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To give all American electricity consumers the right to choose among competitive providers of electricity, in order to secure lower electricity rates, higher quality services, and a more robust United States economy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1997

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

A BILL

To give all American electricity consumers the right to choose among competitive providers of electricity, in order to secure lower electricity rates, higher quality services, and a more robust United States economy, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electric Consumers’ Power to Choose Act of 1997”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

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- Sec. 101. Definitions.
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- Sec. 201. Applicability of title; relationship to Public Utility Holding Company Act of 1935.
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TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

- Sec. 301. Application of PURPA provisions.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that:

- 3 (1) Low cost and reliable electricity is integral
- 4 to the vitality of the United States economy, the
- 5 competitiveness of domestically made goods and the
- 6 quality of life of all Americans.

1 (2) Americans consume electricity worth more
2 than \$200 billion a year, approximately half of
3 which is for residential purposes, making the month-
4 ly electric utility bill one of the largest expenses for
5 most households.

6 (3) The cost of electricity has a direct effect on
7 the price, profitability, and competitiveness of goods
8 and services produced in the United States.

9 (4) Lower priced electricity can be realized by
10 giving all American consumers the right to choose
11 among suppliers of electricity in a competitive mar-
12 ket, while maintaining, if not improving, the reliabil-
13 ity of service those consumers have come to expect.

14 (5) The development of vibrant competition in
15 the retail market for electric energy will—

16 (A) reduce the costs of electric energy to
17 even the smallest consumers of electricity;

18 (B) create jobs as American businesses are
19 able to lower costs and better compete in world
20 markets and against foreign competition here at
21 home; and

22 (C) result in a more efficient utility indus-
23 try.

24 (6) Monopoly rate-of-return regulation of elec-
25 tricity has failed. It has stifled competition, resulting

1 in high electricity rates for many consumers and few
2 incentives for technological innovation and good cus-
3 tomer service by electric utilities.

4 (7) High electricity rates are regressive, placing
5 a disproportionate burden on poor ratepayers.

6 (8) High electricity rates divert consumer dol-
7 lars that would otherwise be spent for purchasing
8 necessary goods and services, savings, or invest-
9 ments that benefit the economy as a whole.

10 (9) Congress has authority to enact laws, under
11 the Commerce Clause of the United States Constitu-
12 tion, regarding the generation, transmission, dis-
13 tribution, and sale of electric energy in interstate
14 commerce at the wholesale and retail levels.

15 (10) Only Congress can ensure that a competi-
16 tive retail electricity market is established through-
17 out the United States on an expeditious but orderly
18 basis. Regional and State variations, however, re-
19 quire that State regulatory authorities should receive
20 deference in implementing competition and consumer
21 choice in retail electricity markets.

22 (11) Customers of all utilities, whether served
23 by regulated or nonregulated electric utilities (such
24 as municipally owned utilities or rural cooperatives)

1 should have the same rights to receive the benefits
2 of competition and consumer choice.

3 (12) In a competitive generation market, it is in
4 the national interest to continue to encourage the
5 development of renewable energy technologies in
6 order to ensure energy diversity and security and to
7 protect the environment.

8 (13) A national program is needed to promote
9 renewable energy development that is market driven
10 and encourages competition among different renew-
11 able technologies. This program should be limited in
12 scope and should be terminated when the goals of
13 the program are achieved.

14 (14) Subjecting renewable energy technologies
15 to the discipline of the free market will better allo-
16 cate renewable resources and speed the commer-
17 cialization of renewable technologies than traditional
18 centralized government resource planning.

19 (b) PURPOSE.—The purpose of this Act is to give all
20 American electricity consumers the right to choose among
21 competitive providers of electricity, in order to secure
22 lower electricity rates, higher quality services, and a more
23 robust United States economy.

1 **SEC. 3. SEVERABILITY.**

2 If any provision of this Act, or the application of such
3 provision to any person or circumstance, shall be held in-
4 valid, the remainder of the Act, and the application of
5 such provision to persons or circumstances other than
6 those as to which it is held invalid, shall not be affected
7 thereby.

8 **TITLE I—COMPETITIVE RETAIL**
9 **ELECTRIC ENERGY SERVICE**

10 **SEC. 101. DEFINITIONS.**

11 For purposes of this title:

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

14 (2) The terms “State regulatory authority”,
15 “State regulated electric utility” and “nonregulated
16 electric utility” have the same meaning as such
17 terms have in the Public Utility Regulatory Policies
18 Act of 1978, as provided by section 3 of that Act.

19 (3) The term “retail electric energy service”
20 means each of the following:

21 (A) Electric energy sold for ultimate con-
22 sumption.

23 (B) Aggregating or marketing electric en-
24 ergy for sale for ultimate consumption.

1 (C) Billing and metering services and
2 equipment for electric energy sold for ultimate
3 consumption.

4 (D) Energy management services and
5 equipment for electric energy sold for ultimate
6 consumption.

7 (E) Any other electric service or equipment
8 for which an alternative to that provided by an
9 electric utility is offered to an electric utility re-
10 tail customer of such utility by any person
11 other than such utility.

