

105TH CONGRESS
1ST SESSION

H. R. 1960

To modernize the Public Utility Holding Company Act of 1935, the Federal Power Act, the Fair Packaging and Labeling Act, and the Public Utility Regulatory Policies Act of 1978 to promote competition in the electric power industry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1997

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To modernize the Public Utility Holding Company Act of 1935, the Federal Power Act, the Fair Packaging and Labeling Act, and the Public Utility Regulatory Policies Act of 1978 to promote competition in the electric power industry, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Power Com-
5 petition and Consumer Choice Act of 1997”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that equitable rates for electric
3 consumers and increased efficiency in the use of tech-
4 nology and resources for the generation of electric power
5 require—

6 (1) increased reliance on competition and mar-
7 ket forces rather than traditional rate-of-return reg-
8 ulation of utility monopolies to generate the most ef-
9 ficient, low cost, and reliable electricity for rate-
10 payers;

11 (2) access to transmission and distribution fa-
12 cilities for all suppliers and marketers of electricity
13 with pricing and terms and conditions on a com-
14 parable basis with those who own or control such fa-
15 cilities;

16 (3) a program to promote fuel diversity and
17 conservation and environmental protection through
18 the encouragement of renewable technologies and
19 other environmentally benign generation resources;

20 (4) State action to assure that electric utilities
21 may seek to recover only those legitimate, verifiable,
22 and nonmitigatable stranded costs for which there
23 would have been a reasonable expectation of recov-
24 ery, but for the implementation of retail competition;

25 (5) appropriate Federal and State regulation of
26 electric utilities to promote development of a com-

1 petitive electric generation market and protect con-
2 sumers against excessive charges by electric utility
3 companies who exercise continued monopoly control
4 over electric power transmission and distribution;
5 and

6 (6) reform of certain Federal and State utility
7 regulatory laws and regulations, to promote competi-
8 tion and to prevent anticompetitive behavior by enti-
9 ties with market power, to avoid excessive concentra-
10 tions of market power, and to prohibit other activi-
11 ties which would undermine a competitive power
12 market.

13 **TITLE I—STANDARDS OF**
14 **COMPETITION**
15 **Subtitle A—Application of PUHCA**
16 **and PURPA**

17 **SEC. 101. PUHCA NOT APPLICABLE IN COMPETITIVE MAR-**
18 **KETS.**

19 The Public Utility Holding Company Act of 1935 (15
20 U.S.C. 79 and following) is amended by redesignating sec-
21 tions 34 and 35 as sections 35 and 36 respectively and
22 by inserting the following new section after section 33:

1 **“SEC. 34. UTILITIES WITH CERTIFICATION OF COMPETI-**
 2 **TION.**

3 “(a) APPLICATION OF ACT TO COMPANIES WITH
 4 CERTIFICATION.—With respect to a holding company sys-
 5 tem, the preceding provisions of this Act shall not, except
 6 as provided in subsection (b), apply to—

7 “(1) any company in the system, or

8 “(2) any affiliate of such a company,

9 if each such company and affiliate that is an electric utility
 10 company has received a certification of compliance with
 11 standards and requirements of competition under subtitle
 12 F of title I of the Public Utility Regulatory Policies Act
 13 of 1978 from all State regulatory authorities which have
 14 ratemaking authority over the electric utility company.

15 “(b) WITHDRAWAL.—If the certification referred to
 16 in subsection (a) is withdrawn, unless the certification is
 17 reissued within 6 months after the date of the withdrawal,
 18 effective at the expiration of such 6-month period, the pre-
 19 ceding provisions of this Act shall apply to each person
 20 referred to in paragraphs (1) and (2) of subsection (a).”.

21 **SEC. 102. PURPA NOT APPLICABLE IN COMPETITIVE MAR-**
 22 **KETS.**

23 (a) APPLICATION OF PURPA.—Title II of the Public
 24 Utility Regulatory Policies Act of 1978 is amended by
 25 adding the following new sections at the end thereof:

1 **“SEC. 214. UTILITIES WITH CERTIFICATION OF COMPETI-**
 2 **TION.**

3 “(a) CERTAIN REQUIREMENTS OF SECTION 210 SUS-
 4 PENDED.—The provisions of section 210 (requiring elec-
 5 tric utilities to offer to purchase electric energy from quali-
 6 fying cogeneration facilities and qualifying small power
 7 production facilities) shall not apply to any contracts en-
 8 tered into by that electric utility during any period for
 9 which a certification of competition from a State regu-
 10 latory authority in accordance with subtitle F of title I
 11 is in effect for any electric utility.

12 “(b) PROTECTION OF EXISTING CONTRACTUAL COM-
 13 MITMENTS.—Subsection (a) shall not affect any contract
 14 or other power purchase arrangement between a qualifying
 15 cogeneration facility or qualifying small power production
 16 facilities and an electric utility entered into during any
 17 period for which a certification referred to in subsection
 18 (a) is not in effect for such electric utility.

19 “(c) TERMS.—For purposes of this section the terms
 20 ‘qualifying cogeneration facility’ and ‘qualifying small
 21 power production facility’ shall have the meaning provided
 22 for such terms by section 3(17) of the Federal Power
 23 Act.”.

24 (b) CERTIFICATION OF COMPETITION.—Title I of the
 25 Public Utility Regulatory Policies Act of 1978 is amended
 26 by adding the following new subtitle at the end thereof:

1 **“Subtitle F—Standards of**
2 **Competition for Electric Utilities**

3 **“SEC. 151. CERTIFICATION OF COMPETITION BY STATE**
4 **REGULATORY AUTHORITIES.**

5 “(a) VOLUNTARY STATE CERTIFICATION.—A State
6 regulatory authority may elect to require any person sell-
7 ing electric energy, or distributing electric energy, or both,
8 subject to the jurisdiction of such authority to comply with
9 standards and requirements of competition under this sub-
10 title. Such election shall be voluntary. Nothing in this sub-
11 title prohibits any State regulatory authority from deter-
12 mining that it is not appropriate to require any such per-
13 son to comply with such standards and requirements.
14 Nothing in this subtitle prohibits or limits any State regu-
15 latory authority from implementing any other process re-
16 garding competition among such persons. Whenever any
17 person selling electric energy or distributing electric en-
18 ergy, subject to the jurisdiction of a State regulatory au-
19 thority that has made an election under this subsection
20 has complied with standards and requirements of competi-
21 tion under this subtitle in accordance with rules estab-
22 lished by such State regulatory authority, such authority
23 shall issue a State certification of compliance to such per-
24 son.

1 “(b) CRITERIA FOR CERTIFICATION.—After notice
2 and opportunity for comment, the Commission shall estab-
3 lish, by rule, criteria for issuance by a State regulatory
4 authority of a State certification of compliance with stand-
5 ards and requirements for competition under this subtitle.
6 Such criteria shall provide that the State regulatory au-
7 thority which has ratemaking authority over a person sell-
8 ing or distributing electric energy, or selling and distribut-
9 ing electric energy, may issue such a certificate only if
10 such authority determines, after notice and opportunity
11 for hearing, that such person meets—

12 “(1) the Federal retail competition standard set
13 forth in section 152(a),

14 “(2) the public benefit certification require-
15 ments of section 152(b), and

16 “(3) such other requirements as the Commis-
17 sion prescribes consistent with the public interest
18 and the purposes of this subtitle.

19 “(c) WITHDRAWAL OF CERTIFICATION.—(1) Certifi-
20 cation of any person under this section shall be withdrawn
21 if the State regulatory authority determines, after notice
22 and opportunity for hearing, that such person has ceased
23 to meet the standards and requirements of competition
24 under this subtitle.

1 “(2) If any person petitions the State regulatory au-
 2 thority with ratemaking authority over a person certified
 3 under this section to withdraw such certification because
 4 such certified person has ceased to meet the standards and
 5 requirements of competition under this subtitle, and if
 6 such authority fails or refuses to act on such petition with-
 7 in 180 days after receiving the petition and adequate doc-
 8 umentation supporting the petition, such petitioner may
 9 submit a request to the Commission to withdraw the cer-
 10 tification of a person under this section, and the Commis-
 11 sion shall withdraw such certification if the Commission
 12 determines, after notice and opportunity for hearing, that
 13 the certified person has ceased to meet the standards and
 14 requirements of competition under this subtitle.

