

107TH CONGRESS
1ST SESSION

H. R. 3406

To benefit consumers and enhance the Nation's energy security by removing barriers to the development of competitive markets for electric power, providing for the reliability and increased capacity of the Nation's electric transmission networks, promoting the use of renewable and alternative sources of electric power generation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2001

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, and Resources, 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 benefit consumers and enhance the Nation's energy security by removing barriers to the development of competitive markets for electric power, providing for the reliability and increased capacity of the Nation's electric transmission networks, promoting the use of renewable and alternative sources of electric power generation, 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,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Electric Supply and
3 Transmission Act”.

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1 **SEC. 3. DEFINITIONS.**

2 Section 3 of the Federal Power Act (16 U.S.C. 796)
3 is amended by adding at the end the following:

4 “(26) **APPROPRIATE REGULATORY AUTHOR-**
5 **ITY.**—The term ‘appropriate regulatory authority’
6 means the entity with authority over the inter-
7 connection at issue in the absence of subsections (e)
8 and (f) of section 210. As appropriate to the con-
9 text, the term shall mean—

10 “(A) the Commission;

11 “(B) a State commission;

12 “(C) a municipality;

13 “(D) a cooperative that is self-regulating
14 under State law and is not a public utility; or

15 “(E) an Indian tribe.

16 “(27) **GENERATING FACILITY.**—The term ‘gen-
17 erating facility’ means a facility that generates elec-
18 tric energy.

19 “(28) **LOCAL DISTRIBUTION UTILITY.**—The
20 term ‘local distribution utility’ means an entity, in-
21 cluding, notwithstanding section 201(f), any State or
22 municipal entity, that owns, controls, or operates a
23 local distribution facility that is used for the sale of
24 electric energy.

25 “(29) **NON-FEDERAL REGULATORY AUTHOR-**
26 **ITY.**—The term ‘non-Federal regulatory authority’

1 means an appropriate regulatory authority other
2 than the Commission.

3 “(30) MARKET PARTICIPANT.—The term ‘mar-
4 ket participant’ means any entity that generates,
5 sells, or aggregates electric power (other than State-
6 ordered transition or default service) that is trans-
7 mitted on the transmission system operated by a re-
8 gional transmission organization. Any entity that is
9 the owner of the regional transmission organization
10 and does not generate, sell, or aggregate electric
11 power shall not be considered a market participant.
12 An entity is not a market participant by reason of
13 providing State-ordered transition service, default
14 service, or generation service necessary to provide re-
15 active power or such other generation service inci-
16 dental to providing transmission service.

17 “(31) OPEN ACCESS.—The term ‘open access’,
18 with respect to local distribution facilities, means
19 that the local distribution company that owns, con-
20 trols, or operates the facilities offers access to the
21 facilities that is not unduly discriminatory or pref-
22 erential.

23 “(32) RETAIL ELECTRIC CONSUMER.—The
24 term ‘retail electric consumer’ means any person

1 who purchases electric energy for ultimate consump-
2 tion.

3 “(33) RETAIL ELECTRIC SUPPLIER.—The term
4 ‘retail electric supplier’ means any person who sells
5 electric energy to a retail electric consumer for ulti-
6 mate consumption.

7 “(34) STATE REGULATED ELECTRIC UTILITY.—
8 The term ‘State regulated electric utility’ means any
9 electric utility with respect to which a State commis-
10 sion has ratemaking authority.

11 “(35) BACKUP POWER.—The term ‘backup
12 power’ means electricity supplied to a generating fa-
13 cility or retail electric consumer when the generating
14 facility is not operating, in whole or in part, for—

15 “(A) end use consumption by the gener-
16 ating facility; or

17 “(B) consumption by the retail electric
18 consumer that receives its electricity supply
19 from the generating facility,

20 except that the obligation to provide backup power
21 shall not exceed the amount of power historically
22 supplied by the generating facility.

23 “(36) INDEPENDENT TRANSMISSION COM-
24 PANY.—The term ‘independent transmission com-
25 pany’ means any entity that owns and operates

1 transmission facilities and is independent of any
 2 market participant.”.

3 **TITLE I—ELECTRIC SUPPLY**
 4 **Subtitle A—Interconnection; Net**
 5 **Metering; Demand Management**

6 **SEC. 101. INTERCONNECTION.**

7 (a) INTERCONNECTION TO DISTRIBUTION FACILI-
 8 TIES.—Section 210 of the Federal Power Act (16 U.S.C.
 9 824i) is amended by inserting after subsection (e) the fol-
 10 lowing:

11 “(f) INTERCONNECTION TO DISTRIBUTION FACILI-
 12 TIES.—

13 “(1) INTERCONNECTION.—

14 “(A) IN GENERAL.—A local distribution
 15 utility shall interconnect a generating facility
 16 with the distribution facilities of the local dis-
 17 tribution utility if the owner of the generating
 18 facility—

19 “(i) complies with the final rule pro-
 20 mulgated under paragraph (2); and

21 “(ii) pays the costs of the interconnec-
 22 tion, including the generating facility’s ap-
 23 propriate share of the necessary and rea-
 24 sonable costs associated with any upgrades
 25 to system facilities.

1 “(B) COSTS.—The costs of the inter-
2 connection shall be—

3 “(i) just and reasonable,

4 “(ii) not unduly discriminatory or
5 preferential, and

6 “(iii) comparable to the costs charged
7 by the local distribution utility for inter-
8 connection by any similarly situated gener-
9 ating facility to the distribution facilities of
10 the local distribution utility, as determined
11 by the appropriate regulatory authority.

12 “(C) APPLICABLE REQUIREMENTS.—The
13 right of a generating facility to interconnect
14 under subparagraph (A) does not—

15 “(i) relieve the generating facility or
16 the local distribution utility of other Fed-
17 eral, State, or local requirements;

18 “(ii) include a right to transmission or
19 distribution service for the generating facil-
20 ity; or

21 “(iii) allow the generating facility or
22 its customer to bypass or avoid payment of
23 any costs approved for recovery by the ap-
24 propriate regulatory authority, or deprive
25 the generating facility or its customer of

1 any rights or arguments it might have to
2 avoid paying such costs.

3 “(2) RULE.—

4 “(A) IN GENERAL.—Not later than 1 year
5 after the date of enactment of this subsection,
6 the Commission shall promulgate a final rule
7 establishing reasonable and appropriate tech-
8 nical standards for the interconnection of a gen-
9 erating facility with the distribution facilities of
10 a local distribution utility, and shall provide for
11 the updating or modification of such standards
12 when appropriate.

13 “(B) PROCESS.—To the extent feasible,
14 the Commission shall develop the standards
15 through a process involving interested parties,
16 and shall rely, where appropriate, on standards
17 developed through independent standard setting
18 organizations.

19 “(3) RIGHT TO BACKUP POWER.—

20 “(A) IN GENERAL.—In accordance with
21 subparagraph (B), a local distribution utility
22 shall offer to provide backup power, as defined
23 in paragraph (35) of section 3, to a generating
24 facility or a retail electric consumer to the ex-
25 tent that the local distribution utility is obli-

1 gated under State law to provide electricity sup-
2 ply service to retail electric consumers in the
3 area in which the generating facility is located
4 and

5 “(i) is not subject to an order of a
6 non-Federal regulatory authority to pro-
7 vide open access to its facilities;

8 “(ii) has not offered to provide open
9 access to its facilities; or

10 “(iii) does not allow a generating fa-
11 cility to purchase backup power from an-
12 other entity using its facilities under terms
13 that are just and reasonable, and not un-
14 duly discriminatory or preferential.

15 “(B) RATES, TERMS, AND CONDITIONS.—A
16 sale of backup power under subparagraph (A),
17 for both firm and interruptible backup power
18 service, shall be at such rates and under such
19 terms and conditions, as determined by and
20 filed with the appropriate regulatory authority,
21 as are just and reasonable and not unduly dis-
22 criminatory or preferential, taking into
23 account—

24 “(i) the actual incremental cost, when-
25 ever incurred by the local distribution util-

1 ity, to supply such backup power service
2 during the period in which the backup
3 power service is provided, and

4 “(ii) any capacity charges assessed
5 against similarly situated generating facili-
6 ties in the area in which the generating fa-
7 cility is located.

8 “(C) NO REQUIREMENT FOR CERTAIN
9 SALES.—A local distribution utility shall not be
10 required to provide backup power for resale.

11 “(D) NEW OR EXPANDED LOADS.—To the
12 extent backup power is used to serve a new or
13 expanded load on the distribution system, the
14 generating facility shall pay the appropriate
15 share of the necessary and reasonable costs as-
16 sociated with any upgrades to transmission, dis-
17 tribution, or generation facilities required to
18 provide such service, as determined by the ap-
19 propriate regulatory authority.

20 “(4) ADMINISTRATION.—

21 “(A) BY A NON-FEDERAL REGULATORY
22 AUTHORITY.—Except where subject to the ju-
23 risdiction of the Commission pursuant to provi-
24 sions other than subparagraph (B), a non-Fed-
25 eral regulatory authority may administer and

1 enforce the rule promulgated under subpara-
2 graph (2)(A) and administer and enforce the
3 requirements of paragraph 3 for backup power.

4 “(B) BY THE COMMISSION.—To the extent
5 that a non-Federal regulatory authority does
6 not administer and enforce the rule or the
7 backup power requirements, the Commission
8 shall administer and enforce the rule or the
9 backup power requirements, as appropriate,
10 with respect to interconnection in that jurisdic-
11 tion.”.

12 (b) INTERCONNECTION TO TRANSMISSION FACILI-
13 TIES.—Section 210 of the Federal Power Act (16 U.S.C.
14 824i) is amended by inserting after subsection (f) (as
15 added by subsection (a) of this Act) the following:

16 “(g) INTERCONNECTION TO TRANSMISSION FACILI-
17 TIES.—

18 “(1) INTERCONNECTION.—

19 “(A) DEFINITION.—For purposes of this
20 subsection and subsection (h), the term ‘trans-
21 mitting utility’ means any entity (notwith-
22 standing section 201 (f)) that owns, controls, or
23 operates an electric power transmission facility
24 that is used for the sale of electric energy.

1 “(B) IN GENERAL.—Notwithstanding sub-
2 sections (a) and (c), a transmitting utility shall
3 interconnect a generating facility with the
4 transmission facilities of the transmitting utility
5 if the owner of the generating facility—

6 “(i) complies with the final rule pro-
7 mulgated under paragraph (2); and

8 “(ii) pays the costs of the interconnec-
9 tion, including the generating facility’s ap-
10 propriate share of the necessary and rea-
11 sonable costs associated with any upgrades
12 to system facilities.

13 “(C) COSTS.—

14 “(i) IN GENERAL.—The costs of the
15 interconnection shall be—

16 “(I) comparable to the costs
17 charged by the transmitting utility for
18 interconnection by any similarly situ-
19 ated generating facility to the trans-
20 mission facilities of the transmitting
21 utility, or

22 “(II) otherwise negotiated and
23 agreed to by the parties, provided that
24 such costs are approved by the Com-
25 mission as just and reasonable and

1 not unduly discriminatory or pref-
2 erential.

3 “(ii) DETERMINATION OF INTER-
4 CONNECTION COSTS.—A non-Federal regu-
5 latory authority that, under section
6 206(e)(2) (as added by section 201(a) of
7 this Act), is authorized to determine the
8 rates for transmission service on facilities
9 subject to its jurisdiction shall be author-
10 ized to determine the costs of any inter-
11 connection to such facilities under this sub-
12 paragraph in accordance with that provi-
13 sion of Federal law.

14 “(D) APPLICABLE REQUIREMENTS.—The
15 right of a generating facility to interconnect
16 under subparagraph (B) does not—

17 “(i) relieve the generating facility or
18 the transmitting utility of other Federal,
19 State, or local requirements;

20 “(ii) include a right to transmission or
21 distribution service for the generating facil-
22 ity; or

23 “(iii) allow the generating facility or
24 its customer to bypass or avoid payment of
25 any costs approved for recovery by the ap-

1 appropriate regulatory authority, or deprive
2 the generating facility or its customer of
3 any rights or arguments it might have to
4 avoid paying such costs.”.

5 “(2) RULE.—

6 “(A) IN GENERAL.—Not later than 1 year
7 after the date of enactment of this subsection,
8 the Commission shall promulgate a final rule
9 establishing reasonable, appropriate, and tech-
10 nically feasible technical standards for the
11 interconnection of a generating facility with the
12 transmission facilities of a transmitting utility.

13 “(B) PROCESS.—To the extent feasible,
14 the Commission shall develop the standards
15 through a process involving interested parties,
16 and shall rely, where appropriate, on standards
17 developed through independent standard setting
18 organizations.

19 “(3) RIGHT TO BACKUP POWER.—

20 “(A) IN GENERAL.—In accordance with
21 subparagraph (B), a local distribution utility
22 that is obligated under State law to provide
23 electricity supply to retail electric consumers in
24 the area in which the generating facility is lo-
25 cated shall offer to provide backup power to the

1 generating facility at the interconnection point
2 and to a retail electric consumer, in accordance
3 with the definition set forth in section 3(35),
4 unless—

5 “(i) Federal, State, or local law (in-
6 cluding regulations) allows such a gener-
7 ating facility or retail electric consumer to
8 purchase backup power from an entity
9 other than the local distribution utility; or

10 “(ii) the local distribution utility al-
11 lows a generating facility to purchase
12 backup power from an entity other than
13 the local distribution utility using—

14 “(I) the transmission facilities of
15 the transmitting utility; or

16 “(II) the transmission facilities
17 of any other transmitting utility that
18 allows such transmission.

19 “(B) RATES, TERMS, AND CONDITIONS.—A
20 sale of backup power under subparagraph (A),
21 for both firm and interruptible backup power
22 service, shall be at such rates and under such
23 terms and conditions, as determined by and
24 filed with the appropriate regulatory authority,
25 as are just and reasonable and not unduly dis-

1 criminatory or preferential, taking into
2 account—

3 “(i) the actual incremental cost, when-
4 ever incurred by the local distribution util-
5 ity, to supply such backup power service
6 during the period in which the backup
7 power service is provided, and

8 “(ii) any capacity charges assessed
9 against similarly situated generating facili-
10 ties in the area in which the generating fa-
11 cility is located.

12 “(C) NO REQUIREMENT FOR CERTAIN
13 SALES.—A local distribution utility shall not be
14 required to provide backup power for resale.

15 “(D) NEW OR EXPANDED LOADS.—To the
16 extent backup power is used to serve a new or
17 expanded load on the transmission system, the
18 generating facility shall pay the appropriate
19 share of the necessary and reasonable costs as-
20 sociated with any upgrades to transmission, dis-
21 tribution, or generating facilities required to
22 provide such service, as determined by the ap-
23 propriate regulatory authority.

24 “(E) ADMINISTRATION.—

1 “(i) BY A NON-FEDERAL REGULATORY
2 AUTHORITY.—Except there subject to the
3 jurisdiction of the Commission pursuant to
4 provisions other than clause (ii), a non-
5 Federal regulatory authority may admin-
6 ister and enforce the requirements of this
7 paragraph for backup power.

8 “(ii) BY THE COMMISSION.—To the
9 extent that a non-Federal regulatory au-
10 thority does not administer and enforce the
11 backup power requirements, the Commis-
12 sion shall administer and enforce the
13 backup power requirements with respect to
14 interconnection in that jurisdiction.”.

15 (c) TRANSMISSION INTERCONNECTION PROCESS AND
16 PROCEDURES.—Section 210 of the Federal Power Act is
17 amended by inserting after subsection (g) (as added by
18 subsection (b)) the following:

19 “(h) TRANSMISSION INTERCONNECTION PROCESS
20 AND PROCEDURES.—(1) Within 180 days of the enact-
21 ment of this section, the Commission shall issue a rule
22 establishing procedures governing—

23 “(A) the interconnection of new generating fa-
24 cilities to a transmission system owned or operated
25 by any transmitting utility or any regional trans-

1 mission organization approved by the Commission;
2 and

3 “(B) the increase in capacity of an existing gen-
4 erating facility interconnected to a transmission sys-
5 tem owned or operated by any transmitting utility or
6 any regional transmission organization approved by
7 the Commission.

8 Such rulemaking proceeding shall establish interconnec-
9 tion procedures and required elements for interconnection
10 agreements as provided in paragraphs (2) and (3). The
11 Commission shall apply similar procedures and required
12 elements to the interconnection of new generating facilities
13 to a distribution system to the extent that the Commission
14 has jurisdiction to do so pursuant to paragraph (f)(4) of
15 this section. Nothing in this Section or Subsection shall
16 affect the terms and conditions of existing agreements be-
17 tween qualifying facilities and utilities pursuant to 18
18 CFR 292.