12 (4) The term “electric utility retail customer”
13 means a person who purchases retail electric energy
14 services.

15 (5) The term “regulated electric utility retail
16 customer” means an electric utility retail customer
17 who is served by the local distribution system of a
18 State regulated electric utility.

19 (6) The term “nonregulated electric utility re-
20 tail customer” means an electric utility retail cus-
21 tomer who is served by the local distribution system
22 of a nonregulated electric utility.

23 (7) The term “affiliate” when used with respect
24 to an electric utility means any person that controls,

1 is controlled by, or is under common control with,
2 such utility.

3 (8) The term “renewable energy” means elec-
4 tricity generated from organic waste, biomass, dedi-
5 cated energy crops, landfill gas, geothermal, solar,
6 tidal, or wind resources.

7 (9) The term “Renewable Energy Credit”
8 means a tradable certificate of proof that one unit
9 (as determined by the Commission) of renewable en-
10 ergy was generated by any person.

11 (10) The term “electric generator” means a
12 person generating electric energy.

13 (11) The term “State” means any State and
14 the District of Columbia.

15 **SEC. 102. CUSTOMER CHOICE.**

16 By no later than December 15, 2000, all electric util-
17 ity retail customers shall have the right to purchase retail
18 electric energy services from any person offering to pro-
19 vide those services to such customers.

20 **SEC. 103. RETAIL COMPETITION FOR STATE REGULATED**
21 **ELECTRIC UTILITIES.**

22 (a) STATE ELECTION.—A State may elect to estab-
23 lish, by no later than December 15, 2000, retail electric
24 service choice in accordance with this Act for retail cus-
25 tomers of State regulated electric utilities in such State.

1 Such election shall be made through submission by the
2 State regulatory authority exercising ratemaking jurisdic-
3 tion over such utilities of a notice to the Commission with-
4 in 6 months after the enactment of this Act. If, within
5 such 6-month period, the State regulatory authority noti-
6 fies the Commission that additional legislative authority
7 is needed in order for the State regulatory authority to
8 make such an election, the 6 month date shall be extended
9 to a date 2 years after the enactment of this Act. Any
10 State that established retail electric service choice for re-
11 tail customers of State regulated electric utilities in such
12 State before the enactment of this Act may submit a no-
13 tice under this section within 6 months after the enact-
14 ment of this Act.

15 (b) CUSTOMER CHOICE AND NONDISCRIMINATORY
16 ACCESS.—If a State elects to establish retail electric serv-
17 ice choice for State regulated electric utility customers, the
18 State regulatory authority exercising ratemaking authority
19 over State regulated electric utilities in the State shall es-
20 tablish such rules as will provide for each of the following:

21 (1) All State regulated electric utility retail cus-
22 tomers of all State regulated utilities under the rate-
23 making jurisdiction of the State regulatory authority

1 shall be able to purchase retail electric energy serv-
2 ices from any person offering to provide those serv-
3 ices to such customers.

4 (2) Any person seeking to provide any retail
5 electric energy service to such customers shall have
6 reasonable and nondiscriminatory access on an
7 unbundled basis, for the purposes of providing such
8 service, to local distribution facilities owned or oper-
9 ated by such State regulated utilities. Access to local
10 distribution facilities shall be provided under rates,
11 terms, and conditions that are just, reasonable and
12 not unduly discriminatory and that permit the recov-
13 ery by the facility owner or operator of all costs in-
14 curred in connection with the local distribution serv-
15 ice and necessary ancillary services. The local dis-
16 tribution services provided shall be at least equal in
17 quality to those provided by the utility to itself or
18 to any affiliate of the utility.

19 (3) Services that are not competitive may not
20 be used to subsidize services that are subject to com-
21 petition.

22 The State regulatory authority shall establish an effective
23 date for the application of the requirements set forth in
24 paragraphs (1) through (3) for all State regulated electric
25 utilities subject to the jurisdiction of such State regulatory

1 authority. Such date (hereinafter in this section referred
2 to as the “effective date for retail electric service choice”)
3 shall not be later than December 15, 2000.

4 (c) PRICING FLEXIBILITY; INCENTIVE-BASED RATE
5 REGULATION.—Each State regulatory authority that
6 makes an election to establish retail electric service choice
7 for retail customers of a State regulated electric utility
8 subject to the jurisdiction of such State regulatory author-
9 ity shall implement, on the effective date of retail electric
10 service choice for such customers, appropriate flexible
11 pricing procedures and incentive-based rate regulation for
12 each retail electric energy service provided by such State
13 regulated electric utility. Such procedures shall afford the
14 utility the opportunity to respond fairly to competition.

15 (d) TERMINATION OF PRICE AND CERTAIN OTHER
16 REGULATION.—Each State regulatory authority that
17 makes an election to establish retail electric service choice
18 for retail customers of any State regulated electric utility
19 shall, on the effective date of such establishment, cease
20 to carry out each of the following with respect to any en-
21 tity that is not providing local distribution services to such
22 customers:

23 (1) Regulation of the prices for retail electric
24 energy services provided by such entity to such cus-
25 tomers.