15 **“SEC. 152. FEDERAL STANDARDS AND REQUIREMENTS OF**
 16 **COMPETITION.**

17 “(a) RETAIL COMPETITION STANDARD.—A person
 18 selling electric energy, or distributing electric energy, or
 19 both, meets the Federal retail competition standard if the
 20 following conditions exist:

21 “(1) UNBUNDLED COMPETITIVE SALES.—All
 22 retail electric energy services, including retail electric
 23 metering and billing services, sold to electric con-
 24 sumers by any person are each sold and billed sepa-
 25 rately and such sales are open to competition.

1 “(2) COMPETITION FOR NEW GENERATING CA-
2 PACITY.—The opportunity to build, own, and oper-
3 ate new generating capacity in the State in which
4 such person sells or distributes electric energy is
5 open to competition.

6 “(3) ABSENCE OF COMPETITIVE ADVANTAGE.—
7 Such person does not gain any undue advantage
8 over other competitors whether by virtue of owner-
9 ship of a monopoly distribution franchise or its sta-
10 tus as a regulated buyer and seller of electricity in
11 a designated service territory or otherwise.

12 “(4) OPEN ACCESS TARIFFS FOR DISTRIBUTI-
13 TION.—(A) Except as provided in subparagraph (B),
14 tariffs are in effect for transmission of electric en-
15 ergy through all local distribution facilities owned or
16 controlled by such person and subject to State juris-
17 diction and such tariffs provide for rates for electric
18 energy transmission that are comparable to the elec-
19 tric energy transmission rates for energy sold by
20 such person.

21 “(B) If the person owning or controlling such
22 local distribution facilities does not sell electric en-
23 ergy transmitted through such facilities, such tariffs
24 must be approved by the State regulatory authority

1 as just, reasonable, and not discriminatory or unduly
2 preferential.

3 “(5) ACCESS TO FACILITIES.—If such person
4 owns, operates, or controls local distribution facili-
5 ties, such person permits reasonable and nondiscrim-
6 inatory access to such facilities at the locations at
7 which retail electric service is provided and at such
8 other locations as may be necessary to enable other
9 person to provide retail electric energy services, in-
10 cluding retail electric metering and billing services,
11 and related information and communications serv-
12 ices, on a competitive basis.

13 “(b) PUBLIC BENEFIT CERTIFICATION REQUIRE-
14 MENTS.—A person selling electric energy, or distributing
15 electric energy, or both, meets the public benefit certifi-
16 cation requirements if:

17 “(1) ENERGY EFFICIENCY AND RENEWABLE
18 ENERGY.—All suppliers of energy services to electric
19 consumers to whom such person provides retail elec-
20 tric energy services in the State have both the incen-
21 tive and opportunity to provide energy efficiency and
22 renewable energy resources.

23 “(2) CHARGES.—(A) Except as provided in sub-
24 paragraph (B), the State has imposed nonbypassable
25 charges on use of, or access to, the electric energy

1 services or facilities of such person that are subject
2 to the jurisdiction of the State. Such charges shall
3 be adequate to ensure sustained and equitable allo-
4 cation of costs associated with low-income services
5 and other investments, including those in renewable
6 energy resources and energy efficiency, that deliver
7 system wide benefits in the form of equity among,
8 or reduced life-cycle costs of service to, electric con-
9 sumers served by such services or facilities. Such
10 charges shall include temporary charges necessary to
11 cover the costs of electric utility workforce transition
12 and retraining made necessary by reason of the re-
13 structuring of the utility.

14 “(B) In lieu of charges to ensure renewable en-
15 ergy resources and energy efficiency, the State may
16 establish minimum portfolio standards that ensure
17 maintenance or improvement of current levels of reli-
18 ance on renewable energy resources and energy effi-
19 ciency.

20 “(3) RECOVERY OF STRANDED COSTS; PRICE
21 INCREASES.—Any rules or orders applicable to retail
22 competition among electric-service suppliers protect
23 customers from price discrimination or undue price
24 increases and ensure that if a State approved any
25 recovery of such person’s net legitimate, verifiable,

1 nonmitigatable stranded costs for which there would
2 have been a reasonable expectation of recovery, but
3 for the implementation of retail competition, no cus-
4 tomer class can avoid paying its equitable share of
5 such costs.

6 “(4) CONTINUED OPERATION OF ASSETS.—
7 Under applicable State laws and regulations, any re-
8 covery of such stranded costs associated with exist-
9 ing generation assets is not contingent on continued
10 operation of the generation assets for which recovery
11 is approved.

12 “(5) RELIABILITY AND CONSUMER PROTEC-
13 TION.—State laws and regulations require all per-
14 sons seeking to provide retail electric service, or to
15 purchase electric energy for consumption by two or
16 more electric consumers, to have met minimum
17 qualifications to protect the public safety and wel-
18 fare and ensure the continued reliability of the dis-
19 tribution system.

20 “(6) AGGREGATION OF PURCHASES.—(A) State
21 laws and regulations provide retail electric customers
22 of the person a reasonable opportunity to aggregate
23 their electric energy purchases for the purpose of
24 achieving lower rates.

1 “(B) Such person does not maintain any rule or
2 contractual or operational practice that precludes
3 the aggregation of such purchases.

4 “(7) NET METERING FOR RENEWABLE EN-
5 ERGY.—Such person offers to purchase all electric
6 energy generated at the retail service location by re-
7 tail electric consumers served by such person if such
8 consumers generate electric energy through the use
9 of generation equipment using renewable energy re-
10 sources that meets all applicable safety and power
11 quality standards approved by the Commission, and
12 the price for such purchases is based on net energy
13 metering using either dual or single metering and
14 using rates identical in all respects to the standard
15 retail rates applicable to retail sales of electric en-
16 ergy to retail electric customers in the same area
17 served by such persons.

18 **“SEC. 153. COMPARABILITY IN RETAIL ELECTRIC SERVICE.**

19 “(a) FEDERAL COMPARABILITY REQUIREMENT.—It
20 shall be unlawful for any person or State or local govern-
21 mental agency that has a designated retail electric energy
22 service territory under State law to provide retail electric
23 service, directly or through an affiliate, to any person not
24 within such service territory if such service is not available
25 on a competitive basis to all retail electric energy cus-

1 tomers within such service territory. Except for sales to
2 persons receiving retail electric service from the Tennessee
3 Valley Authority before the enactment of this Act, it shall
4 be unlawful for the Tennessee Valley Authority to provide
5 retail electric service to any person not within the area
6 referred to in the third sentence of section 15d(a) of the
7 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–
8 4) if such service is not available on a competitive basis
9 to all retail electric energy customers within such area.
10 Except for sales to persons receiving retail electric service
11 from a Federal Power Marketing Authority before the en-
12 actment of this Act, it shall be unlawful for any Federal
13 Power Marketing Authority to provide retail electric serv-
14 ice to any person not within the designated power market-
15 ing area of such agency if such service is not available
16 on a competitive basis to all retail electric energy cus-
17 tomers within such area.

18 “(b) ENFORCEMENT.—Any person may commence a
19 civil action in the appropriate United States district court
20 on his or her own behalf against any person or State or
21 local government agency or the Tennessee Valley Author-
22 ity or the Secretary of Energy for violation of subsection
23 (a). In an action brought under this subsection, the court
24 shall award to any substantially prevailing plaintiff the
25 costs of litigation including reasonable attorney fees, un-

1 less the court finds such award to be inappropriate under
 2 the circumstances.

3 **“SEC. 154. DEFINITION.**

4 “As used in this subpart, the term ‘renewable energy’
 5 means solar heat, solar light, wind, geothermal energy,
 6 and biomass, except for heat from the burning of munici-
 7 pal solid waste.”.

8 (c) CONSIDERATION AND DETERMINATION REGARD-
 9 ING RETAIL COMPETITION STANDARDS.—(1) Section 111
 10 (d) of the Public Utility Regulatory Policies Act of 1978
 11 is amended by adding the following new paragraph at the
 12 end thereof:

13 “(11) RETAIL COMPETITION STANDARDS.—
 14 Each electric utility shall meet—

15 “(A) either the Federal retail competition
 16 standard set forth in section 152(a) or the Fed-
 17 eral divestiture standard set forth in section
 18 152(b);

19 “(B) the public benefit certification re-
 20 quirements of section 152(c); and

21 “(C) such other requirements as the Com-
 22 mission shall prescribe consistent with the pub-
 23 lic interest and the purposes of subtitle F.”.