19 “(2) INTERCONNECTION PROCEDURES.—Pursu-
20 ant to the rulemaking proceeding under paragraph
21 (1) of this subsection, the Commission shall estab-
22 lish interconnection procedures to govern the process
23 in which any transmitting utility or regional trans-
24 mission organization responds to and resolves inter-

1 connection requests. Such procedures shall include
2 provisions governing each of the following:

3 “(A) The study or studies to be conducted
4 to ensure that the interconnection can occur
5 without compromising the reliability of the sys-
6 tem being interconnected.

7 “(B) The time frames for completing such
8 study or studies.

9 “(C) The priorities among generating fa-
10 cilities that submit interconnection requests.

11 “(D) The rights that new generating facili-
12 ties have upon interconnection.

13 “(E) Compensation, if and as appropriate,
14 for transmitting utilities or regional trans-
15 mission organizations for the costs of proc-
16 essing the interconnection requests.

17 “(F) Criteria for assuring that such inter-
18 connections will meet applicable reliability
19 standards and will not adversely affect existing
20 transmission operations or service.

21 “(G) Criteria for assuring that such inter-
22 connections will not violate applicable laws (in-
23 cluding safety and environmental laws), rules,
24 or contracts.

1 Any transmitting utility or regional transmission or-
2 ganization shall include such interconnection proce-
3 dures in its tariffs filed with and approved by the
4 Commission under section 205 of this Act. The
5 Commission may approve different or additional pro-
6 visions in the interconnection procedures if the dif-
7 ferent or additional provisions are substantially com-
8 parable with the procedures established by the Com-
9 mission pursuant to this section.

10 “(3) REQUIRED ELEMENTS FOR INTERCONNEC-
11 TION AGREEMENTS.—Pursuant to the rulemaking
12 proceeding under paragraph (1) of this subsection,
13 the Commission shall also identify the required ele-
14 ments for interconnection agreements. Each such
15 interconnection agreement shall contain provisions
16 respecting—

17 “(A) the cost responsibility for facilities
18 necessary to interconnect the new generating
19 facility or for upgrades to the transmission sys-
20 tem required to allow the reliable interconnec-
21 tion of the new generating facility;

22 “(B) the security and creditworthiness re-
23 quirements for constructing the interconnection
24 facilities or system upgrades;

1 “(C) the methods for preserving the con-
2 fidentiality of information exchanged between
3 any new generating facility, and any transmit-
4 ting utility or regional transmission organiza-
5 tion;

6 “(D) the requirements for operating any
7 new generating facility in parallel with the
8 transmission system; and

9 “(E) the methods for resolving disputes be-
10 tween any new generating facility, and any
11 transmitting utility or regional transmission or-
12 ganization.

13 “(4) EXECUTION OF INTERCONNECTION
14 AGREEMENT.—Each interconnection agreement
15 under this section shall be executed both by any new
16 generating facility, and by any transmitting utility
17 or regional transmission organization before the
18 commencement of the construction of facilities nec-
19 essary to interconnect such new generating facility.
20 Such generating facility and transmitting utility or
21 regional transmission organization may agree to dif-
22 ferent or additional terms and conditions in their
23 interconnection agreement than required under para-
24 graph 3 if they are consistent with the elements for
25 interconnection agreements established by the Com-

1 mission. The Commission shall resolve any dispute
2 between the parties to such an agreement or any re-
3 fusal to execute such an agreement within sixty days
4 of notice by either party of the dispute or refusal.

5 “(5) EXEMPTION FROM COMMISSION APPROVED
6 PROCEDURES.—Any transmitting utility or regional
7 transmission organization shall be exempted by the
8 Commission from the requirements of this sub-
9 section, upon a showing by the transmitting utility,
10 regional transmission organization, or a generating
11 facility that substantially comparable interconnection
12 procedures and agreements have previously been
13 filed with and approved by the Commission for inter-
14 connection with that entity. Any interconnecting
15 generating facility may be entitled to interconnect
16 with that entity under such substantially comparable
17 interconnection procedures and agreements.”.

18 (d) CONFORMING AMENDMENTS.—Section 210 of the
19 Federal Power Act (16 U.S.C. 824i) is amended as fol-
20 lows:

21 (1) In subsection (a)(1)—

22 (A) by inserting “transmitting utility, local
23 distribution utility,” after “electric utility,”;

24 and

1 (B) in subparagraph (A), by inserting
2 “any transmitting utility,” after “small power
3 production facility,”.

4 (2) In subsection (e)(2)—

5 (A) in subparagraph (B), by striking “or”
6 at the end;

7 (B) in subparagraph (C), by striking
8 “and” at the end and inserting “or”; and

9 (C) by adding at the end the following:

10 “(D) promote competition in electricity
11 markets, and”.

12 (3) In subsection (d), by striking the last sen-
13 tence.

14 (4) In subsection (e)(1), by inserting “sub-
15 sections (a) through (d) of” after “used in”.

16 **SEC. 102. FEDERAL STANDARDS FOR STATE NET METERING**
17 **PROGRAMS.**

18 (a) FINDINGS.—The Congress finds that it is in the
19 public interest to:

20 (1) Enable small businesses, residences, schools,
21 churches, farms, and other retail electric customers
22 who generate electric energy to reduce their electric
23 bills.

24 (2) Encourage private investment in renewable
25 and unconventional energy resources.

1 (3) Enhance the diversity of the Nation’s elec-
2 tric supply by increasing reliance on a wide range of
3 renewable and other environmentally sound distrib-
4 uted generation technologies.

5 (4) Reduce price volatility and enhance reli-
6 ability by reducing peak load on centrally generated
7 power supplies.

8 (5) Protect the environment by promoting clean
9 energy sources.

10 (b) NET METERING.—Part II of the Federal Power
11 Act is amended by adding the following new section at
12 the end thereof:

13 **“SEC. 215. STATE NET METERING PROGRAMS.**

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

15 “(1) The term ‘customer generator’ means the
16 owner or operator of an electric generation unit
17 qualified for net metering under this section.

18 “(2) The term ‘net metering’ means measuring
19 the difference between the electricity supplied to a
20 customer-generator and the electricity generated by
21 a customer-generator that is delivered to a local dis-
22 tribution system as the same point of interconnec-
23 tion during an applicable billing period, and pro-
24 viding a crediting to the customer-generator for the
25 net amount, if any, by which the electricity gen-

1 erated by the customer-generator exceeds the elec-
2 tricity supplied to the customer generator during
3 that billing period.

4 “(3) The terms ‘electric generation unit quali-
5 fied for net metering’ and ‘qualified generation unit’
6 mean an electric energy generation unit that meets
7 the requirements of subsection (b)(1) of this section.

8 “(4) The term ‘retail electric supplier’ means
9 any person that sells electric energy to the ultimate
10 consumer thereof.

11 “(5) The term ‘local distribution system’ means
12 any system for the distribution of electric energy to
13 the ultimate consumer thereof, whether or not the
14 owner or operator of such system is also a retail
15 electric supplier.

16 “(b) NET METERING REQUIREMENT.—Each State,
17 electric utility not regulated by a State, and Federal power
18 marketing agency shall consider establishing a net meter-
19 ing program, or modifying an existing program, to meet
20 the minimum Federal standards set forth in subsection
21 (c) of this section. If the Commission determines that a
22 State, electric utility not regulated by a State, or Federal
23 power marketing agency has not established a net meter-
24 ing program that meets such minimum standards within
25 1 year after the effective date of the interconnection stand-

1 ards (for distribution facilities) required under section
2 210(e) of this Act, the Commission shall establish a pro-
3 gram (in such State or in the service territory of such elec-
4 tric utility or Federal power marketing agency) consistent
5 with such standards.

6 “(c) MINIMUM FEDERAL STANDARDS FOR STATE
7 AND OTHER NET METERING PROGRAMS.—

8 “(1) QUALIFIED GENERATION UNIT.—A gen-
9 eration unit that meets the following requirements
10 qualifies for net metering under this section:

11 “(A) The unit is a fuel cell or uses as its
12 energy source either solar, wind, or biomass.

13 “(B) The unit has a generating capacity of
14 up to 250 kilowatts.

15 “(C) The unit is located on premises that
16 are owned, operated, leased, or otherwise con-
17 trolled by the customer-generator.

18 “(D) The unit operates in parallel with the
19 retail electric supplier.

20 “(E) The unit is used primarily to offset
21 part or all of the customer-generator’s require-
22 ments for electric energy.

23 “(F) The unit is not intended to offset or
24 provide credits for electric consumption at an-

1 other location of the customer or for any other
2 customer.

3 “(2) METERING AND COSTS.—The retail elec-
4 tric supplier shall make available upon request net
5 metering service to any customer-generator that the
6 supplier serves if the retail customer-generator pays
7 any incremental costs, including those incurred by
8 suppliers and local distribution systems for equip-
9 ment or services for safety or performance that are
10 necessary to meet the standards referred to in this
11 section. If a State, nonregulated utility, or Federal
12 power marketing agency determines that the use of
13 a real-time net meter or interval net meter will ad-
14 vance the purposes of this section for such units, a
15 customer-generator in that State (or, in the case of
16 a nonregulated utility or Federal power marketing
17 agency, the relevant service territory) may be re-
18 quired to use the appropriate meter and pay the rea-
19 sonable incremental costs for such meter and its in-
20 stallation.

21 “(3) RATES.—Rates and charges for retail elec-
22 tric service to customer-generators, including the
23 amount of a net metering credit, shall be established
24 by the appropriate State regulatory authority and
25 nonpublic utilities. To the extent that a State regu-

1 latory authority, nonregulated utility, or Federal
2 power marketing agency does not establish such
3 rates and charges, such rates and charges shall be
4 established by the Commission. The rates and
5 charges established pursuant to this section shall be
6 just and reasonable and shall promote the purposes
7 of this section.

8 “(4) SAFETY AND PERFORMANCE STAND-
9 ARDS.—A qualified generation unit and net metering
10 system used by a customer-generator shall meet all
11 applicable safety and performance and reliability
12 standards established by the national electrical code,
13 the Institute of Electrical and Electronic Engineers,
14 Underwriters Laboratories, or the American Na-
15 tional Standards Institute, except that a State may
16 adopt additional or different standards provided that
17 such standard is consistent with the purposes of this
18 section and does not impose an unjust or unreason-
19 able burden on a customer-generator that seeks to
20 participate in the State’s net metering program.

21 “(5) STATE AUTHORITY TO ESTABLISH ADDI-
22 TIONAL REQUIREMENTS.—Consistent with the limits
23 of its jurisdiction under this part, nothing in this
24 section shall preclude a State from establishing or
25 imposing—

1 “(A) requirements or incentives to encour-
2 age qualified generation and net metering that
3 are in addition to or in excess of the minimum
4 standards established in this section (including
5 but not limited to additional eligible fuels, high-
6 er capacity limits, and credit amounts that vary
7 by fuel or capacity);

8 “(B) limits on the State-wide aggregate
9 amount of generating capacity of customer-gen-
10 erators with qualified generation facilities and
11 net metering systems, provided that such limits
12 are not unduly discriminatory and are con-
13 sistent with the purposes of this section; or

14 “(C) administrative and enforcement pro-
15 cedures and requirements such State deems
16 necessary or appropriate to implement a net
17 metering program under this section, if such
18 procedures and requirements are consistent
19 with the purposes of this section and does not
20 impose an unjust or unreasonable burden on a
21 customer-generator that seeks to participate in
22 the State’s net metering program.

23 “(6) INTERCONNECTION STANDARDS.—Retail
24 electric suppliers and customer-generators shall be
25 subject to Federal interconnection standards estab-

1 lished under section 210(e) of this Act (relating to
2 interconnection to distribution facilities).

3 “(7) NOT A WHOLESale SALE.—A net meter-
4 ing credit under a net metering program established
5 under this section shall not be considered a sale for
6 resale for the purposes of Federal or State law.”.

7 **SEC. 103. PRICE-RESPONSIVE DEMAND PROGRAMS.**

8 (a) FINDING.—The Congress finds that price-respon-
9 sive demand mechanisms are necessary to enable customer
10 participation in wholesale energy markets, reduce loads,
11 improve reliability, expand customer options, and lower
12 costs when bulk energy prices are high.

13 (b) DEMAND RESPONSE PROGRAMS.—The Federal
14 Energy Regulatory Commission shall develop and imple-
15 ment price-responsive demand programs in consultation
16 with the States, regional transmission organizations, elec-
17 tric utilities, Federal power marketing agencies, and the
18 Secretary of Energy. Such programs shall be designed, to
19 the extent practicable, to meet a goal of reducing annual
20 peak demand by at least 5 percent relative to annual peak
21 demand in calendar year 2001. Such programs shall not
22 preempt or displace existing non-Federal price responsive
23 demand programs.

24 (c) SPECIFIC REQUIREMENTS.—Programs imple-
25 mented under this section shall serve a variety of customer

1 groups and address removal of barriers in utility, market
2 and regulatory arenas that hamper demand-side pro-
3 grams, distributed generation, advanced metering, and
4 other relevant enabling technologies.

5 **Subtitle B—Provisions Regarding** 6 **Public Utility Holding Act of 1935**

7 **SEC. 111. DEFINITIONS.**

8 For purposes of this subtitle:

9 (1) The term “affiliate” of a company means
10 any company 5 percent or more of the outstanding
11 voting securities of which are owned, controlled, or
12 held with power to vote, directly or indirectly, by
13 such company.

14 (2) The term “associate company” of a com-
15 pany means any company in the same holding com-
16 pany system with such company.

17 (3) The term “Commission” means the Federal
18 Energy Regulatory Commission.

19 (4) The term “company” means a corporation,
20 partnership, association, joint stock company, busi-
21 ness trust, or any organized group of persons,
22 whether incorporated or not, or a receiver, trustee,
23 or other liquidating agent of any of the foregoing.

24 (5) The term “electric utility company” means
25 any company that owns or operates facilities used

1 for the generation, transmission, or distribution of
2 electric energy for sale.

3 (6) The terms “exempt wholesale generator”
4 and “foreign utility company” have the same mean-
5 ings as in sections 32 and 33, respectively, of the
6 Public Utility Holding Company Act of 1935, as
7 those sections existed on the day before the effective
8 date of this subtitle.

9 (7) The term “gas utility company” means any
10 company that owns or operates facilities used for
11 distribution at retail (other than the distribution
12 only in enclosed portable containers or distribution
13 to tenants or employees of the company operating
14 such facilities for their own use and not for resale)
15 of natural or manufactured gas for heat, light, or
16 power.

17 (8) The term “holding company” means—

18 (A) any company that directly or indirectly
19 owns, controls, or holds, with power to vote, 10
20 percent or more of the outstanding voting secu-
21 rities of a public utility company or of a holding
22 company of any public utility company; and

23 (B) any person, determined by the Com-
24 mission, after notice and opportunity for hear-
25 ing, to exercise directly or indirectly (either

1 alone or pursuant to an arrangement or under-
2 standing with one or more persons) such a con-
3 trolling influence over the management or poli-
4 cies of any public utility company or holding
5 company as to make it necessary or appropriate
6 for the protection of utility customers with re-
7 spect to rates that such person be subject to the
8 obligations, duties, and liabilities imposed by
9 this subtitle upon holding companies.

10 (9) The term “holding company system” means
11 a holding company, together with its subsidiary com-
12 panies.

13 (10) The term “jurisdictional rates” means
14 rates established by the Commission for the trans-
15 mission of electric energy in interstate commerce,
16 the sale of electric energy at wholesale in interstate
17 commerce, the transportation of natural gas in inter-
18 state commerce, and the sale in interstate commerce
19 of natural gas for resale for ultimate public con-
20 sumption for domestic, commercial, industrial, or
21 any other use.

22 (11) The term “natural gas company” means a
23 person engaged in the transportation of natural gas
24 in interstate commerce or the sale of such gas in
25 interstate commerce for resale.

1 (12) The term “person” means an individual or
2 company.

3 (13) The term “public utility” means any per-
4 son who owns or operates facilities used for trans-
5 mission of electric energy in interstate commerce or
6 sales of electric energy at wholesale in interstate
7 commerce.

8 (14) The term “public utility company” means
9 an electric utility company or a gas utility company.