1 (2) Requiring such entity to file a schedule of
2 charges for retail electric energy services provided by
3 such entity to such customers.

4 (3) Requiring such entity to file cost or revenue
5 projections for retail electric energy services provided
6 by such entity to such customers.

7 (4) Regulation of depreciation charges for facili-
8 ties used by such entity to provide retail electric en-
9 ergy services to such customers.

10 Each such State regulatory authority shall also cease to
11 carry out the activities referred to in paragraphs (1)
12 through (4), and cease to implement subsection (c), with
13 respect to any retail electric energy service provided within
14 a geographic area by a State regulated electric utility that
15 is providing local distribution services within such area if
16 the State regulatory authority determines that such serv-
17 ice is subject to effective competition.

18 (e) CONSIDERATION OF CERTAIN TERMS AND CON-
19 DITIONS.—Each State regulatory authority that makes an
20 election to establish retail electric service choice for retail
21 customers of a State regulated electric utility shall con-
22 sider each of the following terms and conditions and make

1 a determination concerning whether or not it is appro-
2 priate to apply such terms and conditions to the local dis-
3 tribution or sale of retail electric energy services to carry
4 out the purposes of this Act:

5 (1) Terms and conditions intended to insure
6 that adequate electric service is available to all cus-
7 tomers served by the retail distribution system con-
8 cerned.

9 (2) Terms and conditions designed to ensure
10 and enhance the reliability of electric service to all
11 electric energy consumers.

12 (3) Terms and conditions allowing any State
13 regulated electric utility subject to the ratemaking
14 jurisdiction of such State regulatory authority to re-
15 cover costs incurred prior to July 11, 1996, and any
16 costs incurred pursuant to a contract entered into
17 under section 210 of the Public Utility Regulatory
18 Policies Act of 1978.

19 (4) Terms and conditions to promote electric
20 energy efficiency, conservation, and environmental
21 programs.

22 Such terms and conditions may only be imposed on a non-
23 discriminatory and competitively neutral basis.

1 **SEC. 104. RETAIL COMPETITION FOR NONREGULATED**
2 **ELECTRIC UTILITIES.**

3 (a) NONREGULATED UTILITY ELECTION.—A non-
4 regulated electric utility may elect to establish, by no later
5 than December 15, 2000, retail electric service choice for
6 its customers. Such election shall be made through sub-
7 mission, within 6 months after the enactment of this sec-
8 tion, of a notice to the State regulatory authority exercis-
9 ing ratemaking jurisdiction over State regulated utilities
10 in the State in which such nonregulated utility is located.
11 Such notice shall be submitted to the Commission in the
12 case of a State without a State regulatory authority exer-
13 cising ratemaking jurisdiction over State regulated electric
14 utilities. If, within such 6-month period, the utility notifies
15 the State regulatory authority (or the Commission in the
16 case of a State without a State regulatory authority exer-
17 cising ratemaking jurisdiction over State regulated electric
18 utilities) that additional legislative authority is needed in
19 order for the utility to make such an election, the 6 month
20 date shall be extended to a date 2 years after the enact-
21 ment of this section. If a nonregulated electric utility does
22 not elect to establish retail electric service choice for its
23 customers within the required period, such utility shall be
24 subject to the election made under section 103 by the
25 State regulatory authority that has ratemaking authority

1 for State regulated electric utilities in the State. Any non-
2 regulated electric utility that established retail electric
3 service choice for its retail customers before the enactment
4 of this Act may submit a notice under this section within
5 6 months after the enactment of this Act.

6 (b) CUSTOMER CHOICE AND NONDISCRIMINATORY
7 ACCESS.—If a nonregulated electric utility elects to estab-
8 lish retail electric service choice for its retail electric cus-
9 tomers, the utility shall establish such rules as will provide
10 for each of the following:

11 (1) All nonregulated electric utility retail cus-
12 tomers of the utility shall be able to purchase retail
13 electric energy services from any person offering to
14 provide those services to such customers.

15 (2) Any person seeking to provide retail electric
16 energy services to such customers shall have reason-
17 able and nondiscriminatory access on an unbundled
18 basis, for the purposes of providing such services, to
19 all local distribution facilities owned or operated by
20 the utility. Access to local distribution facilities shall
21 be provided under rates, terms, and conditions that
22 are just, reasonable and not unduly discriminatory
23 and that permit the recovery by the utility of all
24 costs incurred in connection with the local distribu-
25 tion services and necessary associated services. The

1 local distribution services provided shall be at least
2 equal in quality to those provided by the utility to
3 itself or to any affiliate of the utility.

4 (3) Services that are not competitive may not
5 be used to subsidize services that are subject to com-
6 petition.

7 The nonregulated electric utility shall establish an effec-
8 tive date for the application of the requirements set forth
9 in paragraphs (1) through (3). Such date (hereinafter in
10 this section referred to as the “effective date for retail
11 electric service choice”) shall not be later than December
12 15, 2000.