24 (2) Section 112(b) of such Act is amended by insert-
 25 ing after “of section 111(d)” in paragraphs (1) and (2)

1 the following “or after the enactment of the Electric
 2 Power Competition and Consumer Choice Act of 1997 in
 3 the case of the standards under paragraph (11) of section
 4 111(d)”.

5 (3) Section 112(c) of such Act is amended by insert-
 6 ing “(or after the enactment of the Electric Power Com-
 7 petition and Consumer Choice Act of 1997 in the case of
 8 the standards under paragraph (11) of section 111(d))”
 9 after “enactment of this Act”.

10 (4) Section 124 of such Act is amended as follows:

11 (A) In the first and second sentences after
 12 “For purposes of” insert “any provision of”.

13 (B) In the first and second sentences, strike out
 14 “enactment of this Act” and insert “enactment of
 15 such provision”.

16 **SEC. 103. ADDITIONAL PROVISIONS APPLICABLE TO ELEC-**
 17 **TRIC UTILITIES AND HOLDING COMPANIES.**

18 (a) FERC RULES TO PREVENT UNFAIR COMPETI-
 19 TIVE ADVANTAGES.—(1) Part II of the Federal Power Act
 20 (16 U.S.C. 824 and following) is amended by adding the
 21 following section after section 214:

22 **“SEC. 215. PREVENTION OF COMPETITIVE ADVANTAGE.**

23 “Within 12 months after the enactment of this sec-
 24 tion, the President or his designee shall prescribe rules
 25 to assure that persons generating or providing electric en-

1 ergy for sale or for ultimate consumption cannot obtain
 2 any competitive advantage by reason of the ownership,
 3 control, use, or purchase of electric energy from facilities
 4 that are not subject to enforceable emission limitations for
 5 sulfur dioxide, oxides of nitrogen, and carbon dioxide that
 6 are as stringent as performance requirements for new elec-
 7 tric generating facilities under the Clean Air Act. Such
 8 rule shall assure that total national or regional emissions
 9 of such pollutants are brought to levels which the Adminis-
 10 trator of the Environmental Protection Agency certifies
 11 are sufficient to protect human health and the environ-
 12 ment. Such standard may provide for trading of emission
 13 allowances as a compliance option.”.

14 (2) Section 201 of such Act is amended as follows:

15 (A) By striking “and 212” in subsection (b)(2)
 16 and inserting “212, and 215”.

17 (B) By striking “or 211” in subsection (b)(2)
 18 and inserting “, 211, or 215”.

19 (C) By striking “or 212” in subsection (e) and
 20 inserting “212, or 115”.

21 (b) STATE AND FEDERAL RATEMAKING AND OTHER
 22 REGULATORY AUTHORITIES.—(1) After the date of enact-
 23 ment of this Act, no provision of Federal law shall be con-
 24 strued to preempt otherwise applicable State authority to
 25 review the prudence of any wholesale or retail cost in-

1 incurred by an electric utility, or to determine the recovery
2 of costs for the sale or delivery of electric energy and relat-
3 ed services to a retail customer regardless of the facilities
4 used for such sales or delivery. The preceding sentence
5 shall not apply to any wholesale or retail cost incurred by
6 an electric utility the recovery of which in wholesale rates
7 has been approved by the Federal Energy Regulatory
8 Commission before the enactment of this Act.

9 (2) After the date of enactment of this Act, no Fed-
10 eral statute or rule shall be construed to affect the author-
11 ity of the Federal Energy Regulatory Commission under
12 the Federal Power Act to approve or disapprove the inclu-
13 sion of existing contract or transaction costs of an affiliate
14 or associate company (including costs approved under sec-
15 tion 13(b) of the Public Utility Holding Company Act) in
16 rates or charges imposed by an electric utility if such rates
17 or charges are subject to the jurisdiction of the Commis-
18 sion.

19 (3) After the date of enactment of this Act, no provi-
20 sion of Federal law shall be construed to preempt any
21 State authority to—

22 (A) impose nonbypassable charges on use of, or
23 access to, the electric energy services or facilities of
24 any person that are subject to the jurisdiction of the
25 State to ensure sustained and equitable allocation of

1 costs associated with low-income services and other
2 investments, including those in fuel diversity and en-
3 ergy efficiency, that deliver system wide benefits in
4 the form of equity among, or reduced life-cycle costs
5 of service to, electric consumers served by such serv-
6 ices or facilities; and

7 (B) impose minimum portfolio standards that
8 ensure maintenance or improvement of current levels
9 of reliance on renewable energy resources.

10 Charges referred to in subparagraph (A) include tem-
11 porary charges to cover the costs of electric utility
12 workforce transition and retraining made necessary by
13 reason of the restructuring of the utility.

14 (4) Section 309 of the Federal Power Act is amended
15 by inserting after the second sentence thereof the follow-
16 ing: “The Commission shall have the power to establish
17 safety and power quality standards for purposes of section
18 152(b)(7) of the Public Utility Regulatory Policies Act of
19 1978 (relating to net metering for renewable energy).”.

20 (c) ENERGY SERVICE COMPANY DIVERSIFICATION.—
21 Section 9 of the Public Utility Holding Company Act of
22 1935 is amended by adding the following new subsection
23 after subsection (c):

24 “(d) The Commission may not use the authority of
25 subsection (c)(3) or any other authority of this Act to ex-

1 empt from prior Commission approval under subsection
2 (a)(1) and section 10 the acquisition by a registered hold-
3 ing company, or by any subsidiary company thereof, di-
4 rectly or indirectly, of any securities, utility assets, or any
5 other interest in any energy-related company (as defined
6 by the Commission by rule). After the date of the enact-
7 ment of this subsection, any provision of any rule of the
8 Commission that is inconsistent with this subsection shall
9 cease to apply.”.

10 (d) INVESTMENTS IN FOREIGN UTILITY COMPA-
11 NIES.—Section 9 of the Public Utility Holding Company
12 Act of 1935 is amended by adding the following new sub-
13 section after subsection (d):

14 “(e) The Commission may not permit a registered
15 holding company to invest or maintain investments in for-
16 eign utility operations in excess of 50 percent of consoli-
17 dated retained earnings (as defined by the Commission in
18 part 250.53 of title 17 of the Code of Federal Regulations
19 as in effect on April 30, 1997) unless a certification under
20 section 151 of the Public Utility Regulatory Policies Act
21 of 1978 is in effect for such registered holding company.”.

1 **Subtitle B—Mergers, Acquisition,**
2 **Market Concentration, Affiliate**
3 **relationships and Diversifica-**
4 **tion**

5 **SEC. 111. MERGERS AND ACQUISITIONS.**

6 (a) PROHIBITION.—A person may not acquire any in-
7 terest in a public utility company that results in ownership
8 of a substantial interest and effective control of such com-
9 pany unless—

10 (1) the Commission makes the findings set
11 forth in subsection (b); and

12 (2) such person has transmitted to the Commis-
13 sion the certifications set forth in subsection (c).

14 (b) REQUIRED COMMISSION FINDINGS.—The find-
15 ings referred to in subsection (a)(1) are as follows:

16 (1) The acquisition described in subsection (a)
17 will not create or maintain a situation inconsistent
18 with effective competition in any market in which
19 competition would benefit consumers.

20 (2) Such acquisition will result in substantial
21 cost reductions in the provision of electric energy (in
22 the case of a person acquiring a substantial interest
23 in an electric utility company) or natural gas (in the
24 case of a person acquiring a substantial interest in

1 a gas utility company) that are greater than could
2 be achieved without the acquisition.

3 (3) The acquisition will be entered into on an
4 arm's-length basis.

5 (c) PUBLIC UTILITY CERTIFICATION.—The certifi-
6 cations referred to in subsection (a)(2) are as follows:

7 (1) A certification by the person acquiring the
8 substantial interest, where the merger involves an
9 acquisition premium, that such person will not seek
10 to recover such premium, either directly or indirectly
11 (such as by failing to reduce rates by an amount
12 equal to the full amount by which costs have been
13 reduced as a result of the merger), in rates charged
14 for any service for which there is not effective com-
15 petition, to the extent such premium exceeds the
16 amount which the Commission has determined to be
17 just and reasonable.