10 (15) The term “State commission” means any
11 commission, board, agency, or officer, by whatever
12 name designated, of a State, municipality, or other
13 political subdivision of a State that, under the laws
14 of such State, has jurisdiction to regulate public util-
15 ity companies.

16 (16) The term “subsidiary company” of a hold-
17 ing company means—

18 (A) any company, 10 percent or more of
19 the outstanding voting securities of which are
20 directly or indirectly owned, controlled, or held
21 with power to vote, by such holding company;
22 and

23 (B) any person, the management or poli-
24 cies of which the Commission, after notice and
25 opportunity for hearing, determines to be sub-

1 ject to a controlling influence, directly or indi-
2 rectly, by such holding company (either alone or
3 pursuant to an arrangement or understanding
4 with one or more other persons) so as to make
5 it necessary for the protection of utility cus-
6 tomers with respect to rates that such person
7 be subject to the obligations, duties, and liabil-
8 ities imposed by this subtitle upon subsidiary
9 companies of holding companies.

10 (17) The term “voting security” means any se-
11 curity presently entitling the owner or holder thereof
12 to vote in the direction or management of the affairs
13 of a company.

14 **SEC. 112. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
15 **PANY ACT OF 1935.**

16 The Public Utility Holding Company Act of 1935 (15
17 U.S.C. 79a and following) is repealed, effective 12 months
18 after the date of enactment of this Act.

19 **SEC. 113. 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, memo-
23 randa, and other records as the Commission determines
24 are necessary to identify 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.

4 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
5 ing company or of any subsidiary company of a holding
6 company shall maintain, and make available to the Com-
7 mission, such books, accounts, memoranda, and other
8 records with respect to any transaction with another affil-
9 iate, as the Commission determines are necessary to iden-
10 tify costs incurred by a public utility or natural gas com-
11 pany that is an associate company of such holding com-
12 pany and necessary or appropriate for the protection of
13 utility customers with respect to jurisdictional rates.

14 (c) HOLDING COMPANY SYSTEMS.—The Commission
15 may examine the books, accounts, memoranda, and other
16 records of any company in a holding company system, or
17 any affiliate thereof, as the Commission determines are
18 necessary to identify costs incurred by a public utility or
19 natural gas company within such holding company system
20 and necessary or appropriate for the protection of utility
21 customers with respect to jurisdictional rates.

22 (d) CONFIDENTIALITY.—No member, officer, or em-
23 ployee of the Commission shall divulge any fact or infor-
24 mation that may come to his or her knowledge during the
25 course of examination of books, accounts, memoranda, or

1 other records as provided in this section, except as may
2 be directed by the Commission or by a court of competent
3 jurisdiction.

4 **SEC. 114. STATE ACCESS TO BOOKS AND RECORDS.**

5 (a) IN GENERAL.—Upon the written request of a
6 State commission having jurisdiction to regulate a public
7 utility company in a holding company system, and subject
8 to such terms and conditions as may be necessary and ap-
9 propriate to safeguard against unwarranted disclosure to
10 the public of any trade secrets or sensitive commercial in-
11 formation, a holding company or its associate company or
12 affiliate thereof, wherever located, shall produce for in-
13 spection books, accounts, memoranda, and other records
14 that—

15 (1) have been identified in reasonable detail in
16 a proceeding before the State commission;

17 (2) the State commission determines are nec-
18 essary to identify costs incurred by such public util-
19 ity company; and

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

23 (b) EFFECT ON STATE LAW.—Nothing in this section
24 shall preempt applicable State law concerning the provi-
25 sion of books, accounts, memoranda, or other records, or

1 in any way limit the rights of any State to obtain books,
2 accounts, memoranda, or other records under Federal law,
3 contract, or otherwise.

4 (c) COURT JURISDICTION.—Any United States dis-
5 trict court located in the State in which the State commis-
6 sion referred to in subsection (a) is located shall have ju-
7 risdiction to enforce compliance with this section.

8 **SEC. 115. EXEMPTION AUTHORITY.**

9 (a) RULEMAKING.—Not later than 90 days after the
10 date of enactment of this Act, the Commission shall pro-
11 mulgate a final rule to exempt from the requirements of
12 section 113 any person that is a holding company, solely
13 with respect to one or more—

14 (1) qualifying facilities under the Public Utility
15 Regulatory Policies Act of 1978;

16 (2) exempt wholesale generators; or

17 (3) foreign utility companies.

18 (b) OTHER AUTHORITY.—If, upon application or
19 upon its own motion, the Commission finds that the books,
20 accounts, memoranda, and other records of any person are
21 not relevant to the jurisdictional rates of a public utility
22 company or natural gas company, or if the Commission
23 finds that any class of transactions is not relevant to the
24 jurisdictional rates of a public utility company, the Com-

1 mission shall exempt such person or transaction from the
2 requirements of section 113.

3 **SEC. 116. AFFILIATE TRANSACTIONS.**

4 Nothing in this subtitle shall preclude the Commis-
5 sion or a State commission from exercising its jurisdiction
6 under otherwise applicable law to determine whether a
7 public utility company, public utility, or natural gas com-
8 pany may recover in rates any costs of an activity per-
9 formed by an associate company, or any costs of goods
10 or services acquired by such public utility company, public
11 utility, or natural gas company from an associate com-
12 pany.

13 **SEC. 117. APPLICABILITY.**

14 No provision of this subtitle shall apply to, or be
15 deemed to include—

16 (1) the United States;

17 (2) a State or any political subdivision of a
18 State;

19 (3) any foreign governmental authority not op-
20 erating in the United States;

21 (4) any agency, authority, or instrumentality of
22 any entity referred to in paragraph (1), (2), or (3);
23 or

24 (5) any officer, agent, or employee of any entity
25 referred to in paragraph (1), (2), or (3) acting as

1 such in the course of such officer, agent, or employ-
2 ee’s official duty.

3 **SEC. 118. EFFECT ON OTHER REGULATIONS.**

4 Nothing in this subtitle precludes the Commission or
5 a State commission from exercising its jurisdiction under
6 otherwise applicable law to protect utility customers.

7 **SEC. 119. ENFORCEMENT.**

8 The Commission shall have the same powers as set
9 forth in sections 306 through 317 of the Federal Power
10 Act (16 U.S.C. 825e–825p) to enforce the provisions of
11 this subtitle.

12 **SEC. 120. SAVINGS PROVISIONS.**

13 (a) IN GENERAL.—Nothing in this subtitle prohibits
14 a person from engaging in or continuing to engage in ac-
15 tivities or transactions in which it is legally engaged or
16 authorized to engage on the date of enactment of this Act,
17 if that person continues to comply with the terms of any
18 such authorization, whether by rule or by order.

19 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
20 Nothing in this subtitle limits the authority of the Com-
21 mission under the Federal Power Act (16 U.S.C. 791a and
22 following) (including section 301 of that Act) or the Nat-
23 ural Gas Act (15 U.S.C. 717 and following) (including sec-
24 tion 8 of that Act).

1 **SEC. 121. IMPLEMENTATION.**

2 Not later than 12 months after the date of enactment
3 of this Act, the Commission shall—

4 (1) promulgate such regulations as may be nec-
5 essary or appropriate to implement this subtitle; and

6 (2) submit to the Congress detailed rec-
7 ommendations on technical and conforming amend-
8 ments to Federal law necessary to carry out this
9 subtitle and the amendments made by this subtitle.

10 **SEC. 122. TRANSFER OF RESOURCES.**

11 All books and records that relate primarily to the
12 functions transferred to the Commission under this sub-
13 title shall be transferred from the Securities and Exchange
14 Commission to the Commission.

15 **SEC. 123. EFFECTIVE DATE.**

16 This subtitle shall take effect 12 months after the
17 date of enactment of this Act.

18 **SEC. 124. CONFORMING AMENDMENT TO THE FEDERAL**
19 **POWER ACT.**

20 Section 318 of the Federal Power Act (16 U.S.C.
21 825q) is repealed.

22 **SEC. 125. EFFECT ON INVESTMENT COMPANY ACT REGULA-**
23 **TION.**

24 (a) GRANDFATHER OF EXISTING HOLDINGS.—A per-
25 son that, on December 31, 2001—

26 (1) was an affiliate of a holding company, and

1 (2) held investment securities of one or more
2 companies engaged directly or indirectly in the elec-
3 tric or gas utility business, or other permitted busi-
4 ness activities for a registered holding company and
5 its subsidiaries,
6 shall not be treated as being an investment company under
7 section 3(a)(1)(C) of the Investment Company Act of
8 1940 (15 U.S.C. 80a-3(a)(1)(C)) on the basis of invest-
9 ing, reinvesting, owning, holding, or trading any invest-
10 ment securities issued by companies in which such person
11 held such investment securities as of such date.

12 (b) DEFINITIONS.—As used in subsection (a):

13 (1) HOLDING COMPANY.—The term “holding
14 company” has the meaning provided in section
15 2(a)(7) of the Public Utilities Holding Company Act
16 of 1935 (15 U.S.C. 79b(a)(7)).

17 (2) AFFILIATE.—The term “affiliate” has the
18 meaning provided in section 2(a)(11) of such Act
19 (15 U.S.C. 79b(a)(11)).

20 (3) INVESTMENT SECURITIES.—The term “in-
21 vestment securities” has the meaning provided in
22 section 3(a)(2) of the Investment Company Act of
23 1940 (15 U.S.C. 80a-3(a)(2)).

1 **Subtitle C—Provisions Regarding**
2 **Public Utility Regulatory Poli-**
3 **cies Act of 1978**

4 **SEC. 131. FINDINGS.**

5 The Congress finds that—

6 (1) implementation of section 210 of the Public
7 Utility Regulatory Policies Act of 1978 (16 U.S.C.
8 824a–3) resulted in many consumers paying exces-
9 sive rates for electricity;

10 (2) the Energy Policy Act of 1992 gives non-
11 regulated producers of electricity additional access to
12 the wholesale electric market through transmission
13 access and exemption from the Public Utility Hold-
14 ing Company Act of 1935; and

15 (3) in light of the competitive wholesale electric
16 marketplace brought about by the Energy Policy Act
17 of 1992, section 210 of the Public Utility Regulatory
18 Policies Act of 1978 need no longer exist.

19 **SEC. 132. PROSPECTIVE REPEAL.**

20 (a) **NEW CONTRACTS.**—After the date of enactment
21 of this Act, no electric utility shall be required to enter
22 into a new contract or obligation to purchase or to sell
23 electric energy or capacity pursuant to section 210 of the
24 Public Utility Regulatory Policies Act of 1978.

1 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
2 FECTED.—Nothing in this section affects the rights or
3 remedies of any party with respect to the purchase or sale
4 of electric energy or capacity from or to a facility deter-
5 mined to be a qualifying small power production facility
6 or a qualifying cogeneration facility under section 210 of
7 the Public Utility Regulatory Policies Act of 1978 pursu-
8 ant to any contract or obligation to purchase or to sell
9 electric energy or capacity in effect on January 6, 1999,
10 including the right to recover the costs of purchasing such
11 electric energy or capacity.

12 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
13 ing in this Act may be deemed or construed as implying
14 congressional ratification of any interpretation of, or any
15 action taken pursuant to, the Public Utility Regulatory
16 Policies Act of 1978.

17 **SEC. 133. RECOVERY OF COSTS.**

18 In order to assure recovery by electric utilities pur-
19 chasing electric energy or capacity from a qualifying facil-
20 ity pursuant to any legally enforceable obligation entered
21 into or imposed pursuant to section 210 of the Public Util-
22 ity Regulatory Policies Act of 1978 prior to the date of
23 enactment of this Act of all costs associated with such pur-
24 chases, the Commission shall promulgate and enforce such
25 regulations as may be required to assure that no utility

1 shall be required directly or indirectly to absorb the costs
2 associated with such purchases from a qualifying facility.
3 Such regulations shall be treated as a rule enforceable
4 under the Federal Power Act (16 U.S.C. 791a–825r).

5 **SEC. 134. DEFINITIONS.**

6 For purposes of this subtitle:

7 (1) The term “Commission” means the Federal
8 Energy Regulatory Commission.

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

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

15 (4) The term “qualifying cogeneration facility”
16 has the same meaning as provided in section
17 3(18)(A) of the Federal Power Act.

18 (5) The term “qualifying facility” means either
19 a small power production facility or a qualifying co-
20 generation facility.

1 **Subtitle D—Redundant Review of**
2 **Certain Matters**

3 **SEC. 141. REPEAL OF CERTAIN PROVISIONS OF FEDERAL**
4 **POWER ACT REGARDING DISPOSITION OF**
5 **PROPERTY, CONSOLIDATION, AND PURCHASE**
6 **OF SECURITIES.**

7 Section 203 of the Federal Power Act (16 U.S.C.
8 824b) is repealed.

9 **SEC. 142. ELIMINATION OF DUPLICATIVE ANTITRUST RE-**
10 **VIEW.**

11 (a) **IN GENERAL.**—Section 105 of the Atomic Energy
12 Act of 1954 (42 U.S.C. 2135) is amended by striking sub-
13 section c. and inserting the following:

14 “c. **CONDITIONS.**—

15 “(1) **IN GENERAL.**—A condition for a grant of
16 a license imposed by the Commission under this sec-
17 tion in effect on the date of enactment of the Elec-
18 tric Supply and Transmission Act shall remain in ef-
19 fect until the condition is modified or removed by
20 the Commission.

21 “(2) **MODIFICATION.**—If a person that is li-
22 censed to construct or operate a utilization or pro-
23 duction facility applies for reconsideration under this
24 section of a condition imposed in the person’s li-
25 cense, the Commission shall conduct a proceeding,

1 on an expedited basis, to determine whether the li-
 2 cense condition—

3 “(A) is necessary to ensure compliance
 4 with subsection a.; or

5 “(B) should be modified or removed.”.

6 (b) SAVINGS PROVISION.—(1) Nothing in this section
 7 or the amendments made by this section shall be construed
 8 to modify, impair, or supersede the applicability of any
 9 of the antitrust laws.

10 (2) As used in this subsection, the term “antitrust
 11 laws” has the meaning given it in subsection (a) of the
 12 first section of the Clayton Act (15 U.S.C. 12(a)), except
 13 that such term includes the Act of June 19, 1936 (49
 14 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as
 15 the Robinson-Patman Act, and section 5 of the Federal
 16 Trade Commission Act (15 U.S.C. 45) to the extent that
 17 such section 5 applies to unfair methods of competition.

18 **TITLE II—TRANSMISSION**

19 **OPERATION**

20 **SEC. 201. OPEN ACCESS FOR ALL TRANSMITTING UTILI-** 21 **TIES.**

22 (a) OPEN ACCESS TRANSMISSION AUTHORITY.—Sec-
 23 tion 206 of the Federal Power Act is amended by adding
 24 the following new subsection after subsection (d):

25 “(e) OPEN ACCESS TRANSMISSION SERVICES.—

1 “(1) PUBLIC UTILITIES.—Under section 205
2 and this section, the Commission may, by rule or
3 order, require public utilities to provide transmission
4 services on a not unduly discriminatory or pref-
5 erential basis, subject to section 212(h). This para-
6 graph applies to any rule or order promulgated by
7 the Commission before, on, or after the date of en-
8 actment of this subsection.

9 “(2) TRANSMITTING UTILITIES.—(A) Subject to
10 section 212(h), the Commission may, by rule or
11 order, require transmitting utilities that are not pub-
12 lic utilities (other than the Federal power marketing
13 administrations, the Tennessee Valley Authority,
14 and utilities to which section 212(k) applies) to pro-
15 vide transmission services—

16 “(i) at rates that are comparable to those
17 each such transmitting utility charges itself and
18 that are not unduly discriminatory or pref-
19 erential, and

20 “(ii) on terms and conditions (not relating
21 to rates) that are comparable to those required
22 under paragraph (1) for transmission service
23 provided by public utilities.

24 In exercising its authority under this subparagraph,
25 the Commission may remand transmission rates to

1 a transmitting utility for review and revision where
2 necessary. The Commission may authorize recovery
3 of wholesale stranded costs, as defined by the Com-
4 mission, arising from any requirement to provide
5 transmission service under this paragraph.

6 “(B)(i) Within 180 days after the date of en-
7 actment of this subsection, after notice and oppor-
8 tunity for comment, the Commission shall adopt
9 rules providing criteria and procedures to exempt
10 certain transmitting utilities from subparagraph (A).
11 The Commission shall exempt from subparagraph
12 (A) any transmitting utility that is a small electric
13 utility that does not own or operate any trans-
14 mission facilities that are part of the bulk-power sys-
15 tem, or that meets other criteria the Commission de-
16 termines to be in the public interest.