13 (c) CONSIDERATION OF CERTAIN TERMS AND CONDI-
14 TIONS.—Each nonregulated electric utility that makes an
15 election to establish retail electric service choice for its
16 customers shall consider each of the following terms and
17 conditions and make a determination concerning whether
18 or not it is appropriate to apply such terms and conditions
19 to the local distribution or sale of retail electric energy
20 services to carry out the purposes of this Act:

21 (1) Terms and conditions intended to insure
22 that adequate electric service is available to all cus-
23 tomers served by the retail electric distribution sys-
24 tem concerned.

1 (2) Terms and conditions designed to ensure
2 and enhance the reliability of electric service to all
3 retail electric customers of the utility.

4 (3) Terms and conditions allowing the nonregu-
5 lated electric utility to recover costs incurred prior to
6 July 11, 1996 and any costs incurred pursuant to
7 a contract entered into under section 210 of the
8 Public Utility Regulatory Policies Act of 1978.

9 (4) Terms and conditions to promote electric
10 energy efficiency, conservation, and environmental
11 programs.

12 Such terms and conditions may only be imposed on a non-
13 discriminatory and competitively neutral basis.

14 (d) PREFERENCE POWER.—No person may resell
15 electric energy purchased by such person pursuant to a
16 long-term firm power contract from any Federal power
17 marketing authority to any other person not directly
18 served by retail distribution facilities owned or operated
19 by such person.

20 **SEC. 105. JURISDICTION OF STATE COURTS.**

21 In addition to the prohibitions on Federal court juris-
22 diction set forth in section 1342 of title 28 of the United
23 States Code, notwithstanding any other provision of law,
24 no court of the United States shall have jurisdiction over
25 any action arising under any provision of section 102, 103,

1 104, 107, or 111 except for review of any action in the
2 Supreme Court of the United States in accordance with
3 sections 1257 and 1258 of title 28 of the United States
4 Code. Any person may bring an action in the appropriate
5 State court to enforce the requirements of sections 102,
6 103, 104, 107, and 111. Except for Supreme Court re-
7 view, any appeal, review, or other action in State court
8 shall be pursuant to any applicable State procedures.

9 **SEC. 106. FERC AUTHORITY FOR CERTAIN UTILITIES.**

10 (a) IN GENERAL.—If a notice under section 103(a)
11 or 104(a) is not submitted by the date applicable under
12 section 103(a) or 104(a) for a State regulated or a non-
13 regulated electric utility, the Commission shall implement
14 by December 15, 2000, subsections (b) through (e) of sec-
15 tion 103 and subsections (b) through (d) of section 104
16 for that State or nonregulated electric utility. The exercise
17 of such authorities pursuant to this section shall preempt
18 any State law that is inconsistent with the exercise of such
19 authorities.

20 (b) FEDERAL COURTS.—The provisions of section
21 105 (relating to jurisdiction of State courts) shall not
22 apply to any action arising under this section. Any person
23 aggrieved by any action of the Commission pursuant to
24 this section may bring an action in the appropriate United
25 States district court for appropriate relief.

1 **SEC. 107. PRIOR STATE ADOPTION.**

2 (a) PRIOR ADOPTION OF CUSTOMER CHOICE.—Noth-
3 ing in this title shall be construed to prohibit any State
4 or State regulatory authority or any nonregulated electric
5 utility from establishing or enforcing any statute, rule, or
6 regulation relating to retail electric service competition
7 prior to December 15, 2000, or to require any State or
8 State regulatory authority or nonregulated electric utility
9 to establish or enforce any statute, rule or regulation relat-
10 ing to retail electric service competition prior to December
11 15, 2000.

12 (b) PRESERVATION OF PRIOR CUSTOMER CHOICE.—

13 (1) STATE REGULATED ELECTRIC UTILITIES.—

14 For any State that established retail electric service
15 choice for State regulated electric utilities before the
16 enactment of this Act, nothing in this title shall be
17 construed to preempt any State statute, rule, or reg-
18 ulation relating to retail electric service choice to the
19 extent that such statute, rule, or regulation satisfies
20 the requirements of subsections (b) through (e) of
21 section 103.

22 (2) NONREGULATED ELECTRIC UTILITIES.—

23 For any nonregulated electric utility that established
24 retail electric service choice for its customers before
25 the enactment of this Act, nothing in this title shall
26 be construed to preempt any State or local statute,

1 rule, or regulation relating to retail electric service
2 choice for such customers to the extent that such
3 statute, rule, or regulation satisfies the requirements
4 of subsections (b) through (d) of section 104.

5 **SEC. 108. ANTITRUST LAWS.**

6 Nothing in this title or the amendments made by this
7 title shall be construed to modify, impair, or supersede the
8 applicability of any of the antitrust laws. As used in this
9 section the term “antitrust laws” includes the Sherman
10 Antitrust Act (15 U.S.C. 1 et seq.) and amendments
11 thereto, the Clayton Act (15 U.S.C. 12 et seq.) and
12 amendments thereto, regulations promulgated under such
13 laws, and Federal court decisions interpreting such laws.