18 (2) A certification that each State commission
19 with jurisdiction over the public utility company has
20 certified that it has (A) the authority and resources
21 to prevent the acquisition from having an adverse ef-
22 fect on the rates charged to any retail customer of
23 the public utility (or affiliate), and (B) the authority
24 to prevent the acquisition from taking place.

1 The Commission shall promulgate regulations concerning
2 the form of certification required by this subsection.

3 (d) CONDITIONS.—Simultaneously with making the
4 findings under subsection (b), the Commission shall estab-
5 lish terms and conditions applicable to transactions be-
6 tween a public utility company and the person acquiring
7 a substantial interest in such company under subsection
8 (a) necessary to ensure the continuing validity of all find-
9 ings made under subsection (b) and certifications made
10 under subsection (c).

11 (e) DEFINITIONS.—For purposes of this section:

12 (1) The term “acquire” means acquire, merge
13 with, or be a recipient of a merger.

14 (2) The term “substantial interest in a public
15 utility” means any interest, whether in voting stock,
16 nonvoting stock, securities, partnership share, or any
17 evidence of indebtedness, where the value of the in-
18 terest equals 10 percent or more of the book value
19 of the public utility.

20 (f) CONFORMING AMENDMENT.—Section 203(b) of
21 the Federal Power Act is amended by adding the following
22 at the end thereof: “Any order of the Commission under
23 this section shall require compliance with section 111 of
24 the Electric Power Competition and Consumer Choice Act

1 of 1977 in any case in which such section 111 is applica-
 2 ble.”.

3 **SEC. 112. MARKET CONCENTRATION AND AFFILIATE RELA-**
 4 **TIONSHIPS.**

5 (a) IN GENERAL.—A public utility company, or any
 6 affiliate thereof, may not use its ownership or control of
 7 any resource to create or maintain a situation inconsistent
 8 with effective competition in the purchase and sale of elec-
 9 tric energy or natural gas in any market in which such
 10 company (or affiliate) has a designated service territory
 11 for the retail distribution of electric energy or natural gas.

12 (b) AUTHORIZED ACTIONS.—Whenever the Commis-
 13 sion finds a violation of subsection (a), it may order a pub-
 14 lic utility company, or any affiliate thereof, to take any
 15 or all of the following actions:

16 (1) Sell or otherwise transfer assets to a non-
 17 affiliated company on an arm’s-length basis.

18 (2) Sell or otherwise transfer assets to an affili-
 19 ated company, on an arm’s-length basis.

20 (3) Conduct business activities involving the re-
 21 source concerned on an arm’s-length basis (except in
 22 such emergency circumstances as the Commission
 23 may authorize by rule).

1 (4) Share access to assets on a nondiscrim-
2 inatory basis at rates which are just and reasonable,
3 and not unduly discriminatory or preferential.

4 **SEC. 113. DIVERSIFICATION.**

5 (a) IN GENERAL.—The Commission shall establish
6 regulations which ensure each of the following with respect
7 to diversification by any public utility company, or affiliate
8 thereof:

9 (1) The diversification shall have no adverse im-
10 pact on electric or natural gas customers of such
11 company.

12 (2) There shall be an arm's-length relationship
13 between—

14 (A) the transmission service activities, dis-
15 tribution service activities, and retail sales ac-
16 tivities of the public utility company or affiliate;
17 and

18 (B) any other business activities of the
19 public utility company or any affiliate thereof.

20 The Commission may, by rule, provide for an exemp-
21 tion from the arm's-length relationship requirements
22 of this paragraph for emergency circumstances.

23 (3) The Commission and each State commission
24 having authority over retail sales of electric energy
25 or natural gas by such company have such access to

1 books and records of the public utility company and
2 all affiliates thereof as is necessary to ensure that
3 the foregoing conditions are met and continue to be
4 met.

5 The Commission shall not permit any diversification re-
6 ferred to in this subsection unless each State commission
7 that has ratemaking authority over such company or any
8 affiliate thereof has certified to the Commission that it
9 has the authority and resources to prevent such diver-
10 sification from having an adverse effect on retail cus-
11 tomers of such public utility company or any affiliate
12 thereof.

13 (b) CONTRACTS WITH AFFILIATES.—No contract en-
14 tered into after the date of the enactment of this Act be-
15 tween any public utility company and an affiliate having
16 a total value of \$1,000,000 or more, shall be valid unless
17 each State commission having authority over retail sales
18 of electric energy or natural gas by such company or affili-
19 ate has found that—

20 (1) such contract will have no adverse effect on
21 consumers; and

22 (2) such State commission has the authority
23 and resources to prevent any such adverse effect.

24 (c) COSTS AND REVENUES.—No Federal law shall be
25 interpreted to prevent a State commission or the Commis-

1 sion, when establishing rates for any type of electric serv-
 2 ice or natural gas subject to the jurisdiction of such State
 3 commission or the Commission, from disallowing any costs
 4 unreasonably incurred, or imputing any revenues unrea-
 5 sonably foregone, including costs incurred or revenues
 6 foregone as a result of an interaffiliate transaction. The
 7 previous sentence shall not apply to any cost incurred and
 8 recovered in rates or charges or revenues foregone prior
 9 to July 11, 1996, whether or not subject to refund or ad-
 10 justment.

11 (d) AMENDMENT OF SECTION 318.—Section 318 of
 12 the Federal Power Act is amended as follows:

13 (1) By striking “shall apply to such person”
 14 and inserting “shall not apply to such person”.

15 (2) By striking “not be subject to the require-
 16 ment of this Act, or of” and inserting “be subject
 17 to the requirement of this Act and of”.

18 (3) By striking “, unless the Securities” and all
 19 that follows down to the period at the end thereof.

20 **SEC. 114. ENFORCEMENT.**

21 Section 314 of the Federal Power Act is amended by
 22 inserting “or subtitle B of title I of the Electric Power
 23 Competition and Consumer Choice Act of 1997” after
 24 “this Act” in each place it appears in subsections (a) and
 25 (b).

1 **SEC. 115. ANTITRUST LAWS NOT AFFECTED.**

2 Nothing in this Act shall be construed to modify or
3 supersede the application of the antitrust laws to any ac-
4 tivity to which the provisions of this Act apply or to any
5 public utility company, electric utility, or to any other per-
6 son or entity to whom the provisions of this Act apply.

7 As used in this section the term “antitrust laws”—

8 (1) has the meaning given it in subsection (a)
9 of the first section of the Clayton Act (15 U.S.C.
10 12(a)), except that such term includes section 5 of
11 the Federal Trade Commission Act (15 U.S.C. 45)
12 to the extent such section 5 applies to unfair meth-
13 ods of competition; and

14 (2) includes any State law similar to the laws
15 referred to in paragraph (1).

16 **Subtitle C—Electric Energy Trans-**
17 **mission and Distribution Poli-**
18 **cies**

19 **SEC. 121. TRANSMISSION ACCESS AND FACILITATION OF**
20 **RETAIL COMPETITION.**

21 (a) TRANSMISSION ACCESS.—Section 211 of the Fed-
22 eral Power Act is amended by adding the following at the
23 end thereof:

24 “(f) TRANSMISSION ACCESS.—Within 12 months
25 after the date of enactment of this subsection, the Com-
26 mission shall promulgate rules to establish tariffs applica-

1 ble in the largest region or regions feasible to carry out
2 each of the following:

3 “(1) Ensure development and efficient oper-
4 ation of competitive electricity markets, while en-
5 couraging the economical and efficient use of exist-
6 ing generating facilities, and the economical location
7 and use of future generating facilities.

8 “(2) Ensure the full recovery by owners of
9 transmission facilities of all prudent transmission
10 costs.

11 “(3) Prevent multiple charges for transmission
12 service based on the number of transmission owners.

13 “(4) Prevent any person engaged in the sale of
14 energy from gaining any advantage over competitors
15 by reason of such person’s ownership or control of
16 electric power transmission or distribution facili-
17 ties.”.

18 (b) FACILITATION OF RETAIL COMPETITION.—Sec-
19 tion 212(h) of such Act is amended to read as follows:

20 “(h) ORDERS TO FACILITATE RETAIL COMPETI-
21 TION.—Notwithstanding any other provision of law, any
22 order under this Act requiring a transmitting utility to
23 provide wholesale transmission service shall also apply to
24 retail transmission service provided by such utility or any
25 other electric utility to the extent necessary to permit the

1 provision of retail competition in accordance with subtitle
 2 F of title I of the Public Utility Regulatory Policies Act
 3 of 1978.”.