17 “(ii) The procedures established by the Com-
18 mission shall permit exemptions, after notice and op-
19 portunity for comment, based on a letter application
20 containing a sworn statement, by a representative le-
21 gally authorized to bind the applicant, attesting to
22 the facts demonstrating that the applicant meets the
23 exemption standards. A good faith application for an
24 exemption shall be deemed granted unless, within 60
25 days of its receipt of such application, the Commis-

1 sion makes a determination that the applicant does
2 not meet the exemption criteria.

3 “(iii) Upon complaint of any electric utility or
4 transmitting utility and after notice and opportunity
5 for comment, the Commission may revoke an exemp-
6 tion if it determines the transmitting utility does not
7 satisfy the exemption criteria. In determining wheth-
8 er a transmitting utility owns or operates trans-
9 mission facilities that are part of the bulk-power sys-
10 tem, the Commission shall consider any position
11 taken by an electric reliability organization in the re-
12 gion where the transmitting utility is located.

13 “(iv) For purposes of this subparagraph, the
14 term ‘small electric utility’ means an electric utility
15 that sells no more than 4,000,000 megawatt hours
16 of electric energy per year; and the terms ‘bulk-
17 power system’, and ‘electric reliability organization’
18 have the meanings given such terms in section
19 218(a).

20 “(3) CERTAIN WHOLESALE STRANDED
21 COSTS.—The Commission shall authorize recovery of
22 wholesale stranded costs of a public utility or trans-
23 mitting utility that occur when retail electric con-
24 sumers cease to be served by that public utility or
25 transmitting utility by reason of the establishment of

1 a local distribution company owned or operated by
2 a State or a political subdivision of a State serving
3 such consumers. In calculating such wholesale
4 stranded costs, the Commission shall use a reason-
5 able expectation period that is based on the weighted
6 average remaining useful life of generation assets
7 owned or power purchased under contract by the
8 public utility and included in wholesale or retail
9 rates in effect on July 9, 1996. This paragraph shall
10 apply to wholesale stranded cost determinations
11 made by the Commission before, on, or after the
12 date of enactment of this paragraph.”.

13 (b) RETAIL WHEELING IN RETAIL COMPETITION
14 STATES.—Section 212(h) of the Federal Power Act is
15 amended as follows:

16 (1) By inserting “(1)” before “No”.

17 (2) By striking “(1)”, “(2)”, “(A)”, and “(B)”
18 and inserting in their places “(A)”, “(B)”, “(i)”,
19 and “(ii)” respectively.

20 (3) By striking from redesignated paragraph
21 (1)(B)(ii) “the date of enactment of this subsection”
22 and inserting “October 24, 1992,”.

23 (4) By adding the following new paragraph at
24 the end:

1 “(2) Notwithstanding paragraph (1), the Commission
2 may issue an order that requires the transmission of elec-
3 tric energy for purposes of a sale of such energy to retail
4 electric consumers served by local distribution facilities
5 that are subject to open access, consistent with State
6 law.”.

7 (c) CONFORMING AMENDMENTS.—(1) Section 211(a)
8 of the Federal Power Act is amended by striking “for re-
9 sale”.

10 (2) Section 212(a) of the Federal Power Act is
11 amended by striking “wholesale” each time it appears, ex-
12 cept the last time.

13 (d) FOREIGN COMMERCE.—(1) Section 201(c) of the
14 Federal Power Act (16 U.S.C. 824(c)) is amended by
15 striking “thereof:” and inserting “thereof (including con-
16 sumption in a foreign country),”.

17 (2) Section 202(f) of the Federal Power Act is re-
18 pealed.

19 **SEC. 202. REGIONAL TRANSMISSION ORGANIZATIONS.**

20 Section 202 of the Federal Power Act (16 U.S.C.
21 824a) is amended by adding the following new subsection
22 after subsection (g):

23 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

24 “(1) DUTY TO PARTICIPATE.—The Commission
25 is authorized and directed to order each transmitting

1 utility to participate in a fully operational regional
2 transmission organization not later than 12 months
3 after enactment of this subsection, subject to the
4 procedures and minimum standards established
5 under this subsection. Each transmitting utility that
6 is not a member of a fully operational regional
7 transmission organization (hereinafter in this sub-
8 section referred to as an ‘RTO’) approved by the
9 Commission (pursuant to the Commission’s Order
10 No. 2000) on the date of the enactment of this sub-
11 section shall file with the Commission, within 3
12 months after such date of enactment, an application
13 to form or join an RTO. If a transmitting utility
14 fails to meet this deadline, the Commission, in con-
15 sultation with affected State regulatory authorities,
16 is authorized and directed to order such transmit-
17 ting utility to form or participate in an RTO that
18 meets the standards set forth in paragraph (6) not
19 later than 9 months after the deadline. The Commis-
20 sion shall approve an application submitted under
21 this subsection if the Commission determines that
22 the RTO, including any independent transmission
23 company, proposed in the application meets the min-
24 imum standards set forth in paragraph (6). If the
25 Commission finds that the RTO proposed in an ap-

1 plication does not meet such standards, the Commis-
2 sion, in consultation with affected State regulatory
3 authorities, shall propose such modifications or con-
4 ditions to the application as the Commission deems
5 necessary for the proposal to meet the minimum
6 standards. The Commission shall have no authority
7 to mandate (whether directly or as a condition of re-
8 ceiving or retaining any other regulatory approval)
9 the establishment of, participation in, or modifica-
10 tion to an RTO except as provided in this section.

11 “(2) EVIDENTIARY HEARING.—At the request
12 of an applicant, the Commission shall hold an evi-
13 dentiary hearing to determine whether the modifica-
14 tions or conditions the Commission would impose on
15 the applicant are necessary to meet the minimum
16 standards set forth in paragraph (6). A hearing held
17 pursuant to this section shall be subject to the pro-
18 cedural requirements of the Federal Power Act, in-
19 cluding the requirements of section 308 providing
20 for interventions by interested parties.

21 “(3) JUDICIAL REVIEW.—The applicant shall
22 have a right of review in the United States Court of
23 Appeals for the District of Columbia of an order im-
24 posing modifications or conditions on an application
25 to form or join an RTO. If the applicant petitions

1 the court for review, the RTO proceeding shall be
2 stayed until such time as the reviewing court renders
3 its decision. In establishing its docket, the Court
4 shall expedite the review of petitions brought under
5 this paragraph. If the reviewing court finds, after
6 considering the evidentiary record as a whole, that
7 the Commission's decision is supported by a prepon-
8 derance of the evidence, the court shall uphold the
9 Commission's decision. If the reviewing court finds,
10 after considering the evidentiary record as a whole,
11 that the Commission's decision is not supported by
12 a preponderance of the evidence, the Commission
13 shall order the applicant to participate in the RTO
14 proposed by the applicant pursuant to paragraph
15 (1), without modification.

16 “(4) UNIFORM MARKET RULES.—The term
17 ‘market rules’ means rules establishing commercial
18 procedures relating to the provision of transmission
19 services. The Commission is authorized and directed,
20 subject to the limitations on its authority under this
21 subsection, to ensure uniform market rules (includ-
22 ing establishment and enforcement of appropriate
23 seams agreements) such as are necessary and appro-
24 priate to achieve the policy objectives of the Com-
25 mission's Order No. 2000. Nothing in this sub-

1 section shall interfere with the Commission’s author-
2 ity to ensure uniform market rules through its re-
3 view of rates, terms and conditions under sections
4 205 and 206 of this Act. Such rules shall not have
5 the effect of requiring a transmitting utility to par-
6 ticipate in a different RTO or modifying the scope,
7 configuration, or governance structure of an RTO
8 deemed to meet the standards of paragraph (6). To
9 implement the requirements of this paragraph, the
10 Commission shall issue a proposed rule within 3
11 months after the enactment of this section.

12 “(5) DIVESTITURE.—Nothing in this Act or
13 any other Act shall give the Commission authority to
14 order the divestiture of transmission facilities by any
15 transmitting utility to a regional transmission orga-
16 nization.

17 “(6) STANDARDS FOR RTOS.—The standards
18 for regional transmission organizations are as fol-
19 lows:

20 “(A) INDEPENDENCE.—The RTO must be
21 independent of any market participant, pursu-
22 ant to rules established by the Commission. The
23 RTO must include, as part of its demonstration
24 of independence, a demonstration that it meets
25 the following:

1 “(i) The RTO, its employees, and any
2 nonstakeholder directors must not have fi-
3 nancial interests in any market partici-
4 pant.

5 “(ii) The RTO must have a decision
6 making process that is independent of con-
7 trol by any market participant or class of
8 participants.

9 “(iii) The RTO must have exclusive
10 and independent authority under section
11 205 of this Act to propose rates, terms and
12 conditions of transmission service provided
13 over the facilities it operates. In the case
14 of an RTO that does not own trans-
15 mission, the transmission owners retain
16 authority under section 206 to seek recov-
17 ery from the RTO of the revenue require-
18 ments associated with the transmission fa-
19 cilities that they own.

20 “(B) SCOPE AND CONFIGURATION.—The
21 RTO must serve an appropriate region. The re-
22 gion must be of sufficient scope and configura-
23 tion to permit the RTO to maintain reliability,
24 effectively perform its required functions, and
25 support efficient and nondiscriminatory power

1 markets, except that the RTO shall be deemed
2 to satisfy the requirements of this subpara-
3 graph if it is structured so that all loads within
4 the boundaries of the RTO shall take service
5 under the RTO's tariff and it complies with ei-
6 ther the cost and benefit test set forth in clause
7 (i) or the generation sufficiency test set forth in
8 clause (ii), respectively, of this paragraph.

9 “(i) COST AND BENEFIT TEST.—The
10 proposed RTO complies with the cost and
11 benefit test if the expected benefits of the
12 proposed scope and configuration of the
13 RTO exceed the expected costs of imple-
14 menting the RTO. The application shall in-
15 clude a cost and benefit analysis address-
16 ing the following factors:

17 “(I) efficient operation of whole-
18 sale markets;

19 “(II) effects on retail electricity
20 rates in each of the affected States;

21 “(III) effects on attraction of in-
22 vestment capital to fund new trans-
23 mission capacity needed for the
24 RTO's efficient operation;

1 “(IV) costs previously incurred
2 by RTO applicants in developing
3 RTOs conditionally approved by the
4 Commission prior to enactment of this
5 Act; and

6 “(V) other costs and benefits re-
7 lated to RTO formation and participa-
8 tion.

9 The applicant’s cost and benefit analysis
10 shall be presumed to be sufficient to meet
11 the requirements of this clause unless the
12 Commission affirmatively finds by a pre-
13 ponderance of the evidence that the pro-
14 posed scope and configuration does not
15 meet such requirements.

16 (ii) GENERATION SUFFICIENCY
17 TEST.—The proposed RTO complies with
18 the generation sufficiency test if the RTO
19 satisfies each of the following require-
20 ments:

21 “(I) The RTO has sufficient gen-
22 eration within the RTO’s boundaries
23 to serve the load within such bound-
24 aries.

1 “(II) The RTO is able to manage
2 a substantial portion of all congestion
3 of transmission facilities within its
4 boundaries through market mecha-
5 nisms without assistance from sur-
6 rounding RTOs.

7 “(III) The RTO owns or has
8 operational control over transmission
9 facilities that serve at least 50,000
10 Megawatts of load.

11 “(C) OPERATIONAL AUTHORITY.—The re-
12 gional transmission organization shall have
13 operational authority for all transmission facili-
14 ties under its control.

15 “(D) RELIABILITY.—The regional trans-
16 mission organization shall have the exclusive
17 authority for maintaining the short-term reli-
18 ability of the grid it operates.

19 “(E) TRANSMISSION SERVICE.—The re-
20 gional transmission organization shall be the
21 sole provider of transmission service and the
22 sole administrator of a tariff for all facilities
23 under its control, provided that nothing in this
24 subsection shall preclude a public utility from
25 filing with the Commission original or amended

1 rates concerning transmission service on such
2 utility's facilities.

3 “(F) CONGESTION MANAGEMENT.—The
4 regional transmission organization shall agree
5 to develop and maintain market mechanisms to
6 manage congestion.

7 “(G) PARALLEL PATH FLOW.—The re-
8 gional transmission organization shall agree to
9 develop and implement procedures to address
10 parallel path flows.

11 “(H) OASIS, ATC AND TTC.—The regional
12 transmission organization shall operate a single
13 Open Access Same Time Information System
14 (OASIS) (as defined by the Commission) for all
15 transmission facilities under its control, and
16 shall calculate total transmission capacity
17 (TTC) and available transmission capacity
18 (ATC).

19 “(I) ANCILLARY SERVICES.—The regional
20 transmission organization must serve as a sup-
21 plier of last resort for each of the following an-
22 cillary services:

23 “(i) Scheduling, System Control, and
24 Dispatching Services; and

1 “(ii) Reactive Supply and Voltage
2 Control from Generation Services. For
3 purposes of this subparagraph, the terms
4 ‘Scheduling, System Control, and Dis-
5 patching Services’ and ‘Reactive Supply
6 and Voltage Control from Generation Serv-
7 ices’ shall be defined by the Commission.

8 “(J) MARKET MONITORING.—The RTO
9 shall have a market monitoring unit responsible
10 for monitoring the regional transmission organi-
11 zation’s performance, compliance with its Com-
12 mission-approved tariff and submission of mar-
13 ket data to the Commission for review. The
14 market monitoring unit shall provide market
15 participants the opportunity to address any
16 findings and recommendations.

17 “(K) PLANNING AND EXPANSION.—The
18 regional transmission organization shall develop
19 plans for enhancement and expansion of trans-
20 mission facilities within its area necessary to
21 serve expected needs. The regional transmission
22 organization also shall have the authority to re-
23 view and approve all interconnections to the
24 transmission system to ensure that such inter-
25 connections do not threaten the reliability of the

1 transmission system under the operational con-
2 trol of the regional transmission organization
3 and are not determined in a discriminatory
4 manner.

5 “(L) COORDINATION.—The regional trans-
6 mission organization shall have in place provi-
7 sions for inter-regional coordination, including
8 seams arrangements with neighboring regional
9 transmission organizations.

10 “(6) EXISTING RTOS.—The Commission shall
11 have no authority under this Act or any other law
12 to require a modification in the scope, configuration,
13 corporate structure, governance structure or other
14 structural element of an RTO finally approved with-
15 out condition by the Commission (pursuant to the
16 Commission’s Order No. 2000) before the date of
17 enactment of this subsection. This paragraph shall
18 not be construed to limit the Commission’s authority
19 to ensure uniform market rules under paragraph
20 (3).

21 “(7) SUBSEQUENT MODIFICATION OF RTOS AP-
22 PROVED UNDER THIS SECTION.—If, after final ap-
23 proval of an RTO under this section, the Commis-
24 sion finds that the public interest requires a modi-
25 fication to such RTO, the Commission shall propose

1 such modification. Such modification shall then be
2 deemed a modification or condition to that RTO's
3 approved application within the meaning of sub-
4 section (a) of this section and the Commission shall
5 have authority to mandate such modification only
6 subject to all procedures and standards of this sec-
7 tion.

8 “(8) STATE AUTHORITY NOT AFFECTED.—
9 Nothing in this section limits the authority of a
10 State to address transmission facility maintenance,
11 planning, siting, and other utility functions in a
12 manner consistent with this Act or Commission ac-
13 tion under this Act. This subsection shall not apply
14 to any transmitting utility referred to in section
15 212(k)(2)(B).”.

16 **TITLE III—TRANSMISSION**
17 **RELIABILITY**

18 **SEC. 301. ELECTRIC RELIABILITY.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by inserting the following after section
21 215 as added by this Act:

22 **“SEC. 216. ELECTRIC RELIABILITY.**

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

1 “(1) ‘bulk-power system’ means the network of
2 interconnected transmission facilities and generating
3 facilities;

4 “(2) ‘electric reliability organization’ means a
5 self-regulating organization certified by the Commis-
6 sion under subsection (c) whose purpose is to pro-
7 mote the reliability of the bulk power system; and

8 “(3) ‘reliability standard’ means a requirement
9 to provide for reliable operation of the bulk power
10 system approved by the Commission under this sec-
11 tion.

12 “(b) JURISDICTION AND APPLICABILITY.—The Com-
13 mission shall have jurisdiction, within the United States,
14 over an electric reliability organization, any regional enti-
15 ties, and all users, owners and operators of the bulk power
16 system, including but not limited to the entities described
17 in section 201(f), for purposes of approving reliability
18 standards and enforcing compliance with this section. All
19 users, owners and operators of the bulk-power system
20 shall comply with reliability standards that take effect
21 under this section.