14 **SEC. 109. FERC AUTHORITY FOR TRANSMISSION.**

15 (a) IN GENERAL.—The Commission may, by rule or
16 order, require a transmitting utility (as defined in the
17 Federal Power Act) to provide transmission of electric en-
18 ergy in interstate commerce (including any enlargement
19 of transmission capacity necessary to provide such service)
20 under such terms and conditions as the Commission finds
21 are necessary and appropriate to ensure that customers
22 have access to transmission services under terms and con-
23 ditions (including charges) that are comparable to those
24 under which the transmitting utility uses its own system
25 and are otherwise in the public interest.

1 (b) LIMITATION.—The Commission may not exercise
2 the authority of subsection (a) to require the transmission
3 of electric energy to any electric utility retail customer
4 prior to the effective date for retail electric choice (as de-
5 termined under section 103 or 104) for the electric utility
6 that provides local distribution service to such customer.

7 **SEC. 110. EFFECT ON OTHER AUTHORITIES.**

8 Nothing in this title shall be construed to prohibit
9 the Commission from using any authority of the Commis-
10 sion under part II of the Federal Power Act in fulfilling
11 the requirements of this title, to the extent that such au-
12 thority is not exercised in a manner inconsistent with the
13 provisions of this title.

14 **SEC. 111. BARRIERS TO ENTRY.**

15 (a) NONDISCRIMINATORY ACCESS.—After the effec-
16 tive date for retail electric service choice (as determined
17 under section 103 or 104) for a State regulated or non-
18 regulated electric utility, no State or local legal require-
19 ment (other than a facility siting requirement) may pro-
20 hibit or have the effect of prohibiting any entity from of-
21 fering to any electric utility retail customer of such utility
22 any retail electric energy service or from providing any re-
23 tail electric energy service directly or indirectly to any such
24 customer.

1 (b) STATE AND LOCAL REGULATORY AUTHORITY.—

2 A State or local government may, under State law, impose
3 requirements relating to retail electric energy services nec-
4 essary to ensure that adequate electric service is available
5 to all customers served by the retail distribution system
6 concerned, protect public safety and welfare, ensure the
7 continued quality of electric services and safeguard the
8 rights of consumers to the extent such requirements are
9 imposed on a nondiscriminatory and competitively neutral
10 basis.

11 (c) PARITY OF FRANCHISE AND OTHER CHARGES.—

12 A State or local government, under State law, may impose
13 or collect any franchise, license, permit fee, or equivalent
14 thereof, from any person providing any retail electric en-
15 ergy service as a condition for operating in the State or
16 locality, only to the extent such charge is imposed on a
17 nondiscriminatory and competitively neutral basis.

18 **SEC. 112. ILLEGAL CHANGES IN CUSTOMER SELECTIONS.**

19 (a) PROHIBITION.—No person shall submit or exe-
20 cute a change in the selection made by a regulated utility
21 retail customer or nonregulated utility retail customer of
22 a provider of retail electric energy services except in ac-
23 cordance with such verification procedures as the Commis-
24 sion shall prescribe. Nothing in this section shall preclude

1 any State regulatory authority from proscribing such addi-
 2 tional procedures regarding changes in customer selection
 3 with respect to intrastate retail electric energy services.

4 (b) LIABILITY FOR CHARGES.—Any person who vio-
 5 lates the verification procedures described in subsection
 6 (a) and that collects charges from a customer shall be lia-
 7 ble—

8 (1) to the customer in an amount equal to all
 9 charges paid by such customer after violation; and

10 (2) to the provider of retail electric energy serv-
 11 ice previously selected by the customer in an amount
 12 equal to all charges paid by such customer after vio-
 13 lation.

14 The Commission may prescribe procedures for the recov-
 15 ery of the amounts referred to in paragraphs (1) and (2).

16 The remedies provided by this section are in addition to
 17 any other remedies available by law.

18 **SEC. 113. RENEWABLE ENERGY.**

19 (a) MINIMUM RENEWABLE GENERATION REQUIRE-
 20 MENT.—For calendar years after December 31, 2000,
 21 each electric generator that sells electric energy to any
 22 other person shall submit to the Commission Renewable
 23 Energy Credits in an amount equal to the required annual
 24 percentage of the total electric energy generated by such
 25 generator in the preceding calendar year. In determining

1 the total electric energy generated by any electric genera-
 2 tor, electric energy generated by means of hydroelectric
 3 facilities shall not be taken into account. Nothing in this
 4 section shall be construed to prohibit any State from re-
 5 quiring additional renewable energy generation in that
 6 State under any program adopted by the State.

7 (b) REQUIRED ANNUAL PERCENTAGE.—From cal-
 8 endar year 2001 through calendar year 2004, the required
 9 annual percentage for each electric generator in the State
 10 shall be 2 percent. Thereafter the required annual percent-
 11 age for each such generator shall be as set forth in the
 12 following table:

Calendar year:	Minimum Percentage:
2005	3
2010	4

13 (c) SUBMISSION OF CREDITS.—An electric generator
 14 may satisfy the requirements of subsection (a) through the
 15 submission of—

16 (1) Renewable Energy Credits issued by the
 17 Commission under this section for renewable energy
 18 generated by such electric generator in such cal-
 19 endar year.

20 (2) Renewable Energy Credits issued by the
 21 Commission under this section to any other electric
 22 generator for renewable energy generated in such

1 calendar year by such other generator and acquired
2 by such electric generator.