4 **SEC. 122. APPLICATION OF FERC OPEN ACCESS RULES TO**
 5 **NONJURISDICTIONAL UTILITIES.**

6 Effective on the date one year after the date of enact-
 7 ment of this Act, all rules adopted by the Commission
 8 under section 201, 205, or 206 of the Federal Power Act
 9 that are applicable to wholesale or retail open access trans-
 10 mission services of public utilities shall apply to any such
 11 services provided by any transmitting utility (as defined
 12 in section 3(23) of such Act) that is not a public utility
 13 (as defined in section 201(e) of such Act) and to any Fed-
 14 eral Power Marketing Agency in the same manner and
 15 to the same extent as such rules apply to public utilities
 16 (as so defined), except that the Commission may exempt
 17 any such transmitting utility from such rules, or modify
 18 the application of such rules to any such transmitting util-
 19 ity if the Commission finds that such action is in the pub-
 20 lic interest.

21 **SEC. 123. ACCESS TO BOOKS AND RECORDS.**

22 (a) STATE COMMISSIONS.—Section 201(g)(1) of the
 23 Federal Power Act is amended by adding the following at
 24 the end thereof: “A public utility, and each affiliate or as-
 25 sociate thereof, shall produce for examination such person-

1 nel, books, accounts, memoranda, contracts, records, and
 2 any other materials upon an order of any State commis-
 3 sion finding that production of such materials will assist
 4 the State commission in carrying out its responsibilities.
 5 The cost of any audit ordered by a State commission
 6 under either this section or under State law, shall be borne
 7 by the public utility and its affiliates.”.

8 (b) FERC.—Section 301 is amended by adding the
 9 following at the end thereof:

10 “(d) A public utility, and each affiliate or associate
 11 thereof, shall produce for examination such personnel,
 12 books, accounts, memoranda, contracts, records, and any
 13 other materials upon an order of the Commission finding
 14 that production of such materials will assist the Commis-
 15 sion in carrying out its responsibilities. The cost of any
 16 audit ordered by the Commission under this section, shall
 17 be borne by the public utility and its affiliates.”.

18 **SEC. 124. ADDITIONAL AMENDMENTS TO PURPA.**

19 Title II of the Public Utility Regulatory Policies Act
 20 of 1978 is amended by adding the following after section
 21 215:

22 **“SEC. 216. ENCOURAGEMENT OF PARTICULAR GENERA-**
 23 **TION TECHNOLOGIES.**

24 “Nothing in this Act, the Federal Power Act, or any
 25 other provision of Federal law prevents a State regulatory

1 authority, in making a determination for purposes of sec-
 2 tion 210 of the incremental cost to a purchasing electric
 3 utility of alternative electric energy, from establishing
 4 such incremental costs at levels which reflect avoided envi-
 5 ronmental costs that are not included in market rates.
 6 Where a State regulatory authority determines that an
 7 electric utility's incremental cost of alternative electric en-
 8 ergy shall be determined by competitive bidding, the State
 9 regulatory authority may segment the bid by generation
 10 technology or by groups of generation technologies.”.

11 **SEC. 125. CONSUMER INFORMATION.**

12 The Fair Packaging and Labeling Act (15 U.S.C.
 13 1451 and following) is amended by inserting the following
 14 new sections after section 12:

15 **“SEC. 13. CONSUMER INFORMATION DISCLOSURE.**

16 “(a) DISCLOSURE RULES.—Not later than January
 17 1, 1999, the Federal Trade Commission, in consultation
 18 with the Administrator of the Environmental Protection
 19 Agency and the Secretary of Energy, shall issue rules pre-
 20 scribing the time, form, content, and frequency of supplier
 21 disclosure as required under subsections (b) and (c) of this
 22 section.

23 “(b) DISCLOSURE TO ELECTRIC CONSUMERS.—In
 24 order to assist electric consumers in making informed pur-
 25 chasing decisions, each person that sells or offers to sell

1 electric energy to electric consumers in a State that has
2 adopted the retail competition standard under subtitle F,
3 shall provide to the electric consumer the following infor-
4 mation in accordance with rules under subsection (a):

5 “(1) Historic and projected generating source
6 data.

7 “(2) Historic and projected air and water emis-
8 sions data.

9 “(3) The following price information:

10 “(A) The price of electric energy expressed
11 in terms of the charge per billing unit.

12 “(B) The definition of the billing unit.

13 “(C) A description of any variable charges
14 and a statement identifying the factors that
15 would cause the charge per billing unit to vary.
16 The supplier shall provide support for any rep-
17 resentation made regarding the likelihood or
18 frequency of changes in the charge per billing
19 unit.

20 “(D) A description of all other charges or
21 costs that are associated with the service being
22 offered including, but not limited to, access
23 charges, exit charges, back-up service charges,
24 stranded benefits, and stranded cost recovery
25 charges and customer service charges.

1 “(4) Historic and projected reliability data.

2 “(5) A notice of any orders or other legal ac-
3 tions pending against such person for noncompliance
4 with Federal, State, and local environmental and nu-
5 clear safety laws.

6 “(c) GENERATING SOURCE INFORMATION WHOLE-
7 SALE TRANSACTIONS.—In every contract for the sale of
8 electric energy for resale, the seller of electric energy shall
9 provide to the purchaser of such generation source data
10 and emissions data as may be required by rules under sub-
11 section (a).

12 “(d) AUTHORITY TO OBTAIN BOOKS AND
13 RECORDS.—The Federal Trade Commission may use the
14 authority of sections 3, 6, 9, and 20 of the Federal Trade
15 Commission Act (15 U.S.C. 41 and following) to obtain
16 any information necessary to carry out its duties under
17 this section, without regard to the limitations contained
18 in section 21(b) (15 U.S.C. 57b–2(b)).

19 “(e) EXEMPT INFORMATION.—The Commission may,
20 by rule, exempt from subsection (b) any information that
21 the Commission determines is not technologically or eco-
22 nomically feasible to provide or that is not likely to assist
23 consumers in purchasing decisions.

24 “(f) PROHIBITED ACTS AND ENFORCEMENT.—(1) It
25 shall be unlawful for any person to fail to provide any of

1 the information required by this section or under the rules
2 issued under subsection (a).

3 “(2) Any person who fails to provide information re-
4 quired under the rules issued under subsection (a) of this
5 section or who provides false or misleading information
6 under subsection (a) of this section shall be subject to a
7 civil penalty of not more than \$1,000,000 for each viola-
8 tion.

9 “(3) Any person against whom a civil penalty is as-
10 sessed under paragraph (2), above may, within 60 cal-
11 endar days after the date of the order of the Commission
12 assessing such penalty, institute an action in the United
13 States Court of Appeals for the appropriate judicial circuit
14 for judicial review of such order in accordance with chap-
15 ter 7 of title 5, United States Code (5 U.S.C. 701 et seq.).
16 The court shall have jurisdiction to enter a judgment af-
17 firming, modifying, or setting aside in whole or in part,
18 the order of the Commission, or the court may remand
19 the proceeding to the Commission for such further action
20 as the court may direct.

21 “(4) Any violation of a rule under this section shall
22 be treated as a violation of a rule respecting unfair or de-
23 ceptive acts or practices in or affecting commerce (within
24 the meaning of section 5(a)(1) of the Federal Trade Com-

1 mission Act (15 U.S.C. 45(a)(1)) and as a violation of
2 section 18 of such Act (15 U.S.C. 57a).

3 “(g) STATE AUTHORITY.—A State regulatory au-
4 thority may prescribe disclosure requirements in addition
5 to those provided under this section.

6 “(h) ENFORCEMENT BY STATES.—

7 “(1) IN GENERAL.—Whenever an attorney gen-
8 eral of any State has reason to believe that the in-
9 terests of the residents of that State have been or
10 are being threatened or adversely affected because
11 any person is violating or has violated any rule of
12 the Commission under this section, the State, as
13 parens patriae, may bring a civil action on behalf of
14 its residents in an appropriate district court of the
15 United States to enjoin such violating, to enforce
16 compliance with such rule of the Commission, to ob-
17 tain damages, restitution, or other compensation on
18 behalf of residents of such State, or to obtain such
19 further and other relief as the court may deem ap-
20 propriate.