22 “(c) CERTIFICATION.—

23 “(1) The Commission shall issue a final rule to
24 implement the requirements of this section not later
25 than 180 days after enactment of this section.

1 “(2) Following the issuance of a Commission
2 rule under paragraph (1), any person may submit an
3 application to the Commission for certification as an
4 electric reliability organization. The Commission
5 may certify an applicant if the Commission deter-
6 mines that the applicant—

7 “(A) has the ability to develop, implement,
8 and enforce reliability standards that provide
9 for an adequate level of reliability of the bulk-
10 power system;

11 “(B) has established rules that—

12 “(i) assure its independence of the
13 users and owners and operators of the bulk
14 power system; while assuring fair stake-
15 holder representation in the selection of its
16 directors and balanced decision-making in
17 any committee or subordinate organiza-
18 tional structure;

19 “(ii) allocate equitably dues, fees, and
20 other charges among end users;

21 “(iii) provide fair and impartial proce-
22 dures for enforcement of reliability stand-
23 ards through imposition of penalties (in-
24 cluding limitations on activities, functions,

1 or operations; or other appropriate sanc-
2 tions); and

3 “(iv) provide for reasonable notice and
4 opportunity for public comment, due proc-
5 ess, openness, and balance of interests in
6 developing reliability standards and other-
7 wise exercising its duties.

8 “(4) If the Commission receives two or more
9 timely applications that satisfy the requirements of
10 this subsection, the Commission shall approve only
11 the application it concludes will best implement the
12 provisions of this section.

13 “(d) RELIABILITY STANDARDS.—

14 “(1) An electric reliability organization shall file
15 a proposed reliability standard or modification to a
16 reliability standard with the Commission.

17 “(2) The Commission may approve a proposed
18 reliability standard if it determines that the stand-
19 ard is just, reasonable, not unduly discriminatory or
20 preferential, and in the public interest. The Commis-
21 sion shall give due weight to the technical expertise
22 of the electric reliability organization with respect to
23 the content of a proposed standard, but shall not
24 defer with respect to its effect on competition.

1 “(3) The electric reliability organization and the
2 Commission shall rebuttably presume that a pro-
3 posal from a regional entity for a reliability standard
4 to be applicable on an Interconnection-wide basis is
5 just, reasonable, not unduly discriminatory or pref-
6 erential and in the public interest.

7 “(4) The Commission shall remand to the elec-
8 tric reliability organization for further consideration
9 a proposed reliability standard that the Commission
10 disapproves in whole or in part.

11 “(5) The Commission, upon its own motion or
12 upon complaint, may order an electric reliability or-
13 ganization to submit to the Commission a proposed
14 reliability standard or a modification to a reliability
15 standard that addresses a specific matter if the
16 Commission considers such a new or modified reli-
17 ability standard appropriate to carry out this sec-
18 tion.

19 “(e) ENFORCEMENT.—

20 “(1) An electric reliability organization may im-
21 pose a penalty on a user or owner or operator of the
22 bulk power system if the electric reliability organiza-
23 tion, after notice and an opportunity for a hearing—

24 “(A) finds that the user or owner or oper-
25 ator of the bulk power system has violated a re-

1 liability standard approved by the Commission
2 under subsection (d); and

3 “(B) filed notice with the Commission,
4 which shall affirm, set aside or modify the ac-
5 tion.

6 “(2) On its own motion or upon complaint, the
7 Commission may order compliance with a reliability
8 standard and may impose a penalty against a user
9 or owner or operator of the bulk power system, if
10 the Commission finds, after notice and opportunity
11 for a hearing, that the user or owner or operator of
12 the bulk power system has violated or threatens to
13 violate a reliability standard.

14 “(3) The Commission shall establish regulations
15 authorizing the electric reliability organization to
16 enter into an agreement to delegate authority to a
17 regional entity for the purpose of enforcing reli-
18 ability standards if the agreement satisfies applica-
19 ble provisions of this section and promotes effective
20 and efficient administration of bulk power system re-
21 liability, and may modify such delegation. The Com-
22 mission shall rebuttably presume that a proposal for
23 delegation to a regional entity organized on an inter-
24 connection-wide basis promotes effective and effi-
25 cient administration of bulk power system reliability.

1 Such regulation may provide that the Commission
2 may assign the electric reliability organization’s au-
3 thority to enforce reliability standards directly to a
4 regional entity consistent with the requirements of
5 this paragraph.

6 “(4) The Commission may take such action as
7 is necessary or appropriate against the electric reli-
8 ability organization or regional entity to ensure com-
9 pliance with a reliability standard or any Commis-
10 sion order affecting the electric reliability organiza-
11 tion or regional entity.

12 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
13 NIZATION RULES.—An electric reliability organization
14 shall file with the Commission for approval any proposed
15 rule or proposed rule change, accompanied by an expla-
16 nation of its basis and purpose. The Commission, upon
17 its own motion or upon complaint, may propose a change
18 to the rules of the electric reliability organization. A pro-
19 posed rule or proposed rule change shall take effect upon
20 a finding by the Commission, after notice and opportunity
21 for comment, that the change is just, reasonable, not un-
22 duly discriminatory or preferential, is in the public inter-
23 est, and satisfies the requirements of subsection (c)(2).

24 “(g) COORDINATION WITH CANADA AND MEXICO.—

1 “(1) The electric reliability organization shall
2 take all appropriate steps to gain recognition in
3 Canada and Mexico.

4 “(2) The President shall use his best efforts to
5 enter into international agreements with the govern-
6 ments of Canada and Mexico to provide for effective
7 compliance with reliability standards and the effec-
8 tiveness of the electric reliability organization in the
9 United States and Canada or Mexico.

10 “(h) RELIABILITY REPORTS.—The electric reliability
11 organization shall conduct periodic assessments of the reli-
12 ability and adequacy of the interconnected bulk-power sys-
13 tem in North America.

14 “(i) SAVINGS PROVISIONS.—(1) The electric reli-
15 ability organization shall have authority to develop and en-
16 force compliance with standards for the reliable operation
17 of only the bulk-power system.

18 “(2) This section does not provide the electric reli-
19 ability organization or the Commission with the authority
20 to order the construction of additional generation or trans-
21 mission capacity or to set and enforce compliance with
22 standards for adequacy or safety of electric facilities or
23 services.

24 “(3) Nothing in this section shall be construed to pre-
25 empt any authority of any State to take action to ensure

1 the safety, adequacy, and reliability of electric service
2 within that State, as long as such action is not incon-
3 sistent with any organization standard.

4 “(4) Within 90 days of the application of the electric
5 reliability organization or other affected party, and after
6 notice and opportunity for comment, the Commission shall
7 issue a final order determining whether a state action is
8 inconsistent with an organization standard, taking into
9 consideration any recommendations of the electric reli-
10 ability organization.

11 “(5) The Commission, after consultation with the
12 electric reliability organization, may stay the effectiveness
13 of any state action, pending the Commission’s issuance of
14 a final order.

15 “(j) APPLICATION OF ANTITRUST LAWS.—

16 “(1) IN GENERAL.—To the extent undertaken
17 to develop, implement, or enforce a reliability stand-
18 ard, each of the following activities shall not, in any
19 action under the antitrust laws, be deemed illegal
20 per se:

21 “(A) activities undertaken by an electric
22 reliability organization under this section, and

23 “(B) activities of a user or owner or oper-
24 ator of the bulk power system undertaken in

1 good faith under the rules of an electric reli-
2 ability organization.

3 “(2) **RULE OF REASON.**—In any action under
4 the antitrust laws, an activity described in para-
5 graph (1) shall be judged on the basis of its reason-
6 ableness, taking into account all relevant factors af-
7 fecting competition and reliability.

8 “(3) **DEFINITION.**—For purposes of this sub-
9 section, ‘antitrust laws’ has the meaning given the
10 term in subsection (a) of the first section of the
11 Clayton Act (15 U.S.C. 12(a)), except that it in-
12 cludes section 5 of the Federal Trade Commission
13 Act (15 U.S.C. 45) to the extent that section 5 ap-
14 plies to unfair methods of competition.”.

15 **TITLE IV—TRANSMISSION**
16 **INFRASTRUCTURE**

17 **SEC. 401. SUSTAINABLE TRANSMISSION NETWORKS RULE-**
18 **MAKING.**

19 Part II of the Federal Power Act is amended by add-
20 ing the following new section after section 215, as added
21 by this Act:

22 **“SEC. 216. SUSTAINABLE TRANSMISSION NETWORKS RULE-**
23 **MAKING.**

24 “(a) **RULEMAKING REQUIREMENT.**—Within 1 year
25 after the enactment of this section, the Commission shall

1 establish, by rule, transmission pricing policies and stand-
2 ards for promoting the expansion and improvement of
3 interstate transmission networks through incentive-based
4 and performance-based rate treatments and other means
5 the Commission deems necessary or appropriate to ensure
6 reliability of the electric system, to support interstate
7 wholesale markets for electric power, and expand trans-
8 mission capacity needed to sustain the growth of wholesale
9 competition. Policies and standards established under this
10 section shall specifically—

11 “(1) promote economically efficient enlargement
12 of transmission networks, including the provision of
13 proper price signals so that new generation and
14 transmission is built where it provides the lowest
15 overall cost to consumers;

16 “(2) ensure consistency of gas pipeline pricing
17 and transmission pricing so as to ensure the proper
18 economic signals for generation location, use of al-
19 ternative energy sources, and for development of dis-
20 tributed generation;

21 “(3) encourage deployment of transmission
22 technologies to increase capacity of existing net-
23 works, including but not limited to high-capacity
24 wires, conductor and phase improvements, power

1 electronics and information technologies, and high
2 voltage direct current lines;

3 “(4) encourage deployment of transmission
4 technologies to reduce line losses;

5 “(5) provide a return on equity that causes
6 needed investment in transmission facilities to be
7 made and reasonably reflects the risks associated
8 with changes in regulatory or economic cir-
9 cumstances, including the financial, operational and
10 other risks of turning facilities over to a regional
11 transmission organization;

12 “(6) promote the voluntary participation in and
13 formation of regional transmission organizations;

14 “(7) reduce congestion on transmission net-
15 works;

16 “(8) allow for accelerated depreciation for
17 transmission equipment and facilities;

18 “(9) provide for innovative capital structures;

19 “(10) promote the implementation of environ-
20 mentally sound and other low-impact transmission
21 design techniques and facilities;

22 “(11) promote the efficient use of transmission
23 systems on a real-time basis, and

24 “(12) improve the reliability and security of
25 transmission networks.

1 “(b) LIMITATION ON THE AUTHORITY OF THIS SEC-
2 TION.—In the case of any transmission rate approved by
3 the Commission on or after the effective date of the rule
4 established under this section, the rate shall comply
5 with—

6 “(1) the policies and standards adopted pursu-
7 ant to this section; and

8 “(2) the procedural and other requirements of
9 this part, including the requirement of sections 205
10 and 206, that all rates, charges, terms and condi-
11 tions be just and reasonable and not unduly dis-
12 criminatory.

13 “(c) REPORT.—Within 1 year of the issuance of the
14 rule under this section, the Commission shall submit to
15 Congress a report on all transmission pricing policies and
16 standards adopted by the Commission to encourage the
17 economic use and expansion of the transmission network
18 through incentive rates or other similar market-oriented
19 approaches consistent with subsection (a) of this section.

20 “(d) ANNUAL REPORTS.—Beginning 1 year from en-
21 actment of this Act, the Commission shall submit annually
22 a report to the Congress assessing the level of trans-
23 mission investment in the preceding year and an assess-
24 ment of the level and sufficiency of the Commission’s al-
25 lowed financial returns and other transmission pricing

1 policies promoting economically efficient transmission in-
2 vestment by electric utilities.”.

3 **SEC. 402. TRANSMISSION SITING.**

4 Part II of the Federal Power Act (16 U.S.C. 824 et
5 seq.) is amended by inserting the following new section
6 after section 216, as added by this Act:

7 **“SEC. 217. FEDERAL TRANSMISSION SITING AUTHORITY.**

8 “(a) CONSTRUCTION PERMIT.—The Commission
9 shall approve, after notice and opportunity for hearing, a
10 request of an entity for a permit to construct or modify
11 transmission facilities if it makes each of the following
12 findings:

13 “(1) A finding that—

14 “(A) the State in which the transmission
15 facilities are to be constructed or modified is
16 without authority to approve the siting of the
17 facilities, or

18 “(B) a State commission or body in the
19 State in which the transmission facilities are to
20 be constructed or modified that has authority to
21 approve the siting of the facilities has withheld
22 approval, conditioned its approval in such a
23 manner that the proposed construction or modi-
24 fication is not economically feasible, or delayed

1 final approval for more than one year after the
2 filing of an application seeking approval.

3 “(2) A finding that the facilities to be author-
4 ized by the permit will be used for the transmission
5 of electric energy in interstate commerce.

6 “(3) A finding that the proposed construction
7 or modification is consistent with the public interest.
8 The Commission may include in a permit issued under this
9 section conditions consistent with the public interest.

10 “(b) PERMIT APPLICATIONS.—Permit applications
11 under subsection (a) shall be made in writing to the Com-
12 mission and verified under oath. The Commission shall
13 issue rules setting forth the form of the application, the
14 information it is to contain, and the manner of service of
15 notice of the permit application upon interested persons.

16 “(c) COMMENTS.—In any proceeding before the Com-
17 mission under subsection (a), the Commission shall afford
18 each State in which a transmission facility covered by the
19 permit is or will be located, each affected Federal agency
20 and Indian tribe, and other interested persons, a reason-
21 able opportunity to present their views and recommenda-
22 tions with respect to the need for and impact of a facility
23 covered by the permit.

24 “(d) RIGHTS-OF-WAY.—If a holder of a permit issued
25 by the Commission pursuant to subsection (a) cannot ac-

1 quire by contract, or is unable to agree with the owner
2 of the property to the compensation to be paid for, the
3 necessary right-of-way to construct, operate, and maintain
4 the transmission facility that is the subject of the permit,
5 it may acquire the right-of-way by the exercise of the right
6 of eminent domain in the district court of the United
7 States for the district in which the property to be subject
8 of the right-of-way is located, or in the appropriate court
9 of the State in which the property is located. The practice
10 and procedure in any action or proceeding for that pur-
11 pose in the district court of the United States shall con-
12 form as nearly as practicable with the practice and proce-
13 dure in similar action or proceeding in the courts of the
14 State where the property is situated.

15 “(e) COST RECOVERY.—All just and reasonable costs
16 for the construction, operation, and maintenance of trans-
17 mission facilities developed through a permit issued under
18 subsection (a) shall be recoverable in rates for trans-
19 mission services associated with these facilities.

20 “(f) STATE LAW.—Nothing in this section shall pre-
21 clude any person from constructing any transmission fa-
22 cilities pursuant to State law.

23 “(g) COMPLIANCE WITH OTHER LAWS.—Commis-
24 sion action under this section shall be subject to the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
2 et seq.) and all other applicable Federal laws.”.

3 **TITLE V—FEDERAL UTILITIES**
4 **Subtitle A—Tennessee Valley**
5 **Authority**

6 **SEC. 501. DEFINITIONS.**

7 For purposes of this subtitle:

8 (1) The term “Commission” means the Federal
9 Energy Regulatory Commission.

10 (2) The term “distributor” means a cooperative
11 organization, municipal or other publicly owned elec-
12 tric power system which on December 31, 1997,
13 purchased all or substantially all of its wholesale
14 power requirements from the Tennessee Valley Au-
15 thority pursuant to a long-term power sales agree-
16 ment.

17 (3) The term “distributor service area” means
18 the geographic area within which a distributor is au-
19 thorized by State law to sell electric power to retail
20 electric consumers.

21 (4) The term “electric utility” has the same
22 meaning as provided by section 3(22) of the Federal
23 Power Act (16 U.S.C. 796(22)).

24 (5) The term “excess electric power” means
25 that portion of the electric power and capacity that

1 is available to the Tennessee Valley Authority and
2 which exceeds the Tennessee Valley Authority's
3 power supply obligations to—

4 (A) distributors; and

5 (B) those Tennessee Valley Authority re-
6 tail electric consumers (or predecessor in inter-
7 est) that had a contract for the purchase of
8 electric power from the Tennessee Valley Au-
9 thority on the date of enactment of this Act.