3 (3) Any combination of the foregoing.

4 A Renewable Energy Credit that is submitted to the Com-
5 mission for any year may not be used for any other pur-
6 poses thereafter.

7 (d) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

8 (1) IN GENERAL.—The Commission shall estab-
9 lish, by rule after notice and opportunity for hearing
10 but not later than 120 days after the enactment of
11 this Act, a program to issue Renewable Energy
12 Credits to electric generators that sell electric energy
13 to any other person. Renewable Energy Credits shall
14 be identified by type of generation and facility loca-
15 tion (State). Under such program, the Commission
16 shall issue one Renewable Energy Credit to any per-
17 son who generates and sells to any other person one
18 unit of electric energy through the use of renewable
19 energy generation.

20 (2) FEES.—The Commission shall impose and
21 collect a fee on recipients of Renewable Energy
22 Credits in an amount equal to the administrative
23 costs of issuing, recording, monitoring the sale or ex-
24 change, and tracking of such credits. The failure or
25 refusal of any person to pay such fee shall be subject

1 to a civil penalty equal to 2 and one-half times the
2 amount of the unpaid fees. The Commission shall
3 bring an action in the appropriate United States dis-
4 trict court to collect any unpaid fees and to impose
5 a civil penalty on any person who fails or refuses to
6 pay such fee imposed under this section.

7 (3) PURPA CONTRACTS.—In the case of re-
8 newable energy sold by the generator to a State reg-
9 ulated electric utility under a contract (including but
10 not limited to a contract entered into before the date
11 of enactment of this Act) that is subject to section
12 210 of the Public Utility Regulatory Policies Act of
13 1978, for the duration of such contract, the utility
14 shall be treated for purposes of the other provisions
15 of this section as the generator of such energy un-
16 less such generator and utility agree to terminate
17 such contract prior to the expiration date set forth
18 in the contract.

19 (e) SALE OR EXCHANGE.—Renewable Energy Credits
20 may be sold or exchanged by the person to whom issued
21 or by any other person who acquires the credit. A Renew-
22 able Energy Credit for any year that is not used to satisfy
23 the minimum renewable generation requirement of sub-
24 section (a) for that year may be not be carried forward
25 for use in another year. The Commission shall promulgate

1 regulations to provide for the issuance, recording, monitor-
2 ing the sale or exchange, and tracking of such credits. The
3 Commission shall maintain records of all sales and ex-
4 changes of credits. No such sale or exchange shall be valid
5 unless recorded by the Commission.

6 (f) ENFORCEMENT.—The Commission shall bring an
7 action in the appropriate United States district court to
8 impose a civil penalty on any person who fails or refuses
9 to comply with subsection (a). The failure or refusal of
10 any person to submit any required quantity of Renewable
11 Energy Credits shall be subject to a civil penalty of not
12 more than 2 and one-half times the estimated national av-
13 erage market value (as determined by the Commission)
14 for the calendar year concerned of such quantity of Re-
15 newable Energy Credits.

16 (g) RULES AND REGULATIONS.—The Commission
17 shall promulgate such rules and regulations as may be
18 necessary to carry out this section, including such rules
19 and regulations requiring the submission of such informa-
20 tion as may be necessary to verify the annual electric en-
21 ergy generation and renewable energy generation of any
22 person applying for Renewable Energy Credits under this
23 section or to verify and audit the validity of Renewable
24 Energy Credits submitted by any person to the Commis-
25 sion.

1 (h) ANNUAL REPORTS.—The Commission shall gath-
 2 er available data and devise measures to gauge compliance
 3 with the requirements of this section and the success of
 4 the National Renewable Energy Trading Program estab-
 5 lished under this section. On an annual basis not later
 6 than May 31 of each year, the Commission shall publish
 7 a report for the previous year that includes compliance
 8 data, National Renewable Energy Trading Program re-
 9 sults, and steps taken to improve the Program results.

10 (i) SUNSET.—The requirements of this section shall
 11 cease to apply 90 days after the Commission certifies in
 12 the annual report under subsection (h) that for the preced-
 13 ing year the market value of Renewable Energy Credits
 14 or the number of credits traded or both has declined to
 15 such nominal levels that the costs incurred by the Com-
 16 mission for issuance, recording, monitoring sale or ex-
 17 change, and tracking of credits is no longer justified.

18 **SEC. 114. JURISDICTIONAL DETERMINATIONS OF TRANS-**
 19 **MISSION AND LOCAL DISTRIBUTION FACILI-**
 20 **TIES.**

21 (a) IN GENERAL.—Section 201(b) of the Federal
 22 Power Act is amended by inserting the following new para-
 23 graphs after paragraph (1) and redesignating paragraph
 24 (2) as paragraph (7):

1 “(2)(A) Any person that provides unbundled retail
2 transmission or distribution of electric energy in interstate
3 commerce shall obtain a jurisdictional determination from
4 the Commission as to which facilities owned, controlled,
5 or operated by such person are or will be facilities used
6 for retail transmission in interstate commerce and there-
7 fore subject to Commission jurisdiction, and which facili-
8 ties are or will be used for local distribution and therefore
9 subject to State jurisdiction.