21 “(2) NOTICE.—The State shall serve prior writ-
22 ten notice of any civil action under this subsection
23 upon the Commission and provide the Commission
24 with a copy of its complaint, except that if it is not
25 feasible for the State to provide such prior notice,

1 the State shall serve such notice immediately upon
2 instituting such action. Upon receiving a notice re-
3 specting a civil action, the Commission shall have
4 the right (A) to intervene in such action, (B) upon
5 so intervening, to be heard on all matters arising
6 therein, and (C) to file petitions for appeal.

7 “(3) CONSTRUCTION.—For purposes of bring-
8 ing any civil action under this subsection, nothing in
9 this section shall prevent an attorney general from
10 exercising the powers conferred on the attorney gen-
11 eral by the laws of such State to conduct investiga-
12 tions or to administer oaths or affirmations or to
13 compel the attendance of witnesses or the production
14 of documentary and other evidence.

15 “(4) ACTIONS BY COMMISSION.—Whenever a
16 civil action has been instituted by or on behalf of the
17 Commission for violation of any rule under this sec-
18 tion, no State may, during the pendency of such ac-
19 tion instituted by or on behalf of the Commission,
20 institute a civil action under this subsection against
21 any defendant named in the complaint in such ac-
22 tion for violation of any rule as alleged in such com-
23 plaint.

24 “(5) VENUE; SERVICE OF PROCESS.—Any civil
25 action brought under this subsection in a district

1 court of the United States may be brought in the
2 district in which the defendant is found, is an inhab-
3 itant, or transacts business or wherever venue is
4 proper under section 1391 of title 28. Process in
5 such an action may be served in any district in
6 which the defendant is an inhabitant or in which the
7 defendant may be found.

8 “(6) ACTIONS BY OTHER STATE OFFICIALS.—

9 (A) Nothing contained in this section shall prohibit
10 an authorized State official from proceeding in State
11 court on the basis of an alleged violation of any civil
12 or criminal statute of such State.

13 “(B) In addition to actions brought by an attor-
14 ney general of a State under this subsection, such
15 an action may be brought by officers of such State
16 who are authorized by the State to bring actions in
17 such State on behalf of its residents.

18 “(i) DEFINITIONS.—For purposes of this section:

19 “(1) GENERATION SOURCE DATA.—The term
20 ‘generation source data’ for a sale of electric energy
21 means the fuel or source of energy for the facility
22 or facilities generating the electric energy, calculated
23 in such manner as the Commission, in consultation
24 with the Secretary shall, prescribe by rule.

1 “(2) EMISSIONS DATA.—The term ‘emissions
2 data’ for a sale of electric energy means the emis-
3 sions of criteria air pollutants, carbon dioxide, and
4 any other air or water pollutant specified by the
5 Commission, in consultation with the Administrator
6 and the Secretary, by rule associated with a facility
7 or facilities generating such energy calculated in
8 such manner as the Administrator, in consultation
9 with the Secretary, may prescribe by rule.

10 “(3) CRITERIA AIR POLLUTANT.—The term
11 ‘criteria air pollutant’ means an air pollutant for
12 which an ambient air quality standard has been pre-
13 scribed under section 109 of the Clean Air Act.

14 **“SEC. 14. PRIVACY OF CONSUMER PROPRIETARY INFORMA-**
15 **TION.**

16 “(a) PRIVACY REQUIREMENTS.—Except as required
17 by law or with the prior written affirmative approval of
18 the consumer, any person that receives or obtains cus-
19 tomer information by virtue of its provision of a retail elec-
20 tric service or metering and billing service shall only use,
21 disclose, or permit access to individually identifiable
22 consumer information in its provision of (1) a retail elec-
23 tric service or metering and billing service from which such
24 information is derived, or (2) services necessary to, or used
25 in, the provision of such service.

1 “(b) DISCLOSURE ON REQUEST BY CONSUMERS.—

2 An electric utility or metering and billing service provider
3 shall disclose consumer information, upon affirmative
4 written request by the consumer, to any person designated
5 by the consumer.

6 “(c) AGGREGATE CONSUMER INFORMATION.—Any

7 person that receives or obtains consumer information by
8 virtue of its provision of retail electric service or metering
9 and billing services may use, disclose, or permit access to
10 aggregate consumer information other than for the pur-
11 poses described in subsection (a). An electric utility or me-
12 tering or billing service provider may use, disclose, or per-
13 mit access to aggregate consumer information other than
14 for purposes described in subsection (a) only if it provides
15 such aggregate information to other retail electric service
16 providers on reasonable and nondiscriminatory terms and
17 conditions upon reasonable request therefor.

18 “(d) EXCEPTIONS.—Nothing in this section prohibits

19 an electric utility or metering and billing service provider
20 from using, disclosing, or permitting access to consumer
21 information obtained from its consumers, either directly
22 or indirectly through its agents—

23 “(1) to initiate, render, bill, and collect for re-
24 tail electric services or metering and billing services;

1 “(2) to protect the rights or property of the
2 electric utility or metering and billing service pro-
3 vider, or to protect consumers of those services and
4 other service providers from fraudulent, abusive, un-
5 lawful use of, or subscription to such services; or

6 “(3) for purposes of compliance with any other
7 Federal or State law or regulation authorizing dis-
8 closure of information to a Federal or State agency.

9 “(e) DEFINITIONS.—As used in this section:

10 “(1) CONSUMER INFORMATION.—The term
11 ‘consumer information’ means—

12 “(A) information that relates to the quan-
13 tity, technical configuration, type, destination,
14 and amount of use of a retail electric service
15 subscribed to by any consumer, and that is
16 made available to an electric utility or metering
17 and billing service provider solely by virtue of
18 its business relationship; and

19 “(B) information contained in the bills per-
20 taining to retail electric service received by a
21 consumer.

22 “(2) AGGREGATE CONSUMER INFORMATION.—
23 The term ‘aggregate consumer information’ means
24 collective data that relates to a group or category of
25 services or consumers, from which individual

1 consumer identities and characteristics have been re-
2 moved.”.

3 **SEC. 126. FEDERAL RENEWABLES POLICY.**

4 (a) MINIMUM RENEWABLE GENERATION REQUIRE-
5 MENT.—Every person who generates, and sells to any
6 other person, electric energy shall submit to the Secretary
7 of Energy renewable energy credits (computed in kilowatt-
8 hours) in an amount equal to a specified percentage of
9 its total of such sales in the preceding calendar year. The
10 specified percentage shall be 3 percent for calendar year
11 1998. The Secretary shall annually establish a gradually
12 increasing specified percentage for each calendar year
13 after calendar year 1998 according to a sliding scale such
14 that the specified percentage for the calendar year 2010
15 and thereafter is 10 percent. Nothing in this section shall
16 be construed to prohibit any State from requiring addi-
17 tional renewable energy generation in that State under
18 any program adopted by the State.

19 (b) SUBMISSION OF CREDITS.—A person generating
20 electric energy may satisfy the requirements of subsection
21 (a) through the submission of—

22 (1) renewable energy credits issued by the Sec-
23 retary of Energy under this section for renewable
24 energy generated by such person in such calendar
25 year;

1 (2) renewable energy credits issued by the Sec-
2 retary of Energy under this section to any other per-
3 son for renewable energy generated in such calendar
4 year by such other person and acquired by such per-
5 son; and

6 (3) any combination of the foregoing.

7 (c) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

8 (1) IN GENERAL.—The Secretary of Energy
9 shall establish, by rule after notice and opportunity
10 for hearing but not later than 120 days after the en-
11 actment of this Act, a program to issue renewable
12 energy credits to generators of renewable energy.
13 Renewable energy credits shall be identified by type
14 of generation and facility location (State). Under
15 such program, the Secretary of Energy shall issue
16 one renewable energy credit to any person who gen-
17 erates in any State one unit of electric energy
18 through the use of renewable energy.

19 (2) FEES.—The Secretary of Energy shall im-
20 pose and collect a fee on recipients of renewable en-
21 ergy credits in an amount equal to the administra-
22 tive costs of issuing, recording, monitoring the sale
23 or exchange, and tracking of such credits. The fail-
24 ure or refusal of any person to pay such fee shall
25 be subject to a civil penalty equal to 2½ times the

1 amount of the unpaid fees. The Secretary of Energy
2 shall bring an action in the appropriate United
3 States district court to collect any unpaid fees and
4 to impose a civil penalty on any person who fails or
5 refuses to pay such fee imposed under this section.