10 (6) The term “public utility” has the same
11 meaning as provided by section 201(e) of the Fed-
12 eral Power Act (16 U.S.C. 824(e)(1)).

13 (7) The term “retail electric consumer” has the
14 same meaning as provided by section 3 of the Fed-
15 eral Power Act (16 U.S.C. 796).

16 (8) The term “Tennessee Valley Region” means
17 the geographic area in which the Tennessee Valley
18 Authority or its distributors were the primary source
19 of electric power on December 31, 1997.

20 **SEC. 502. WHOLESALE COMPETITION IN THE TENNESSEE**
21 **VALLEY REGION.**

22 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—
23 (1) Section 212(f) of the Federal Power Act (16 U.S.C.
24 824k(f)), relating to interconnection or wheeling orders

1 that result in the sale or delivery of electric power outside
2 the Tennessee Valley Region, is repealed.

3 (2) Section 212(j) of the Federal Power Act (16
4 U.S.C. 824k(j)), relating to transmission within the Ten-
5 nessee Valley Region, is repealed.

6 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
7 THORITY ACT.—(1) The third sentence of the first para-
8 graph of section 15d(a) of the Tennessee Valley Authority
9 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
10 delivery of electric power outside the area for which the
11 Tennessee Valley Authority or its distributors were the
12 primary source of electric power on July 1, 1957, is re-
13 pealed.

14 (2) The second and third paragraphs of section
15 15d(a) of the Tennessee Valley Authority Act of 1933 (16
16 U.S.C. 831n–4(a)) are repealed.

17 **SEC. 503. TENNESSEE VALLEY AUTHORITY POWER SALES.**

18 (a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY
19 AUTHORITY.—Notwithstanding sections 10, 11, and 12 of
20 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
21 831i), the Tennessee Valley Authority shall not sell elec-
22 tric power at retail, except it may sell electric power to—

23 (1) a retail electric consumer (or predecessor in
24 interest) that had a contract for the purchase of

1 electric power from the Tennessee Valley Authority
2 on the date of enactment of this Act; or

3 (2) a retail electric consumer who consumes
4 that electric power within a distributor service area,
5 if the applicable regulatory authority (other than the
6 Tennessee Valley Authority) permits any other
7 power supplier to sell electric power to such retail
8 electric consumer.

9 (3) CONSTRUCTION OF RETAIL ELECTRIC SERV-
10 ICE FACILITIES.—No person shall construct or mod-
11 ify facilities in the service area of a distributor for
12 the purpose of serving a retail electric consumer
13 within the distributor service area without the con-
14 sent of such distributor, except when such electric
15 consumer is already being served by such person.

16 (b) WHOLESALE POWER SALES.—

17 (1) EXISTING SALES.—Nothing in this subtitle
18 shall be construed to modify or alter the existing ob-
19 ligations of the Tennessee Valley Authority under
20 the first sentence of section 10 of the Tennessee
21 Valley Authority Act of 1933 (16 U.S.C. 831i) to
22 sell power to a distributor, except that, with respect
23 to a distributor which—

24 (A) has made a prior election under sec-
25 tion 505(b); and

1 (B) requests to increase its power pur-
2 chases from the Tennessee Valley Authority,
3 this paragraph shall not apply to access by that dis-
4 tributor to power being supplied by the Tennessee
5 Valley Authority to another entity under an existing
6 contract with a term of 1 year or longer.

7 (2) SALES OF EXCESS ELECTRIC POWER.—Not-
8 withstanding sections 10, 11, and 12, or any other
9 provision of the Tennessee Valley Authority Act of
10 1933 (16 U.S.C. 831 et seq.), the sale of electric
11 power at wholesale by the Tennessee Valley Author-
12 ity for use outside the Tennessee Valley Region shall
13 be limited to excess electric power. The Tennessee
14 Valley Authority shall not offer excess electric power
15 under a firm power agreement with a term of 3
16 years or longer to a new wholesale customer at
17 rates, terms, and conditions more favorable than
18 those offered to any distributor for comparable elec-
19 tric power, taking into account such factors as the
20 amount of electric power sold, the firmness of such
21 power, and the length of the contract term, unless
22 the distributor or distributors that are purchasing
23 electric power under equivalent firm power contracts
24 agree to the sale to the new customer. Nothing in
25 this subsection shall prevent the Tennessee Valley

1 Authority from making exchange power arrange-
2 ments with other electric utilities when economically
3 feasible.

4 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
5 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
6 GION.—The third proviso of section 10 of the Tennessee
7 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
8 second and third provisos of section 12 of the Tennessee
9 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
10 apply to any sale of excess electric power by the Tennessee
11 Valley Authority for use outside the Tennessee Valley Re-
12 gion.

13 **SEC. 504. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
14 **ERATION FACILITIES.**

15 (a) GENERATION FACILITIES.—Section 15d(a) of the
16 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–
17 4(a)) is amended by striking the period at the end of the
18 second sentence and inserting the following: “, if the Cor-
19 poration determines that the construction, acquisition, en-
20 largement, improvement, or replacement of any plant or
21 facility used or to be used for the generation of electric
22 power is necessary to supply the demands of distributors
23 (as defined in section 501 of the Electric Supply and
24 Transmission Act) and, to the extent permitted by section

1 503(a) of such Act, retail electric consumers of the Cor-
2 poration.”.

3 (b) DISCLOSURE OF INFORMATION.—Commencing on
4 the date of enactment of this Act, the Tennessee Valley
5 Authority shall provide distributors and their duly author-
6 ized representatives on a confidential basis detailed infor-
7 mation on its projections and plans regarding the potential
8 acquisition of new electric generating facilities and shall
9 provide distributors an opportunity to provide comment,
10 not less than 45 days prior to a decision by the Tennessee
11 Valley Authority to make such an acquisition. Any law to
12 the contrary notwithstanding, such confidential informa-
13 tion shall not be disclosed by distributor to sources other
14 than the Tennessee Valley Authority, except—

15 (1) in response to process validly issued by any
16 court or governmental agency having jurisdiction
17 thereof;

18 (2) to any officer, agent, employee, or duly au-
19 thorized representative of distributor who has agreed
20 to the same confidentiality and nondisclosure obliga-
21 tion applicable to distributor;

22 (3) in any judicial or administrative proceeding
23 initiated by distributor contesting action by the Ten-
24 nessee Valley Authority to cause the construction of
25 new electric generation facilities; or

1 (4) 3 years following the commercial operating
2 date of the electric generating facilities.

3 **SEC. 505. RENEGOTIATION OF POWER CONTRACTS.**

4 (a) RENEGOTIATION.—Following the date of enact-
5 ment of this Act, the Tennessee Valley Authority and the
6 distributors shall make good faith efforts to renegotiate
7 their existing power contracts.

8 (b) DISTRIBUTOR CONTRACT TERMINATION OR RE-
9 DUCTION RIGHT.—If a distributor and the Tennessee Val-
10 ley Authority are unable by negotiation to arrive at a mu-
11 tually acceptable replacement contract to govern the post-
12 enactment relationship, then the Tennessee Valley Author-
13 ity shall allow such distributor to give notice, which notice
14 may be given once each calendar year and only within the
15 60-day period that follows either the date of enactment
16 of this Act or any subsequent anniversary of the date of
17 enactment of this Act—

18 (1) to terminate the contract to purchase whole-
19 sale electric energy from the Tennessee Valley Au-
20 thority that was in effect on the date of enactment,
21 such termination to be effective 3 years after the
22 giving of such notice; or

23 (2) to reduce the quantity of its wholesale
24 power requirements under the contract to purchase
25 wholesale electric energy from the Tennessee Valley

1 Authority that was in effect on the date of enact-
2 ment by up to 10 percent of its requirements, such
3 reduction to be effective 2 years after the giving of
4 such notice, or by more than 10 percent of its re-
5 quirements, such reduction to be effective 3 years
6 after the giving of such notice, and to negotiate with
7 the Tennessee Valley Authority to adapt the con-
8 tract that was in effect on the date of enactment to
9 reflect a partial requirements relationship.

10 (c) PARTIAL REQUIREMENTS NOTICE.—As part of
11 any notice provided under subsection (b)(2), a distributor
12 shall identify the annual quantity of electric energy which
13 it will be acquiring from a source other than the Tennessee
14 Valley Authority as the result of its election and times of
15 the day and year that specified amounts of such energy
16 will be received by the distributor.

17 (d) NONDISCRIMINATION.—The Tennessee Valley
18 Authority shall not unduly discriminate against any dis-
19 tributor as the result of the exercise of notice under either
20 subsection (b)(1) or subsection (b)(2) by such distributor
21 or its status as a partial requirements customer.

22 **SEC. 506. REGULATION OF TENNESSEE VALLEY AUTHORITY**
23 **TRANSMISSION SYSTEM.**

24 Notwithstanding sections 201(b)(1) and 201(f) of the
25 Federal Power Act, sections 205, 206, 208, and 210

1 through 213 and sections 301 through 304, 306, 307 (ex-
2 cept the last sentence of subsection (c)), 308, 309, 313,
3 and 317 of the Federal Power Act apply to the trans-
4 mission and local distribution of electric power by the Ten-
5 nessee Valley Authority to the same extent and in the
6 same manner as such provisions apply to the transmission
7 of electric power in interstate commerce by a public utility
8 otherwise subject to the jurisdiction of the Commission
9 under part II of such Act

10 **SEC. 507. REGULATION OF TENNESSEE VALLEY AUTHORITY**

11 **DISTRIBUTORS.**

12 (a) ELECTION TO REPEAL TENNESSEE VALLEY AU-
13 THORITY REGULATION OF DISTRIBUTORS.—Upon the
14 election of a distributor, the third proviso of section 10
15 of the Tennessee Valley Authority Act of 1933 (16 U.S.C.
16 831i) and the second and third provisos of section 12 of
17 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
18 831k) shall not apply to wholesale sales of electric power
19 by the Tennessee Valley Authority in the Tennessee Valley
20 Region after the date of enactment of this Act, and the
21 Tennessee Valley Authority shall not be authorized to reg-
22 ulate, by means of rules, contract provisions, resale rate
23 schedules, contract termination rights, or any other meth-
24 od, any rates, terms, or conditions imposed on the resale
25 of such electric power by such distributor, or any rates,

1 terms, or conditions for the use of local distribution facili-
2 ties.

3 (b) AUTHORITY OF GOVERNING BODIES OF DIS-
4 TRIBUTORS.—Any regulatory authority exercised by the
5 Tennessee Valley Authority over any distributor making
6 an election authorized in subsection (a) shall be exercised
7 by the governing body of such distributor, in accordance
8 with the laws of the State in which it is organized. In the
9 event a distributor does not make the election authorized
10 in subsection (a), the provisions of the Tennessee Valley
11 Authority Act specified in that subsection shall continue
12 to apply for the duration of any wholesale power contract
13 between the Tennessee Valley Authority and the dis-
14 tributor, according to its terms.

15 (c) USE OF FUNDS.—In any contract between the
16 Tennessee Valley Authority and a distributor for the pur-
17 chase of at least 70 percent of the distributor's require-
18 ments for the sale of electric power, the Tennessee Valley
19 Authority shall include such terms and conditions as may
20 be reasonably necessary to assure that the financial bene-
21 fits of a distributor's electric system operations are allo-
22 cated to the distributor's retail electric consumers.

23 (d) REMOVAL OF PURPA RATEMAKING AUTHOR-
24 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
25 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by

1 striking “, and in the case of an electric utility with re-
2 spect to which the Tennessee Valley Authority has rate-
3 making authority, such term means the Tennessee Valley
4 Authority”.

5 **SEC. 508. STRANDED COST RECOVERY.**

6 (a) COMMISSION JURISDICTION.—The Tennessee
7 Valley Authority may recover any wholesale stranded costs
8 that may arise from the exercise of rights by a distributor
9 pursuant to section 505 of this subtitle to the extent au-
10 thorized by the Commission based on application of the
11 rules and principles the Commission applies to wholesale
12 stranded cost recovery by other electric utilities within its
13 jurisdiction, provided that the Tennessee Valley Authority
14 shall not be authorized to recover from any distributor any
15 wholesale stranded costs related to loss of sales revenues
16 by the Tennessee Valley Authority, or its expectation of
17 continuing to sell electric energy, for any period after Sep-
18 tember 30, 2007. The exercise of rights by a distributor
19 under section 505 of this subtitle shall not affect a claim
20 by the Tennessee Valley Authority that it may have for
21 recovery of stranded costs prior to October 1, 2007. This
22 subsection shall apply notwithstanding the absence of pro-
23 vision addressing wholesale stranded cost recovery in a
24 power sales agreement between the Tennessee Valley Au-

1 thority and a distributor executed after the date of enact-
2 ment of this Act.

3 (b) DEBT.—Stranded costs recovered by the Ten-
4 nessee Valley Authority under subsection (a) shall be used
5 to pay down the Tennessee Valley Authority’s debt to the
6 extent determined by the Tennessee Valley Authority to
7 be consistent with proper financial management. The Ten-
8 nessee Valley Authority may not use amounts recovered
9 to pay for additions to the Tennessee Valley Authority’s
10 generation capacity.

11 (c) UNBUNDLING.—Any stranded cost recovery
12 charge authorized by the Commission to be assessed by
13 the Tennessee Valley Authority shall be unbundled from
14 the otherwise applicable rates and charges to such cus-
15 tomer and separately stated on the bill of such customer.
16 The Tennessee Valley Authority shall not recover whole-
17 sale stranded costs from any customer through any other
18 rate, charge, or mechanism.

19 (d) REPORT.—Beginning in fiscal year 2001, as part
20 of the annual management report submitted by the Ten-
21 nessee Valley Authority to Congress, the Tennessee Valley
22 Authority shall also specifically report—

23 (1) the status of the Tennessee Valley
24 Authority’s long-range financial plans and the
25 progress toward its goal of competitively priced elec-

1 tric power, and a general discussion of the Ten-
2 nessee Valley Authority’s prospects on meeting the
3 objectives of the Ten Year Business Outlook issued
4 on July 22, 1997;

5 (2) any changes in assumptions since the pre-
6 vious report that may have a material effect on the
7 Tennessee Valley Authority’s long-range financial
8 plans;

9 (3) the source of funds used for any generation
10 and transmission capacity additions;

11 (4) the use or other disposition of amounts re-
12 covered by the Tennessee Valley Authority under the
13 Tennessee Valley Authority Act and this subtitle;

14 (5) the amount by which the Tennessee Valley
15 Authority’s publicly held debt was reduced; and

16 (6) the projected amount by which the Ten-
17 nessee Valley Authority’s publicly held debt will be
18 reduced.

19 **SEC. 509. APPLICATION OF ANTITRUST LAW.**

20 (a) IN GENERAL.—The Tennessee Valley Authority
21 shall be subject to the antitrust laws of the United States
22 with respect to the operation of its electric power and
23 transmission systems. For purposes of this section, the
24 term “antitrust laws” has the meaning given such term
25 in subsection (a) of the first section of the Clayton Act

1 (15 U.S.C. 12(a)), except that such term includes section
2 5 of the Federal Trade Commission Act (15 U.S.C. 45)
3 to the extent that such section 5 applies to unfair methods
4 of competition.

5 (b) DAMAGES.—No damages, interest on damages,
6 costs, or attorneys' fees may be recovered under section
7 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
8 15c) from the Tennessee Valley Authority.

9 (c) ASSOCIATION FOR ADVOCACY.—Nothing in this
10 subtitle shall diminish or impair any privileges, immuni-
11 ties, or exemptions prior to enactment that would have
12 been accorded any person by virtue of their association
13 together in advocating their cause and points of view to
14 the Tennessee Valley Authority or any other agency or
15 branch of Federal, State, or local government.

16 **SEC. 510. SAVINGS PROVISION.**

17 Nothing in this subtitle shall affect section 15d(b) of
18 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
19 831n-4(b)), providing that bonds issued by the Tennessee
20 Valley Authority shall not be obligations of, nor shall pay-
21 ment of the principal thereof or interest thereon be guar-
22 anteed by, the United States.

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

3 **SEC. 521. DEFINITIONS.**

4 As used in this subtitle:

5 (1) The term “Bonneville Administrator”
6 means the Administrator of the Bonneville Power
7 Administration.

8 (2) The term “Bonneville Transmission Sys-
9 tem” means transmission facilities owned or leased
10 by the United States, acting through the Bonneville
11 Administrator, and operated by the Bonneville
12 Power Administration or operated by another entity
13 under section 523 of this subtitle.

14 (3) The term “Commission” has the meaning
15 given that term in section 3 of the Federal Power
16 Act (16 U.S.C. 796).

