 section (e) regarding the proposed standard. Where
3 such hindrance or conflict is identified between a
4 proposed organization standard and a provision of
5 any rule, order, tariff, rate schedule or agreement
6 accepted, approved or ordered by the Commission
7 applicable to a regional transmission organization,
8 nothing in this section shall require a change in the
9 regional transmission organization's obligation to
10 comply with such provision unless the Commission
11 orders such a change and the change becomes effec-
12 tive. If the Commission finds that the tariff, rate
13 schedule, or agreement needs to be changed, the re-
14 gional transmission organization must expeditiously
15 make a section 205 filing to reflect the change. If
16 the Commission finds that the proposed organization
17 standard needs to be changed, it shall remand the
18 proposed organization standard to the electric reli-
19 ability organization under subsection (e)(3)(B).

20 “(3) Except as provided in paragraph (5), to
21 the extent hindrances and conflicts arise after ap-
22 proval of a reliability standard under subsection (c)
23 or organization standard under subsection (e), each
24 regional transmission organization authorized by the
25 Commission shall report to the Commission, and no-

1 tify the electric reliability organization and any ap-
2 plicable affiliated regional reliability entity, regard-
3 ing any reliability standard approved under sub-
4 section (c) or organization standard that hinders or
5 conflicts with that regional transmission organiza-
6 tion's ability to fulfill the requirements of any Com-
7 mission-accepted, approved, or ordered rule, regula-
8 tion, order, tariff, rate schedule, or agreement. The
9 Commission shall seek to assure that such hin-
10 drances or conflicts are resolved promptly. Where a
11 hindrance or conflict is identified between a reli-
12 ability standard or an organization standard and a
13 provision of any rule, order, tariff, rate schedule or
14 agreement accepted, approved or ordered by the
15 Commission applicable to a regional transmission or-
16 ganization, nothing in this section shall require a
17 change in the regional transmission organization's
18 obligation to comply with such provision unless the
19 Commission orders such a change and the change
20 becomes effective. If the Commission finds that the
21 tariff, rate schedule or agreement needs to be
22 changed, the regional transmission organization
23 must expeditiously make a section 205 filing to re-
24 flect the change. If the Commission finds that an or-
25 ganization standard needs to be changed, it shall

1 order the electric reliability organization to develop
2 and submit a modified organization standard under
3 subsection (e)(3)(C).

4 “(4) An affiliated regional reliability entity and
5 a regional transmission organization operating in the
6 same geographic area shall cooperate to avoid con-
7 flicts between implementation and enforcement of
8 organization standards by the affiliated regional reli-
9 ability entity and implementation and enforcement
10 of Commission-accepted tariffs, rate schedules, and
11 agreements by the regional transmission organiza-
12 tion. In areas without an affiliated regional reli-
13 ability entity, the electric reliability organization
14 shall act as the affiliated regional reliability entity
15 for purposes of this paragraph.

16 “(5) Until 6 months after approval of applica-
17 ble subsection (h)(3) procedures, any reliability
18 standard, guidance, or practice contained in Com-
19 mission-accepted tariffs, rate schedules, or agree-
20 ments in effect of any Commission-authorized inde-
21 pendent system operator or regional transmission or-
22 ganization shall continue to apply unless the Com-
23 mission accepts an amendment thereto by the appli-
24 cable operator or organization, or upon complaint
25 finds them to be unjust, unreasonable, unduly dis-

1 criminatory or preferential, or not in the public in-
2 terest. At the conclusion of such transition period,
3 any such reliability standard, guidance, practice, or
4 amendment thereto that the Commission determines
5 is inconsistent with organization standards shall no
6 longer apply.”.

7 (2) ENFORCEMENT.—Sections 316 and 316A of
8 the Federal Power Act are each amended by striking
9 “or 214” each place it appears and inserting “214,
10 or 215”.

11 (b) APPLICATION OF ANTITRUST LAWS.—Notwith-
12 standing any other provision of law, each of the following
13 activities are rebuttably presumed to be in compliance with
14 the antitrust laws of the United States:

15 (1) Activities undertaken by the Electric Reli-
16 ability Organization under section 215 of the Fed-
17 eral Power Act or affiliated regional reliability entity
18 operating under an agreement in effect under sec-
19 tion 215(h) of such Act.