6 (3) PURPA CONTRACTS.—To the extent pur-
7 chases are made by an electric utility from a genera-
8 tor pursuant to section 210 of the Public Utility
9 Regulatory Policies Act of 1978, the electric utility
10 shall be treated for purposes of this section as the
11 generator of such energy unless such generator and
12 utility agree to terminate such contract prior to the
13 expiration date set forth in the contract.

14 (d) SALE OR EXCHANGE.—Renewable energy credits
15 may be sold or exchanged by the person to whom issued
16 or by any other person who acquires the credit. A renew-
17 able energy credit for any year that is not used to satisfy
18 the minimum renewable generation requirement of sub-
19 section (a) for that year may not be carried forward for
20 use in another year. The Secretary of Energy shall pro-
21 mulgate regulations to provide for the issuance, recording,
22 monitoring the sale or exchange, and tracking of such
23 credits and ensuring public disclosure of price information.
24 The Secretary of Energy shall maintain records of all sales

1 and exchanges of credits. No such sale or exchange shall
2 be valid unless recorded by the Secretary of Energy.

3 (e) ENFORCEMENT.—The Secretary of Energy shall
4 bring an action in the appropriate United States district
5 court to impose a civil penalty on any person who fails
6 or refuses to comply with subsection (a). The failure or
7 refusal of any person to submit any required quantity of
8 renewable energy credits shall be subject to a civil penalty
9 of not more than 2½ times the estimated national average
10 market value (as determined by the Secretary of Energy)
11 for the calendar year concerned of such quantity of renew-
12 able energy credits.

13 (f) RULES.—The Secretary of Energy shall promul-
14 gate such rules as may be necessary to carry out this sec-
15 tion, including such rules requiring the submission of such
16 information as may be necessary to verify the annual elec-
17 tric energy generation and renewable energy generation of
18 any person applying for renewable energy credits under
19 this section or to verify and audit the validity of renewable
20 energy credits submitted by any person to the Secretary
21 of Energy.

22 **SEC. 127. UNIVERSAL SERVICE.**

23 (a) PROCEDURES TO REVIEW UNIVERSAL SERVICE
24 REQUIREMENTS.—

1 (1) FEDERAL-STATE JOINT BOARD ON UNIVER-
2 SAL SERVICE.—Within one month after the date of
3 enactment of the this Act, the Commission shall es-
4 tablish a Federal-State Joint Board and institute
5 and refer to the Joint Board a proceeding to rec-
6 ommend uniform universal service support mecha-
7 nisms.

8 (2) STATE ACTION.—In order to support the
9 public benefit certification requirements of section
10 152(b), each State shall consider the recommenda-
11 tions from the Joint Board required by paragraph
12 (1) prior to making the certification of competition
13 under subtitle F of the Public Utility Regulatory
14 Policies Act of 1978. Thereafter, the States should
15 complete any proceeding to implement subsequent
16 recommendations from any Joint Board on universal
17 service within one year after receiving such rec-
18 ommendations.

19 (b) UNIVERSAL SERVICE PRINCIPLES.—The Joint
20 Board and the States should base policies for the preserva-
21 tion and advancement of universal service on the following
22 principles:

23 (1) QUALITY AND RATES.—Quality services
24 should be available at just, reasonable, and afford-
25 able rates.

1 (2) ACCESS TO ADVANCED SERVICES.—Access
2 to advanced electric services should be provided in
3 all regions of the Nation.

4 (3) ACCESS IN RURAL AND HIGH COST
5 AREAS.—Consumers in all regions of the Nation, in-
6 cluding low-income consumers and those in rural, in-
7 sular, and high cost areas, should have access to
8 electric services, including advanced services, that
9 are reasonably comparable to those services provided
10 in urban areas within the same region and that are
11 available at rates that are reasonably comparable to
12 rates charged for similar services in such urban
13 areas. Nothing in this paragraph shall result in any
14 preference for centralized generation or for the ex-
15 tension of existing retail distribution facilities.

16 (4) EQUITABLE AND NONDISCRIMINATORY CON-
17 TRIBUTIONS.—All providers of electric services
18 should make an equitable and nondiscriminatory
19 contribution to the preservation and advancement of
20 universal service.

21 (5) SPECIFIC AND PREDICTABLE SUPPORT
22 MECHANISMS.—There should be specific, predictable
23 and sufficient mechanisms to preserve and advance
24 universal service.

1 (6) ADDITIONAL PRINCIPLES.—Such other
2 principles as the Joint Board and the States deter-
3 mine are necessary and appropriate for the protec-
4 tion of the public interest, convenience, and necessity
5 and are consistent with this Act.

6 (c) DEFINITION.—

7 (1) IN GENERAL.—Universal service is an evol-
8 ving level of electric services that the States shall es-
9 tablish periodically under this section, taking into
10 account advances in technologies and services. The
11 Joint Board in recommending, and the States in es-
12 tablishing, the definition of the services that are sup-
13 ported by universal service support mechanisms shall
14 consider the extent to which such services—

15 (A) are essential to public health or public
16 safety;

17 (B) have, through the operation of market
18 choices by customers, been subscribed to by a
19 substantial majority of residential customers;

20 (C) are being deployed in transmission and
21 distribution systems by electric service provid-
22 ers; and

23 (D) are consistent with the public interest,
24 convenience, and necessity.

1 (2) ALTERATIONS AND MODIFICATIONS.—The
2 Joint Board may, from time to time, recommend to
3 the States modifications in the definition of the serv-
4 ices that are supported by universal service support
5 mechanisms.

6 (d) UTILITY CONTRIBUTION.—Every electric utility
7 that provides interstate electric services shall contribute,
8 on an equitable and nondiscriminatory basis, to the spe-
9 cific, predictable, and sufficient mechanisms established
10 by the States to preserve and advance universal service.
11 Any State may exempt a utility or class of utilities from
12 any requirement established by the State consistent with
13 this subsection if the utility's activities are limited to such
14 an extent that the level of such utility's contribution to
15 the preservation and advancement of universal service
16 would be de minimis. Any other provider of electric serv-
17 ices may be required to contribute to the preservation and
18 advancement of universal service if the public interest so
19 requires.

20 (e) STATE AUTHORITY.—A State may adopt regula-
21 tions to preserve and advance universal service. Every
22 electric utility that provides intrastate electric services
23 shall contribute, on an equitable and nondiscriminatory
24 basis, in a manner determined by the State to the preser-
25 vation and advancement of universal service in that State.

1 A State may adopt regulations to provide for additional
2 definitions and standards to preserve and advance univer-
3 sal service within that State.

4 (f) CONSUMER PROTECTION.—The States should en-
5 sure that universal service is available at rates that are
6 just, reasonable, and affordable.

7 (g) SUBSIDY OF COMPETITIVE SERVICES PROHIB-
8 ITED.—An electric utility may not use services that are
9 not competitive to subsidize services that are subject to
10 competition. The States shall establish any necessary cost
11 allocation rules, accounting safeguards, and guidelines to
12 ensure that services included in the definition of universal
13 service bear no more than a reasonable share of the joint
14 and common costs of facilities used to provide those serv-
15 ices.

16 **Subtitle D—General and** 17 **Miscellaneous Provisions**

18 **SEC. 131. DEFINITIONS.**

19 As used in this title:

20 (1) The term “Commission” means the Federal
21 Energy Regulatory Commission, except as otherwise
22 specifically provided.

23 (2) The term “public utility” has the meaning
24 provided by section 201(e) of the Federal Power
25 Act.

1 (3) Except as otherwise specifically provided in
2 this Act, the term “affiliate” means a person that
3 (directly or indirectly) owns or controls, is owned or
4 controlled by, or is under common ownership or con-
5 trol with, another person. For purposes of this para-
6 graph, the term “own” means to own an equity in-
7 terest (or the equivalent thereof) of more than 10
8 percent.