17 (4) The term ‘Pacific Northwest’ has the mean-
18 ing given that term in section 3(14) of the Pacific
19 Northwest Electric Power Planning and Conserva-
20 tion Act (16 U.S.C. 839a(14)).

21 **SEC. 522. REGULATION OF BONNEVILLE TRANSMISSION**
22 **SYSTEM.**

23 (a) IN GENERAL.—After September 30, 2002, or the
24 date the Bonneville Transmission System is participating
25 in a regional transmission organization, whichever is ear-

1 lier, notwithstanding section 201(f) of the Federal Power
2 Act, sections 202(h), 205, 206, 208, 210 through 213,
3 301 through 304, 306, 307 (except the last sentence of
4 subsection (c)), 308, 309, 313, and 317 of that Act shall
5 apply to the Bonneville Transmission System and the
6 transmission of electric energy over the Bonneville Trans-
7 mission System.

8 (b) TRANSITION PROVISION.—The Bonneville Ad-
9 ministrators' transmission rates, terms, and conditions
10 filed with the Commission prior to October 1, 2001, and
11 approved by the Commission, shall continue in effect until
12 superseded by rates, terms, and conditions that are filed
13 with the Commission under this Act to be effective no later
14 than October 1, 2003.

15 (c) ADDITIONAL RULES.—Any determination or ap-
16 proval by the Commission of rates, terms, and conditions
17 for the transmission of electric energy under subsection
18 (a) shall be subject to the following rules:

19 (1) Phasing in changes in transmission rates or
20 charges that would cause unreasonable cost shifts
21 among transmission customers if implemented at
22 once.

23 (2) Mitigating unreasonable adverse effects on
24 transmission customers that would otherwise result
25 from changes in the historical treatment of costs to

1 acquire transmission to serve customers historically
2 served by General Transfer Agreements entered into
3 between the Bonneville Administrator and other util-
4 ities prior to the enactment of this Act.

5 (3) No direct assignment of the costs of trans-
6 mission facilities that were included in the Bonne-
7 ville Administrator's rolled-in network transmission
8 rates in effect on October 1, 2001, or of the costs
9 for replacement of such facilities.

10 (4) Assuring the transmission rates and charges
11 are established sufficient to—

12 (A) recover in a timely fashion the Federal
13 investment in the Bonneville Transmission Sys-
14 tem over a reasonable number of years after
15 first meeting all the Bonneville Power Adminis-
16 trator other transmission costs and expenses;
17 and

18 (B) produce the revenues necessary to as-
19 sure timely payment of all transmission-related
20 costs and expenses.

21 (5) Costs and revenues shall be allocated to the
22 Bonneville Transmission System in accordance with
23 rules to be promulgated by the Commission.

24 (6) Rules established by the Commission to—

1 (A) assure transmission access is provided
2 over the Bonneville Transmission System for
3 hydroelectric power that must be generated and
4 transmitted at a particular time in order to re-
5 duce levels of dissolved nitrogen gas harmful to
6 fish, with such access to be provided in a man-
7 ner that displaces the output of other genera-
8 tion using the Bonneville Transmission System
9 but does not impair service to loads, require op-
10 erations that may damage generation facilities,
11 or alter commercial relationships between the
12 power supplier whose generation was displaced
13 and its customer; and

14 (B) provide methods for compensation be-
15 tween or among the hydroelectric power mar-
16 keter and the party or parties affected by the
17 displacement.

18 (d) APPLICABILITY.—Subsection (a) shall not apply
19 to—

20 (1) the Bonneville Power Administration’s ac-
21 tivities other than transmission of electric energy
22 over the Bonneville Transmission System; or

23 (2) a contract in effect on the date of enact-
24 ment of this Act, except for transmission rates which
25 are adjustable by the Bonneville Administrator

1 under the contract; a treaty of the United States; or
2 a contract concerning the delivery of electric energy
3 and capacity entered into by entities designated pur-
4 suant to such a treaty.

5 (e) PRIORITY OF PAYMENTS.—Nothing in this sec-
6 tion shall alter or be construed to alter the priority of pay-
7 ments established in section 13(b) of the Federal Colum-
8 bia River Transmission System Act (16 U.S.C. 838k(b))
9 or the requirements of section 11 of that Act (16 U.S.C.
10 838i).

11 (f) SECURITY.—(1) Notwithstanding any other law,
12 any statutory and other authorities in effect on October
13 1, 1998, of the Bonneville Administrator to establish, and
14 of the Commission to confirm and approve, a surcharge
15 on rates or charges for transmission services over the Bon-
16 neville Transmission System for the recovery of costs
17 that—

18 (A) relate to any generation or conservation re-
19 sources financed by debt issued by a non-Federal
20 party before October 1, 1998 (and any refundings
21 and refinancings thereof),

22 (B) are secured by an obligation of the Bonne-
23 ville Administrator to make payments or net bill
24 power and transmission service, and

1 (C) cannot be timely recovered through power
2 rates and charges and paid in accordance with the
3 application of revenues and priority of payments
4 specified by section 13(b) of the Federal Columbia
5 River Transmission System Act of 1974 (16 U.S.C.
6 838k(b)), shall continue in full force and effect for
7 the purposes of such recovery.

8 Recovery of such costs shall be allowed only to the extent
9 that it would have been allowed under laws applicable to
10 the Bonneville Administrator as of October 1, 1998. In
11 reviewing the Administrator's filing of a surcharge under
12 this paragraph, the Commission shall apply the standard
13 of review applicable as of October 1, 1998.

14 (2) Any amount recovered through any transmission
15 surcharge under paragraph (1) shall be treated as a loan
16 to the Bonneville Power Administration's power function
17 from the transmission function and shall bear interest at
18 a rate determined appropriate by the Commission. The
19 Bonneville Power Administration's power function shall
20 repay the loans as soon as reasonably possible after the
21 Bonneville Administrator determines that power revenues
22 are sufficient to meet the Administrator's other power cost
23 recovery and Treasury repayment obligations on an an-
24 nual basis. To the extent reasonably practicable, the Ad-
25 ministrator shall refund all or a portion of the surcharge

1 collected from transmission customers with a higher pri-
2 ority of payment accorded those transmission customers
3 that purchased no or a lesser amount of power from the
4 Bonneville Power Administration in the 5 years prior to
5 the effective date of the surcharge as directed and deter-
6 mined appropriate by the Commission.

7 (g) HEARINGS.—Any proceeding to approve or fix
8 transmission rates and charges pursuant to this part shall
9 be conducted in the Pacific Northwest.

10 **SEC. 523. AUTHORITY OF ADMINISTRATOR TO PARTICI-**
11 **PATE IN REGIONAL TRANSMISSION ORGANI-**
12 **ZATION.**

13 Notwithstanding any other provision of law, the Bon-
14 neville Administrator is authorized to make contractual
15 and other arrangements for the transfer of control and
16 use of the Bonneville Transmission System to a regional
17 transmission organization comprised of all or part of the
18 geographic areas specified in FERC Docket RTO-35-
19 000, filed on October 15, 2000, that meets or proposes
20 to meet the minimum characteristics and functions of a
21 regional transmission organization required by the Com-
22 mission. The Administrator's contracts and other arrange-
23 ments for participation shall set forth terms and condi-
24 tions the Administrator determines are necessary or ap-
25 propriate, and shall include terms that assure the recovery

1 of all the Administrator's transmission costs and expenses,
2 and consistency with the Administrator's existing con-
3 tracts and existing third-party financing obligations. The
4 contracts for participation may provide for the resolution
5 of disputes through arbitration or other means with the
6 entity or with other participants. The Bonneville Adminis-
7 trator shall maintain effective oversight of the regional
8 transmission organization's fulfillment of the contractual
9 and other terms and conditions required by the Adminis-
10 trator, and shall maintain the ability to terminate the
11 Bonneville Transmission System's participation in the re-
12 gional transmission organization if the organization fails
13 to materially satisfy those terms and conditions. The stat-
14 utory authorities and duties of the Secretary of Energy
15 and the Bonneville Administrator with respect to the Bon-
16 neville Transmission System shall be suspended for the pe-
17 riod of the contract of participation, including extensions
18 or renewals thereof, insofar as they are to be accomplished
19 through the Administrator's contracts and other arrange-
20 ments for participation, and except for those matters that
21 the Administrator determines are not to be fulfilled by the
22 regional transmission organization.

23 **SEC. 524. LIMITATION ON RETAIL SERVICES.**

24 Notwithstanding section 5(a) of the Bonneville
25 Project Act (16 U.S.C. 823d(a)), the Administrator shall

1 not sell electric energy or capacity to any consumer, except
2 for any consumer that did have a contract for purchase
3 of electric energy from the Bonneville Power Administra-
4 tion for use at specific facilities on October 1, 2001. This
5 restriction shall not apply to sales to a Federal agency
6 or to an assignee, subsidiary, affiliate, or successor in in-
7 terest, whether through sale, transfer or otherwise, of a
8 consumer that did have a contract for purchase of electric
9 energy from the Bonneville Power Administration for use
10 at specific facilities on October 1, 2001. For purposes of
11 this section, the term “consumer” has the meaning given
12 such term in section 3(5) of the Pacific Northwest Electric
13 Power Planning and Conservation Act (16 U.S.C.
14 839a(5)).

15 **SEC. 525. DIRECT SERVICE INDUSTRIES.**

16 The Administrator of the Bonneville Power Adminis-
17 tration shall negotiate power sales contracts with all will-
18 ing Northwest aluminum direct service industrial cus-
19 tomers beyond the term of currently effective BPA power
20 supply contracts. The Secretary of Energy or his designee
21 within the Department of Energy shall review the terms
22 of such negotiated contracts and ensure that they provide
23 for continued access to a reasonable level of federal firm
24 power, at a rate established under 16 U.S.C. 839e(c), that
25 will enable such customers to operate their facilities in the

1 Pacific Northwest in an economic manner for the long
2 term.

3 **SEC. 526. CONFORMING AMENDMENTS.**

4 (a) FEDERAL POWER ACT.—(1) Section 212(i) of the
5 Federal Power Act (16 U.S.C. 824(i)) is repealed.

6 (2) Section 306 of the Federal Power Act is amended
7 by inserting “agency or instrumentality of the United
8 States,” after “person” in the first sentence.

9 (3) Section 313 of the Federal Power Act is amended
10 by inserting “agency or instrumentality of the United
11 States,” after “person,” in the first sentence.

12 (b) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-
13 TEM ACT.—(1) Section 3(c) of the Federal Columbia
14 River Transmission System Act (16 U.S.C. 838a(c)) is
15 amended by inserting “, and transmission facilities with
16 an estimated capital cost exceeding \$50,000,000 in 1998
17 dollars, adjusted using the United States Gross Domestic
18 Product Implicit Price Deflator Index”, after “own facili-
19 ties”.

20 (2) Section 6 of the Federal Columbia River Trans-
21 mission System Act (16 U.S.C. 838d) is repealed.

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

1 **“SEC. 9. RATES AND CHARGES.**

2 “Schedules of rates and charges for the sale, includ-
3 ing dispositions to Federal agencies, of all electric power
4 made available to the Administrator pursuant to section
5 8 of this Act or otherwise acquired shall be established—

6 “(1) with a view to encouraging the widest pos-
7 sible diversified use of electric power at the lowest
8 possible rates to consumers consistent with sound
9 business principles;

10 “(2) having regard to the recovery (upon the
11 basis of the application of such rate schedules to the
12 capacity of the electric facilities of the projects) of
13 the cost of producing such electric power, including
14 the amortization of the capital investment allocated
15 to power over a reasonable period of years and pay-
16 ments provided for in section 11(b)(9) of this Act;
17 and

18 “(3) at levels to produce such additional power
19 revenues as may be required, in the aggregate with
20 all other power revenues of the Administrator, to
21 pay when due—

22 “(A) the principal of, premiums, discounts,
23 and expenses in connection with the issuance of
24 and interest on all bonds issued and out-
25 standing pursuant to this Act for all actions
26 other than the construction, acquisition, and re-

1 placement of the Federal transmission system;
2 and

3 “(B) amounts required to establish and
4 maintain reserve and other funds and accounts
5 established in connection therewith.

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

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

12 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
13 lic Law 88–552 (16 U.S.C. 837e), commonly known as
14 the “Regional Preference Act”, is amended by striking
15 “Federal energy or” in the first sentence and by striking
16 the second sentence.

17 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
18 of the Pacific Northwest Electric Power Planning and
19 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
20 read as follows:

21 “(1) The Administrator shall establish, and periodi-
22 cally review and revise, rates for the sale and disposition
23 of electric power and shall periodically review and, if nec-
24 essary, propose revisions to rates for the transmission of
25 electric power. Rates for the sale and disposition of electric

1 power shall be established and, as appropriate, revised to
2 recover, in accordance with sound business principles, the
3 costs associated with the acquisition and conservation of
4 electric power, including the amortization of the Federal
5 investment in the Federal Columbia River Power System
6 that is allocable to electric power rates (including irriga-
7 tion costs required to be repaid out of electric power reve-
8 nues) over a reasonable period of years and the other costs
9 and expenses incurred by the Administrator pursuant to
10 this Act and other provisions of law. Rates for the sale
11 and disposition of electric power shall be established in
12 accordance with section 9 of the Federal Columbia River
13 Transmission System Act (16 U.S.C. 838g), section 5 of
14 the Flood Control Act of 1944 (16 U.S.C. 825s), and this
15 Act.”.

16 (2) Section 7(a)(2) of the Pacific Northwest Electric
17 Power Planning and Conservation Act (16 U.S.C.
18 839e(a)(2)) is amended as follows:

19 (A) By striking “Rates” and inserting “Power
20 rates”.

21 (B) By inserting “and” after the comma in
22 subparagraph (A).

23 (C) By striking “, and” and inserting a period
24 at the end of subparagraph (B).

25 (D) By striking subparagraph (C).

1 (3) Section 7(i) of the Pacific Northwest Electric
2 Power Planning and Conservation Act (16 U.S.C. 839e(i))
3 is amended by inserting “power” after “establishing” in
4 the first sentence.

5 (4) Section 9(d) of the Pacific Northwest Electric
6 Power Planning and Conservation Act (16 U.S.C.
7 839f(d)) is amended by striking “transmission access,”
8 and inserting “power” before “services” in the second sen-
9 tence.

10 (5) Section 9(i)(3) of the Pacific Northwest Electric
11 Power Planning and Conservation Act (16 U.S.C.
12 839f(i)(3)) is amended by inserting “power” before “serv-
13 ices” each place it appears, and by striking “trans-
14 mission,” in the first sentence.

15 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
16 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
17 by striking the colon and all that follows and inserting
18 a period.

19 **Subtitle C—Other Federal Power** 20 **Marketing Administrations**

21 **SEC. 531. DEFINITIONS.**

22 For purposes of this subtitle:

23 (1) The term “Administrator” means the ad-
24 ministrator of a Federal power marketing adminis-
25 tration.

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

3 (3) The term “Federal power marketing admin-
4 istrations” means the Western Area Power Adminis-
5 tration, Southwestern Power Administration, and
6 Southeastern Power Administration.

7 (4) The term “power generating agencies”
8 means the Bureau of Reclamation, the Army Corps
9 of Engineers, and the International Boundary and
10 Water Commission.

11 (5) The term “public utility” means a public
12 utility as defined in section 201(e) of the Federal
13 Power Act.

14 **SEC. 532. WHOLESALE POWER SALES BY FEDERAL POWER**
15 **MARKETING ADMINISTRATIONS.**

16 (a) **RATES, TERMS, AND CONDITIONS.**—(1) All rates
17 and charges made, demanded, or received for the sale of
18 electric energy and capacity by each Federal power mar-
19 keting administration to its electric energy customers shall
20 be the lowest possible rates and charges that will recover
21 from such customers over a reasonable period of years,
22 in accordance with sound business principles, all costs in-
23 curred by the United States for the production of electric
24 energy sold by such Federal power marketing administra-
25 tion, including repayment of the capital investment allo-

1 cated to power and costs assigned by Acts of Congress
2 to power for repayment.

3 (2) The Commission may modify proposed rates sub-
4 mitted by any Federal power marketing administration
5 and establish terms and conditions consistent with this
6 subsection. In its determination of rates, terms, and condi-
7 tions for the sale of electric energy and capacity by the
8 Federal power marketing administrations the Commission
9 shall not review policy judgments and interpretations of
10 laws and regulations made by the power generating agen-
11 cies.