20 (2) Activities of a member of the Electric Reli-
21 ability Organization or affiliated regional reliability
22 entity in pursuit of organization objectives under
23 section 215 of the Federal Power Act undertaken in
24 good faith under the rules of the organization.

1 Primary jurisdiction, and immunities and other affirma-
2 tive defenses, shall be available to the extent otherwise ap-
3 plicable.

4 **SEC. 5. DISPOSITION OF PROPERTY.**

5 Section 203 of the Federal Power Act (16 U.S.C.
6 824b) is repealed.

7 **SEC. 6. PROMOTION OF VOLUNTARY DEVELOPMENT OF RE-**
8 **REGIONAL TRANSMISSION ORGANIZATIONS.**

9 Part II of the Federal Power Act is amended by in-
10 sserting at the end thereof the following new section:

11 **“SEC. 217. PROMOTION OF VOLUNTARY DEVELOPMENT OF**
12 **REGIONAL TRANSMISSION ORGANIZATIONS.**

13 “(a) IN GENERAL.—The Commission may approve
14 and may encourage the formation of regional transmission
15 organizations for the purpose of enhancing the trans-
16 mission of electric energy in interstate commerce. Among
17 options for the formation of regional transmission organi-
18 zations, the Commission shall prefer those in which—

19 “(1) participation in the regional transmission
20 organization by transmitting utilities is voluntary;

21 “(2) the form, structure, and operating entity
22 of the regional transmission organization are ap-
23 proved of by participating transmitting utilities; and

24 “(3) market incentives exist to promote invest-
25 ment for expansion of transmission facilities and for

1 the introduction of new transmission technologies
2 within the territory of the regional transmission or-
3 ganization.

4 “(b) CONDITIONS.—No order issued under this Act
5 shall be conditioned upon or require a transmitting utility
6 to transfer operational control of jurisdictional facilities
7 to an independent system operator or other regional trans-
8 mission organization.

9 “(c) COMPLAINT.—In addition to any other rights or
10 remedies it may have under this Act, any entity serving
11 electric load that is denied services by a regional trans-
12 mission organization that the regional transmission orga-
13 nization makes available to other load serving entities shall
14 be entitled to file a complaint with the Commission con-
15 cerning the denial of such services. If the Commission
16 shall find, after an evidentiary hearing on the record, that
17 the denial of services complained of was unjust, unreason-
18 able, unduly discriminatory or preferential, or contrary to
19 the public interest, the Commission may order the provi-
20 sion of such services at rates and on terms and conditions
21 that shall be in accordance with section 215 of this Act.”.

22 **SEC. 7. STATE AND FEDERAL AUTHORITY TO SITE TRANS-**
23 **MISSION FACILITIES.**

24 Part II of the Federal Power Act is amended by in-
25 serting at the end thereof the following new section:

1 **“SEC. 218. STATE AND FEDERAL AUTHORITY TO SITE**
2 **TRANSMISSION FACILITIES.**

3 “(a) In order to ensure the availability of adequate
4 capacity to provide for reliable, economic transmission of
5 electric energy in interstate commerce, upon enactment of
6 this section, and after notice and opportunity for com-
7 ment, the Commission shall publish a report, which it shall
8 revise each year thereafter, describing areas where addi-
9 tional facilities are necessary to increase electric trans-
10 mission capacity. The report shall include information
11 from the regional transmission organization planning
12 processes explaining the feasibility of providing additional
13 transmission capacity through existing transmission rights
14 of way, and shall assess efforts to promote adequate and
15 economically efficient transmission of electricity through
16 the introduction of new transmission technologies, and to
17 encourage investment in new and existing transmission fa-
18 cilities. The Commission shall rely upon information pro-
19 vided by regional transmission organizations developed in
20 conjunction with States through regional transmission or-
21 ganization planning processes, information provided by
22 State public utility commissions, and such other informa-
23 tion about transmission constraints, reliability, and prices
24 of electric energy as the Commission deems appropriate.
25 In the report, the Commission shall review the status of

1 facilities for which an application has been submitted pur-
2 suant to subsection (b).