10 “(B) A person providing services referred to in sub-
11 paragraph (A) as of the date of enactment of this para-
12 graph shall file, within 90 days of the date of enactment
13 of this paragraph, an application for jurisdictional deter-
14 mination under this paragraph. The Commission, after
15 consultation with representatives of affected State com-
16 missions, shall make a jurisdictional determination with
17 respect to the facilities of such person no later than 18
18 months after the date the application is filed.

19 “(C) A person that first provides services referred to
20 in subparagraph (A) after the date of enactment of this
21 paragraph shall file an application for jurisdictional deter-
22 mination under this paragraph no later than 90 days prior

1 to the date that unbundled retail transmission or distribu-
2 tion service is to commence. The Commission, after con-
3 sultation with representatives of the affected State com-
4 missions, shall make a determination with respect to the
5 facilities of such person no later than 1 year after the date
6 the application is filed.

7 “(3) In making a jurisdictional determination under
8 paragraph (2), the Commission shall consider the follow-
9 ing nonexclusive list of factors as indicating that facilities
10 constitute local distribution facilities subject to State ju-
11 risdiction:

12 “(A) Local distribution facilities normally are in
13 close proximity to retail customers.

14 “(B) Local distribution facilities are primarily
15 radial in character.

16 “(C) Power flows into, but rarely out of, local
17 distribution systems.

18 “(D) When power enters a local distribution
19 system, it is not reconsigned or transported on to
20 some other market.

21 “(E) Power entering a local distribution system
22 is consumed in a comparatively restricted geographi-
23 cal area.

1 “(F) Meters are based at the transmission/local
2 distribution interface to measure flows into the local
3 distribution system.

4 “(G) Local distribution systems will be of re-
5 duced voltage.

6 The Commission shall also consider the historical uses of
7 facilities used to deliver electric energy to end users and
8 other technical factors that may be relevant to a jurisdic-
9 tional determination. The Commission shall give deference
10 to State commission recommendations that take into ac-
11 count the factors described in this subsection and shall
12 take into account other factors identified by a State com-
13 mission as relevant to a jurisdictional determination with
14 respect to facilities located in such State.

15 “(4) Once the Commission makes a jurisdictional de-
16 termination under paragraph (2), such determination may
17 not be modified unless the Commission determines there
18 is a material change in facts or circumstances since the
19 time the prior determination was made, or finds that prior
20 representations or facts were incorrect. The Commission
21 may modify a prior jurisdictional determination only after
22 consultation with representatives of the affected State
23 commission.

24 “(5) Any person, State, or State commission ag-
25 grieved by an order making a jurisdictional determination

1 under paragraph (2) may obtain a review of such order
2 in the Circuit Court of Appeals of the United States for
3 any circuit wherein the person to which the order relates
4 is located or has its principal place of business or in the
5 United States Court of Appeals for the District of Colum-
6 bia Circuit, pursuant to section 313.”

7 (b) BYPASS.—(1) Notwithstanding the Federal
8 Power Act, a State or a State regulatory authority (in car-
9 rying out its authority to regulate facilities used for the
10 local distribution of electric energy or for the provision of
11 local distribution service) may require, as a condition for
12 the purchase by any person or municipality of retail elec-
13 tric energy services, the payment of a charge deemed nec-
14 essary by the State or State regulatory authority for any
15 of the following:

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

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

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

24 (D) To fund assistance to low-income cus-
25 tomers.

1 (E) To encourage environmental, renewable en-
 2 ergy, energy efficiency, conservation programs, or
 3 any combination of such programs.

4 (F) to provide for retraining of electric employ-
 5 ees.

6 (G) Any combination of the purposes described
 7 in subparagraphs (A) through (F). Notwithstanding
 8 the Federal Power Act, a nonregulated electric util-
 9 ity may also require, as a condition for the purchase
 10 by any person of retail electric energy services, the
 11 payment of a charge deemed necessary by the non-
 12 regulated electric utility for any of such purposes.

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

17 **TITLE II—PUBLIC UTILITY**
 18 **HOLDING COMPANY ACT OF 1935**

19 **SEC. 201. APPLICABILITY OF TITLE; RELATIONSHIP TO**
 20 **PUBLIC UTILITY HOLDING COMPANY ACT OF**
 21 **1935.**

22 (a) APPLICABILITY OF TITLE.—

23 (1) IN GENERAL.—This section and section 202
 24 take effect on the date of the enactment of this Act.

1 (2) COMPANY-SPECIFIC APPLICABILITY OF
2 OTHER PROVISIONS.—Section 203 and the subse-
3 quent sections of this title take effect for a holding
4 company, and for each public utility company of the
5 holding company, on the date on which, pursuant to
6 subsection (b), the Public Utility Holding Company
7 Act of 1935 ceases to apply to the holding company
8 and to each public utility company of the holding
9 company.