12 (b) EXISTING RATES.—All rates, terms, and condi-
13 tions for the sale of electric energy and capacity by the
14 Federal power marketing administrations placed into ef-
15 fect on a final basis prior to the date of enactment of this
16 Act shall remain in full force and effect unless the Com-
17 mission determines, after a hearing held upon its own mo-
18 tion or upon complaint, that the rates, terms, and condi-
19 tions are inconsistent with subsection (a)(1) and estab-
20 lishes new rates, terms, and conditions.

21 (c) PERIODIC REVIEW.—The Administrators shall
22 periodically review the rates and charges made, demanded,
23 or received by each Federal power marketing administra-
24 tion for the sale of electric energy and capacity. In the
25 event the rates and charges made, demanded, or received

1 by any Federal power marketing administration are incon-
2 sistent with subsection (a)(1), the Administrator of that
3 administration shall propose revised rates. Such rates
4 shall be established in accordance with this section, section
5 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
6 tion 9(c) of the Reclamation Project Act of 1939 (43
7 U.S.C. 485h(c)), and the Acts specifically applicable to in-
8 dividual projects of the power systems of the power gener-
9 ating agencies.

10 **SEC. 533. REGULATION OF FEDERAL POWER MARKETING**
11 **ADMINISTRATION TRANSMISSION SYSTEMS.**

12 Notwithstanding section 201(f) of the Federal Power
13 Act, sections 202(h), 205, 206, 208, and 210 through 213
14 and sections 301 through 304, 306, 307 (except the last
15 sentence of paragraph (c)), 308, 309, 313, and 317 of the
16 Federal Power Act apply to the transmission of electric
17 energy by the Federal power marketing administrations
18 to the same extent and in the same manner as such provi-
19 sions apply to the transmission of electric energy in inter-
20 state commerce by a public utility otherwise subject to the
21 jurisdiction of the Commission under part II of such Act.

22 **SEC. 534. ACCOUNTING.**

23 Not later than six months after the date of enactment
24 of this Act, the Commission shall promulgate rules con-
25 taining each of the following:

1 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
2 MENTS.—Procedures to ensure that the Federal
3 power marketing administrations utilize the same
4 accounting principles and requirements as are appli-
5 cable to public utilities pursuant to parts II and III
6 of the Federal Power Act (16 U.S.C. 792 and fol-
7 lowing) with respect to accounting for revenue, ex-
8 penses, investments, and depreciation.

9 (2) COMPLIANCE.—Procedures for the filing of
10 complaints with the Commission by interested per-
11 sons seeking to ensure compliance with the proce-
12 dures of this section.

13 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
14 dures to ensure that the power generating agencies
15 and the Administrators maintain a consistent set of
16 books and records for purposes of repayment obliga-
17 tions.

18 **SEC. 535. APPLICATION OF ANTITRUST LAW.**

19 (a) IN GENERAL.—Each Federal power marketing
20 administration shall be subject to the antitrust laws of the
21 United States with respect to its sale of electric energy
22 and capacity and the operation of its transmission system.
23 For purposes of this section, the term “antitrust laws”
24 has the meaning given such term in subsection (a) of the
25 first section of the Clayton Act (15 U.S.C. 12(a)), except

1 that such term includes section 5 of the Federal Trade
2 Commission Act (15 U.S.C. 45) to the extent that such
3 section 5 applies to unfair methods of competition.

4 (b) DAMAGES.—No damages, interest on damages,
5 costs, or attorney’s fees may be recovered under section
6 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
7 15c) from a Federal power marketing administration.

8 **TITLE VI—CONSUMER** 9 **PROTECTIONS**

10 **SEC. 601. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

11 (a) SLAMMING.—(1) The Federal Trade Commission
12 may promulgate rules in accordance with section 553 of
13 title 5 of the United States Code for the submittal and
14 verification of a retail electric consumer’s selection or
15 change in selection of a retail electric supplier and for the
16 assessment of penalties for violation of these rules.

17 (2) A person shall not submit or change the selection
18 made by a retail electric consumer if prohibited by law
19 or Federal Trade Commission rules established under
20 paragraph (1).

21 (3) It shall be unlawful for any person to change the
22 retail electric supplier without the consent of the retail
23 electric consumer.

24 (b) CRAMMING.—(1) The Federal Trade Commission
25 may promulgate rules in accordance with section 553 of

1 title 5 of the United States Code for obtaining the consent
2 of a retail electric consumer for purchase of goods and
3 services other than those expressly authorized by law or
4 any agreement for the purchase of electric energy or re-
5 lated services entered into by the electric consumer and
6 for the assessment of penalties for violation of these rules.

7 (2) A person shall not charge a retail electric con-
8 sumer for a particular good or service if such submission
9 or change is prohibited by law or Federal Trade Commis-
10 sion rules established under paragraph (1).

11 (3) It shall be unlawful for any person to charge a
12 retail electric consumer for electric energy or related serv-
13 ices unless expressly authorized by law or by agreement
14 for the purchase of electric energy or related services en-
15 tered into by the electric consumer.

16 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
17 Violation of a rule promulgated under this section shall
18 be treated as a violation of a rule under section 18 of the
19 Federal Trade Commission Act (15 U.S.C. 57a) regarding
20 unfair and deceptive acts or practices. All functions and
21 powers of the Federal Trade Commission under such Act
22 are available to the Federal Trade Commission to enforce
23 compliance with this section notwithstanding any jurisdic-
24 tional limitations in such Act.

1 (d) STATE AUTHORITY.—(1) This section does not
2 preclude a State or State commission from prescribing and
3 enforcing additional laws, regulations, or procedures re-
4 garding the practices which are the subject of this section,
5 so long as such laws, regulations, or procedures are not
6 inconsistent with the provisions of this section or with any
7 rule prescribed by the Federal Trade Commission pursu-
8 ant to it.

9 (2) If the Federal Trade Commission determines that
10 a State's regulations provide equivalent or greater protec-
11 tion than the provisions of this section, such State regula-
12 tions shall apply in that State in lieu of the regulations
13 issued by the Commission under this section.

14 (e) OTHER REMEDIES.—The remedies provided by
15 this section are in addition to any other remedies available
16 by law.

17 (f) ENFORCEMENT BY STATES.—(1) Whenever an at-
18 torney general of any State has reason to believe that the
19 interests of the residents of that State have been or are
20 being threatened or adversely affected because any person
21 has engaged or is engaging in a pattern or practice which
22 violates any rule of the Commission under this section or
23 section 602, the State, as *parens patriae*, may bring a civil
24 action on behalf of its residents in an appropriate district
25 court of the United States to enjoin such violation, to en-

1 force compliance with such rule of the Commission, to ob-
2 tain damages, restitution, or other compensation on behalf
3 of residents of such State, or to obtain such further and
4 other relief as the court may deem appropriate.

5 (2) The State shall serve prior written notice of any
6 civil action under paragraph (1) or paragraph (6)(B) of
7 this subsection upon the Commission and provide the
8 Commission with a copy of its complaint, except that if
9 it is not feasible for the State to provide such prior notice,
10 the State shall serve such notice immediately upon insti-
11 tuting such action. Upon receiving a notice respecting a
12 civil action, the Commission shall have the right—

13 (A) to intervene in such action,

14 (B) upon so intervening, to be heard on all
15 matters arising therein, and

16 (C) to file petitions for appeal.

17 (3) For purposes of bringing any civil action under
18 paragraph (1) of this subsection, nothing in this chapter
19 shall prevent an attorney general from exercising the pow-
20 ers conferred on the attorney general by the laws of such
21 State to conduct investigations or to administer oaths or
22 affirmations or to compel the attendance of witnesses or
23 the production of documentary and other evidence.

24 (4) Whenever a civil action has been instituted by or
25 on behalf of the Commission for violation of any rule pre-

1 scribed under this section or section 602, no State may,
2 during the pendency of such action instituted by or on
3 behalf of the Commission, institute a civil action under
4 paragraph (1) or paragraph (6)(B) of this subsection
5 against any defendant named in the complaint in such ac-
6 tion for violation of any rule as alleged in such complaint.

7 (5) Any civil action brought under paragraph (1) of
8 this subsection in a district court of the United States may
9 be brought in the district in which the defendant is found,
10 is an inhabitant, or transacts business or wherever venue
11 is proper under section 1391 of title 28 of the United
12 States Code. Process in such an action may be served in
13 any district in which the defendant is an inhabitant or
14 in which the defendant may be found.

15 (6)(A) Nothing contained in this subsection shall pro-
16 hibit an authorized State official from proceeding in State
17 court on the basis of an alleged violation of any civil or
18 criminal statute of such State.

19 (B) In addition to actions brought by an attorney
20 general of a State under paragraph (1) of this subsection,
21 such an action may be brought by officers of such State
22 who are authorized by the State to bring actions in such
23 State on behalf of its residents.

1 **SEC. 602. CONSUMER PRIVACY.**

2 (a) PROHIBITION.—The Federal Trade Commission
3 may promulgate rules regarding the disclosure of or access
4 to consumer information in connection with the sale or
5 delivery of electric energy to a retail electric consumer.
6 Such rules shall be promulgated in accordance with sec-
7 tion 553 of title 5 of the United States Code.

8 (b) PERMITTED USE.—The rules under subsection
9 (a) shall not prohibit any person from using, disclosing,
10 or permitting access to consumer information referred to
11 in subsection (a) for any of the following purposes:

12 (1) To facilitate a retail electric consumer's
13 change in selection of a retail electric supplier under
14 procedures approved by the State or State commis-
15 sion.

16 (2) To initiate, render, bill, or collect for the
17 sale or delivery of electric energy to retail electric
18 consumers or for related services.

19 (3) To protect the rights or property of the per-
20 son obtaining such information.

21 (4) To protect retail electric consumers from
22 fraud, abuse, and unlawful subscription in the sale
23 or delivery of electric energy to such consumers.

24 (5) For law enforcement purposes.

25 (6) For purposes of compliance with any Fed-
26 eral, State, or local law or regulation authorizing

1 disclosure of information to a Federal, State, or
2 local agency.

3 (c) AGGREGATE CONSUMER INFORMATION.—The
4 rules under subsection (a) shall permit any person to use,
5 disclose, and permit access to aggregate consumer infor-
6 mation and shall require local distribution companies to
7 make such information available to retail electric suppliers
8 upon request and payment of a reasonable fee.

9 (d) FEDERAL TRADE COMMISSION ENFORCE-
10 MENT.—Violation of a rule promulgated under this section
11 shall be treated as a violation of a rule under section 18
12 of the Federal Trade Commission Act (15 U.S.C. 57a) re-
13 garding unfair and deceptive acts or practices. All func-
14 tions and powers of the Federal Trade Commission under
15 such Act are available to the Federal Trade Commission
16 to enforce compliance with this section notwithstanding
17 any jurisdictional limitations in such Act.

18 (e) STATE AUTHORITY.—(1) If the Federal Trade
19 Commission determines that a State's regulations provide
20 equivalent or greater protection than the provisions of this
21 section, such State regulations shall apply in that State
22 in lieu of the regulations issued by the Commission under
23 this section.

24 (2) The remedies provided by this section are in addi-
25 tion to any other remedies available by law.

1 (f) DEFINITIONS.—As used in this section:

2 (1) AGGREGATE CONSUMER INFORMATION.—

3 The term “aggregate consumer information” means
4 collective data that relates to a group or category of
5 retail electric consumers, from which individual con-
6 sumer identities and characteristics have been re-
7 moved.

8 (2) CONSUMER INFORMATION.—The term “con-
9 sumer information” means information that relates
10 to the electric energy delivered to any retail electric
11 consumer.

12 **SEC. 603. AGGREGATION.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and
14 following) is amended by adding the following new section
15 after section 217, as added by this Act:

16 **“SEC. 218. PURCHASE OF ELECTRIC ENERGY BY RETAIL**
17 **ELECTRIC CONSUMERS.**

18 “Subject to not unduly discriminatory or preferential
19 State requirements, each retail electric consumer may des-
20 ignate any entity that aggregates consumers to negotiate
21 on the consumer’s behalf the purchase of retail electric
22 energy on an aggregate basis if the consumer is served
23 by a local distribution company whose local distribution
24 facilities are subject to open access, and no State may pro-
25 hibit any political subdivision of a State or any electric

1 cooperative from serving as an entity that aggregates con-
2 sumers, if such entity provides open access to any local
3 distribution facilities it may own or operate.”.

4 **SEC. 604. STATE PUBLIC PURPOSE CHARGES.**

5 Section 201(b) of the Federal Power Act is amended
6 by adding the following new paragraph after paragraph
7 (3):

8 “(4) This Act shall not affect the authority of a State
9 or municipality to require as a charge for delivery of elec-
10 tric energy to, or as a condition for the purchase or receipt
11 of electric energy by, any retail electric consumer located
12 in such State the payment of any charge deemed necessary
13 by such State or municipality for any purpose, including
14 any of the following:

15 “(A) To recover transition costs.

16 “(B) To ensure that adequate electric service is
17 available to all retail electric consumers served by a
18 local distribution company.

19 “(C) To ensure and enhance the reliability of
20 retail electric service.

21 “(D) To fund assistance to low-income retail
22 electric consumers.

23 “(E) To encourage environmental, emerging en-
24 ergy technology, energy efficiency, or energy con-
25 servation programs.

1 “(F) To provide for transition costs of electric
2 utility workers.

3 Nothing in this paragraph shall require a State or munici-
4 pality to impose any such charges.”.

5 **SEC. 605. STATE AUTHORITY TO ORDER RETAIL ELECTRIC**
6 **COMPETITION.**

7 Section 201(b) of the Federal Power Act is amended
8 by adding the following new paragraph after paragraph
9 (2):

10 “(3) This Act shall not affect the authority of a State
11 or municipality to require retail electric competition or to
12 require the unbundling of transmission and local distribu-
13 tion service for the delivery of electric energy directly to
14 a retail electric consumer.”.

15 **SEC. 606. UNIVERSAL AND AFFORDABLE SERVICE.**

16 It is the sense of the Congress that—

17 (1) every retail electric consumer should have
18 access to electric energy at reasonable and afford-
19 able rates; and

20 (2) the States should ensure that retail electric
21 competition does not result in the loss of service to
22 rural, residential, or low-income consumers.

1 **TITLE VII—INVESTIGATION AND**
2 **CORRECTION OF ANTI-**
3 **COMPETITIVE CONDUCT**

4 **SEC. 701. UNIFORM INVESTIGATION AUTHORITY.**

5 Section 307(a) of the Federal Power Act (16 U.S.C.
6 825f(a)) is amended as follows:

7 (1) By inserting “electric utility, or transmit-
8 ting utility” after “person” each time it appears.

9 (2) By striking the period at the end of the
10 first sentence and inserting the following: “or in ob-
11 taining information about the sale of electric energy
12 at wholesale in interstate commerce and the trans-
13 mission of electric energy in interstate commerce.”.

14 **SEC. 702. UNIFORM FERC REFUND AUTHORITY.**

15 (a) SCOPE OF AUTHORITY.—Section 206 of the Fed-
16 eral Power Act (16 U.S.C. 824e) is amended as follows:

17 (1) In subsection (a), strike “public utility for
18 any transmission or sale subject to” and insert “en-
19 tity for any transmission or sale by or to a public
20 utility subject to”.

21 (2) In subsection (b), in the seventh sentence,
22 strike “the public utility to make”.

23 (b) CONFORMING AMENDMENTS.—Section 201(b)(2)
24 of such Act (16 U.S.C. 824(b)(2)) is amended as follows:

1 (1) In the first sentence, strike “The provisions
2 of section 210” and insert “Notwithstanding sub-
3 section (f), the provisions of section 206, 210”.

4 (2) In the second sentence strike “section 210”
5 and insert “section 206, 210”.

6 **SEC. 703. CRIMINAL AND CIVIL PENALTIES.**

7 (a) **CRIMINAL PENALTIES.**—(1) Section 316(a) of the
8 Federal Power Act (16 U.S.C. 825o(a)) is amended by
9 striking “\$5,000” and inserting “\$1,000,000”, and by
10 striking “two years” and inserting “five years”;

11 (2) Section 316(b) of the Federal Power Act (16
12 U.S.C. 825o(b)) is amended by striking “\$500” and in-
13 serting “\$25,000”.

14 (b) **CIVIL PENALTIES.**—Subsections (a) and (b) of
15 section 316A of the Federal Power Act (16 U.S.C. 825o-
16 1) are amended by striking “section 211, 212, 213, or
17 214” each place it appears and inserting “part II”.

○