3 “(b) A regional transmission organization which has
4 submitted an application to a State or local agency for
5 approval of transmission facilities to provide additional
6 transmission capacity in an area identified in the report
7 required by subsection (a) shall notify the Commission by
8 providing a copy of the application, including a description
9 of the facilities and the proposed route. The regional
10 transmission organization shall submit to the Commission
11 with a copy of the application a statement assessing the
12 feasibility of upgrading existing transmission facilities to
13 provide additional capacity in an area identified in the re-
14 port required by subsection (a).

15 “(c) If a regional transmission organization has not
16 received approval of its application to the State to con-
17 struct transmission facilities in an area identified in the
18 report required by subsection (a) within one year of the
19 notice to the Commission pursuant to subsection (b), or
20 within two years of such notice has not received all permits
21 and approvals required to construct the facilities, the
22 Commission may, after considering the feasibility of up-
23 grading existing facilities to increase electric transmission
24 capacity, upon its own motion or upon request, and after
25 notice and opportunity for hearing, issue a certificate of

1 public convenience and necessity to construct a proposed
2 transmission facility if it finds the facilities to be author-
3 ized by the certificate are or will be required by public
4 convenience and necessity.

5 “(d) The Commission shall have the power to attach
6 to the issuance of such certificate and to the exercise of
7 the rights granted thereunder such reasonable terms and
8 conditions related to the construction of such facility as
9 the public convenience and necessity may require; pro-
10 vided, that the Commission shall have no authority to
11 compel the construction, enlargement or modification of
12 transmission facilities directly or indirectly, including as
13 a condition of the receipt of any other approval from the
14 Commission.

15 “(e) The Commission shall issue its final decision in
16 the certificate proceeding within 180 days after the filing
17 of a request for a certificate or the initiation of pro-
18 ceedings on its own motion.

19 “(f) When any holder of a certificate of public con-
20 venience and necessity for electric transmission facilities
21 issued by the Commission pursuant to subsection (c) can-
22 not acquire by contract, or is unable to agree with the
23 owner of the property to the compensation to be paid for
24 the necessary rights-of-way to construct, operate and
25 maintain such transmission facility, it may acquire the

1 same by the exercise of the right of eminent domain in
 2 the district court of the United States for the district in
 3 which such property may be located, or in the State
 4 courts.”.

5 **SEC. 8. PUBLIC UTILITY HOLDING COMPANY ACT EXEMP-**
 6 **TION FOR RTOS.**

7 The Public Utility Holding Company Act is amended
 8 as follows:

9 (1) After section 35, insert the following:

10 **“SEC. 36. SAVINGS CLAUSE.**

11 “This Act shall not apply to regional transmission or-
 12 ganizations, as described in Federal Energy Regulatory
 13 Commission Order No. 2000 and 2000A, or to any action
 14 to form, modify, finance, sell, purchase, operate, or other-
 15 wise affect such an organization.”.

16 (2) Renumber existing section 36 as section 37.

17 **SEC. 9. INDEPENDENT TRANSMISSION COMPANIES.**

18 (a) IN GENERAL.—Section 1033 of the Internal Rev-
 19 enue Code of 1986 (relating to involuntary conversions)
 20 is amended by redesignating subsection (k) as subsection
 21 (l) and by inserting after subsection (j) the following new
 22 subsection:

23 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 24 ERAL ENERGY REGULATORY COMMISSION OR STATE
 25 ELECTRIC RESTRUCTURING POLICY.—

1 “(1) IN GENERAL.—For purposes of this sub-
2 title, if a taxpayer elects the application of this sub-
3 section to a qualifying electric transmission
4 transaction—

5 “(A) such transaction shall be treated as
6 an involuntary conversion to which this section
7 applies, and

8 “(B) exempt utility property shall be treat-
9 ed as property which is similar or related in
10 service or use to the property disposed of in
11 such transaction.

12 “(2) EXTENSION OF REPLACEMENT PERIOD.—
13 In the case of any involuntary conversion described
14 in paragraph (1), subsection (a)(2)(B) shall be ap-
15 plied by substituting ‘4 years’ for ‘2 years’ in clause
16 (i) thereof.

17 “(3) QUALIFYING ELECTRIC TRANSMISSION
18 TRANSACTION.—For purposes of this subsection, the
19 term ‘qualifying electric transmission transaction’
20 means any sale or other disposition before January
21 1, 2009, of—

22 “(A) property used in the trade or business
23 of providing electric transmission services, or

24 “(B) any stock or partnership interest in a
25 corporation or partnership, as the case may be,

1 whose principal trade or business consists of
2 providing electric transmission services,
3 but only if such sale or disposition is to an inde-
4 pendent transmission company.