9 (4) The term “arm’s-length relationship”
10 means a relationship between—

11 (A) those business activities conducted by
12 a public utility for its transmission service cus-
13 tomers, distribution service customers, or retail
14 electric customers; and

15 (B) any other business activities conducted
16 by the same corporation or any affiliate or asso-
17 ciate company, where—

18 (i) such business activities are con-
19 ducted in compliance with Commission
20 rules ensuring that—

21 (I) no business activity has any
22 advantage over its competitors due to
23 its affiliation with a business which
24 serves transmission service customers,
25 distribution service customers, or re-

1 tail electric customers who do not
2 have the right to choose their own
3 electric supplier; and

4 (II) no transmission service cus-
5 tomer, distribution service customer
6 or retail electric customer who do not
7 have the right to choose his own elec-
8 tric supplier is disadvantaged due to
9 its affiliation with a competitive enter-
10 prise; and

11 (ii) the public utility has certified that
12 with respect to any resource (whether tan-
13 gible or intangible) owned, or employees
14 employed, by a public utility which is an
15 affiliate or associate of such person, any
16 cost of which has been recovered from the
17 captive customers of such public utility (or,
18 in the case of a registered holding com-
19 pany, from the captive customers of a pub-
20 lic utility which is an affiliate or associate
21 of such public utility), no use of such re-
22 sources or employees shall be made by
23 such public utility or any affiliate or asso-
24 ciate thereof for any purpose other than
25 serving such native load customers, nor

1 shall such resources or employees be sold
2 or transferred to any affiliate or associate
3 therefore, unless such public utility remits
4 to such captive customers, through a pro-
5 cedure found satisfactory by each affected
6 State commission responsible for setting
7 the rates for such customers, the higher of
8 the cost attributable to such use or the
9 market value of such use.

10 (5) The term “diversification” refers to the con-
11 duct of any business activity other than the genera-
12 tion, transmission, distribution or sale of electric en-
13 ergy.

14 (6) The term “economic risk” includes the risk,
15 in any form, that the cost of a resource borne by the
16 consumer at any time in the life of the resource will
17 be below the market value of the resource.

18 (7) The term “effective competition” refers to
19 a market in which no profit-maximizing seller could
20 profitably impose a significant and nontransitory in-
21 crease in price, as determined by the Commission. In
22 determining whether an action is inconsistent with
23 effective competition, the Commission shall take into
24 account the size of market share and the extent of
25 any barriers to entry. For purposes of this para-

1 graph, behavior which is mandated by State law is
2 not inconsistent with effective competition.

3 (8) The term “captive customers” means the
4 group of customers of a public utility who do not
5 have the right to choose their own supplier of elec-
6 tricity.

7 (9) The terms “public utility company”, “elec-
8 tric utility company” and “gas utility company”
9 have the meanings provided by section 2(a) of the
10 Public Utility Holding Company Act of 1935.

11 (10) The term “renewable energy” means solar
12 heat, solar light, wind, geothermal energy, and bio-
13 mass, except for heat from the burning of municipal
14 solid waste.

15 **TITLE II—RELIABILITY**

16 **SEC. 201. ELECTRIC RELIABILITY COUNCILS.**

17 (a) IN GENERAL.—Part II of the Federal Power Act
18 is amended by adding after section 216 the following new
19 section:

20 **“SEC. 217. ELECTRIC RELIABILITY COUNCILS.**

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

22 **“(1) The term ‘electric reliability council’ means**
23 **a self-regulated organization whose membership is**
24 **composed of electric utilities or transmitting utilities**

1 and whose mission to promote the reliability of elec-
2 tricity supply and system.

3 “(2) The term ‘electric reliability system’ means
4 the network of transmission lines and generating
5 units in a given geographic area, operated collabo-
6 ratively by or for their owners, in a manner that
7 promotes the reliability of bulk electric systems.

8 “(b) MEMBERSHIP.—(1) Each electric utility and
9 transmitting utility shall become a member of an electric
10 reliability council.

11 “(2) An electric reliability council may condition
12 membership on meeting standards of operation that the
13 council establishes, and may bar from or suspend the
14 membership of an electric utility or transmitting utility
15 that fails to comply with a condition placed on its member-
16 ship.

17 “(c) RULES.—An electric reliability council shall es-
18 tablish rules that—

19 “(1) permit open access to membership;

20 “(2) assure fair representation of its members
21 in the selection of its directors and management of
22 its affairs;

23 “(3) allocate equitably dues, fees, and other
24 charges among its members;

1 “(4) include standards of utility operation de-
2 signed to foster reliability of electric reliability sys-
3 tems; and

4 “(5) provide a procedure for discipline (includ-
5 ing fines, suspension, expulsion, or other appropriate
6 sanctions of members for violation of this section,
7 rules and regulations issued under this section, and
8 rules of the council.

9 “(d) OVERSIGHT OF ELECTRIC RELIABILITY COUN-
10 CILS.—

11 “(1) The Commission shall oversee the oper-
12 ations of an electric reliability council.

13 “(2) The Commission shall establish procedures
14 for an electric reliability council to apply for reg-
15 istration, shall provide public notice of the applica-
16 tion, and shall afford interested persons the oppor-
17 tunity to submit views on the application. The Com-
18 mission shall register an applicant if the Commission
19 determines that—

20 “(A) the applicant is so organized and has
21 the capacity to carry out the purposes of this
22 section and to comply and enforce compliance
23 of its members with the provisions of this sec-
24 tion, the rules and regulations issued under this
25 section, and the rules of the applicant;

1 “(B) the applicant’s rules comply with sub-
2 section (c) of this section; and

3 “(C) the applicant’s rules do not impose a
4 burden on effective competition that is not nec-
5 essary or appropriate to further the purposes of
6 this section.

7 “(3) An electric reliability council shall file with
8 the Commission for approval any proposed rule or
9 proposed rule change, accompanied by an expla-
10 nation of its basis and purpose. The Commission
11 shall establish procedures, in accordance with part
12 III of this Act, to consider a proposed rule or pro-
13 posed rule change. A proposed rule change takes ef-
14 fect upon Commission approval, except as specified
15 in paragraphs (4) and (5).

16 “(4) A proposed rule or proposed rule change
17 that an electric reliability council designates as—

18 “(A) a stated policy, practice, or interpre-
19 tation with respect to the meaning, administra-
20 tion, or enforcement of an existing rule;

21 “(B) establishment or changes in dues or
22 other council charges; or

23 “(C) concerned solely with administration
24 of the council takes effect upon filing with the
25 Commission.

1 “(5) An electric reliability council may put into
2 effect summarily a proposed rule or proposed rule
3 change that is necessary to protect an electric reli-
4 ability system, subject to subsequent Commission
5 approval.

6 “(6) The Commission may amend the rules of
7 an electric reliability council if the Commission con-
8 siders amendment necessary or appropriate to en-
9 sure the fair administration of the council, to con-
10 form the council rules to the requirements of this
11 section or rules and regulations issued under this
12 section, or to further the purposes of this section or
13 promote effective competition. The Commission shall
14 establish procedures in accordance with part III of
15 this Act to implement this paragraph.

16 “(7) If an electric reliability council imposes a
17 final disciplinary action on a council member, the
18 council shall notify the Commission of that action.
19 The Commission, on its own motion, or upon appli-
20 cation by the member subject to the action, after no-
21 tice and opportunity for hearing in accordance with
22 part III of the Act, may affirm, set aside, or modify
23 the action.

24 “(8) The Commission, by order, may suspend
25 or revoke the registration of an electric reliability

1 council or limit the activities, functions, or oper-
2 ations of a council if it determines that action is
3 necessary or appropriate to protect the electric reli-
4 ability system. If the Commission responds or re-
5 vokes the registration of a council, the Commission
6 shall operate the council until the suspension ex-
7 pires, the revocation is reversed, or another council
8 is in place.

9 “(9) The Commission, by order may suspend or
10 expel a member from a council, or may remove from
11 office an officer or director of the council if the
12 Commission, on the record after notice and oppor-
13 tunity for hearing in accordance with part III of this
14 Act finds that action necessary or appropriate to
15 protect the electric reliability system.

16 “(10) A violation of this section is subject to
17 section 316A, but not subject to section 316 of this
18 Act.”.

19 (b) CONFORMING AMENDMENT.—Section 316A of
20 the Federal Power Act is amended by striking “or 214”
21 and inserting “214, 215, or 217”. Section 316A of such
22 Act is amended by striking “or 214” in each place it ap-
23 pears subsections (a) and (b) and inserting “214, 215, or
24 217”.

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