5 “(4) INDEPENDENT TRANSMISSION COM-
6 PANY.—For purposes of this subsection, the term
7 ‘independent transmission company’ means—

8 “(A) a regional transmission organization
9 approved by the Federal Energy Regulatory
10 Commission,

11 “(B) a person—

12 “(i) who the Federal Energy Regu-
13 latory Commission determines in its au-
14 thorization of the transaction under section
15 203 of the Federal Power Act (16 U.S.C.
16 823b) is not a market participant within
17 the meaning of such Commission’s rules
18 applicable to regional transmission organi-
19 zations, and

20 “(ii) whose transmission facilities to
21 which the election under this subsection
22 applies are under the operational control of
23 a Federal Energy Regulatory Commission-
24 approved regional transmission organiza-
25 tion before the close of the period specified

1 in such authorization, but not later than
2 the close of the period applicable under
3 subsection (a)(2)(B) as extended under
4 paragraph (2), or

5 “(C) in the case of facilities subject to the
6 exclusive jurisdiction of the Public Utility Com-
7 mission of Texas, a person which is approved by
8 that Commission as consistent with Texas State
9 law regarding an independent transmission or-
10 ganization.

11 “(5) EXEMPT UTILITY PROPERTY.—For pur-
12 poses of this subsection—

13 “(A) IN GENERAL.—The term ‘exempt
14 utility property’ means property used in the
15 trade or business of—

16 “(i) generating, transmitting, distrib-
17 uting, or selling electricity, or

18 “(ii) producing, transmitting, distrib-
19 uting, or selling natural gas.

20 “(B) NONRECOGNITION OF GAIN BY REA-
21 SON OF ACQUISITION OF STOCK.—Acquisition of
22 control of a corporation shall be taken into ac-
23 count under this section with respect to a quali-
24 fying electric transmission transaction only if
25 the principal trade or business of such corpora-

1 tion is a trade or business referred to in sub-
2 paragraph (A).

3 “(6) SPECIAL RULE FOR CONSOLIDATED
4 GROUPS.—In the case of a corporation which is a
5 member of an affiliated group filing a consolidated
6 return, such corporation shall be treated as satis-
7 fying the purchase requirement of subsection (a)(2)
8 with respect to any qualifying electric transmission
9 transaction engaged in by such corporation to the
10 extent such requirement is satisfied by another
11 member of such group.

12 “(7) ELECTION.—An election under paragraph
13 (1), once made, shall be irrevocable.”

14 (b) EXCEPTION FROM GAIN RECOGNITION UNDER
15 SECTION 1245.—Subsection (b) of section 1245 of such
16 Code is amended by adding at the end the following new
17 paragraph:

18 “(9) DISPOSITIONS TO IMPLEMENT FEDERAL
19 ENERGY REGULATORY COMMISSION OR STATE ELEC-
20 TRIC RESTRUCTURING POLICY.—At the election of
21 the taxpayer, the amount of gain which would (but
22 for this paragraph) be recognized under this section
23 on any qualified electric transmission transaction (as
24 defined in section 1033(k)) for which an election
25 under section 1033 is made shall be reduced by the

1 aggregate reduction in the basis of section 1245
2 property held by the taxpayer or, if insufficient, by
3 a member of an affiliated group which includes the
4 taxpayer at any time during the taxable year in
5 which such transaction occurred. The manner and
6 amount of such reduction shall be determined under
7 regulations prescribed by the Secretary.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 subsections (a) and (b) of this section shall apply to trans-
10 actions occurring after the date of the enactment of this
11 Act.

12 (d) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
13 ERAL ENERGY REGULATORY COMMISSION OR STATE
14 ELECTRIC RESTRUCTURING POLICY.—

15 (1) IN GENERAL.—Subparagraph (A) of section
16 355(e)(3) of such Code (relating to special rules re-
17 lating to acquisitions) is amended by inserting after
18 clause (iv) the following new clause:

19 “(v) The acquisition of stock in any
20 controlled corporation in a qualifying elec-
21 tric transmission transaction (as defined in
22 section 1033(k)).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply to distributions after
3 the date of the enactment of this Act.

○