10 (b) APPLICABILITY OF PUBLIC UTILITY HOLDING
11 COMPANY ACT OF 1935; COMPANY-SPECIFIC DETER-
12 MINATIONS BY STATES.—The Public Utility Holding
13 Company Act of 1935 ceases to apply to a holding com-
14 pany, and to each public utility company of the holding
15 company, on the date on which all of the following condi-
16 tions are met:

17 (1) In the case of each electric utility company
18 of the holding company, each State in which such
19 utility company provides electric energy at retail
20 makes a determination that the retail customers of
21 the utility company in such State are able to pur-
22 chase electric energy at retail from any person offer-
23 ing electric energy to the purchaser on a competi-
24 tively neutral and nondiscriminatory basis.

1 (2) In the case of each gas utility company of
2 the holding company, each State in which such util-
3 ity company distributes at retail natural or manufac-
4 tured gas or both (as the case may be) for heat,
5 light, or power makes a determination that the retail
6 customers of the utility company in such State are
7 able to purchase such gas at retail from any person
8 offering such gas to the purchaser on a competitively
9 neutral and nondiscriminatory basis.

10 (3) Each State making a determination under
11 paragraph (1) or (2) notifies the Commission, and
12 the Securities and Exchange Commission, of such
13 determination.

14 **SEC. 202. DEFINITIONS.**

15 For purposes of this title:

16 (1) The term “affiliate” of a company means
17 (A) any company 5 percent or more of whose out-
18 standing voting securities are owned, controlled, or
19 held with power to vote, directly or indirectly, by
20 such company; and (B) any person or class of per-
21 sons that the Commission determines, after appro-
22 priate notice and opportunity for hearing, to stand
23 in such relation, directly or indirectly, to such com-
24 pany that there is likely to be such an absence of
25 arm’s length bargaining in transactions between

1 them as to make it necessary or appropriate in the
2 public interest or for the protection of consumers
3 that such person be subject to the obligations, du-
4 ties, and liabilities imposed in this title upon affili-
5 ates of a company.

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

9 (3) The term “Commission” means the Federal
10 Energy Regulatory Commission.

11 (4) The term “company” means a corporation,
12 a partnership, an association, a joint-stock company,
13 a business trust, or an organized group of persons,
14 whether incorporated or not; or any receiver, trustee,
15 or other liquidating agent of any of the foregoing in
16 his capacity as such.

17 (5) The term “electric utility company” means
18 any company that owns or operates facilities used
19 for the generation, transmission, or distribution of
20 electric energy for sale.

21 (6) The terms “exempt wholesale generator”
22 and “foreign utility company” have the same mean-
23 ings as in sections 32 and 33, respectively, of the
24 Public Utility Holding Company Act of 1935.

1 (7) The term “gas utility company” means any
2 company that owns or operates facilities used for the
3 distribution at retail (other than the distribution
4 only in enclosed portable containers) of natural or
5 manufactured gas for heat, light, or power.

6 (8) The term “holding company” means (A)
7 any company that directly or indirectly owns, con-
8 trols, or holds with power to vote, 10 percent or
9 more of the outstanding voting securities of a public
10 utility company or of a holding company of any pub-
11 lic utility company; and (B) any person, determined
12 by the Commission, after notice and opportunity for
13 hearing, to exercise directly or indirectly (either
14 alone or pursuant to an arrangement or understand-
15 ing with 1 or more other persons) such a controlling
16 influence over the management or policies of any
17 public utility company or holding company as to
18 make it necessary or appropriate for the protection
19 of consumers with respect to rates that such person
20 be subject to the obligations, duties, and liabilities
21 imposed in this title upon holding companies.

22 (9) The term “holding company system” means
23 a holding company, together with its subsidiary com-
24 panies.

1 (10) The term “jurisdictional rates” means
2 rates established by the Commission for the trans-
3 mission of electric energy in interstate commerce,
4 the sale of electric energy at wholesale in interstate
5 commerce, the transportation of natural gas in inter-
6 state commerce, and the sale in interstate commerce
7 of natural gas for resale for ultimate public con-
8 sumption for domestic, commercial, industrial, or
9 any other use.

10 (11) The term “natural gas company” means a
11 person engaged in the transportation of natural gas
12 in interstate commerce or the sale of such gas in
13 interstate commerce for resale.

14 (12) The term “person” means an individual or
15 company.

16 (13) The term “public utility” means any per-
17 son who owns or operates facilities used for trans-
18 mission of electric energy in interstate commerce or
19 sale of electric energy at wholesale in interstate com-
20 merce.

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

23 (15) The term “State commission” means any
24 commission, board, agency, or officer, by whatever
25 name designated, of a State, municipality, or other

1 political subdivision of a State that under the law of
2 such State has jurisdiction to regulate public utility
3 companies.

4 (16) The term “subsidiary company” of a hold-
5 ing company means (A) any company 10 percent or
6 more of the outstanding voting securities of which
7 are directly or indirectly owned, controlled, or held
8 with power to vote, by such holding company; and
9 (B) any person the management or policies of which
10 the Commission, after notice and opportunity for
11 hearing, determines to be subject to a controlling in-
12 fluence, directly or indirectly, by such holding com-
13 pany (either alone or pursuant to an arrangement
14 or understanding with 1 or more other persons) so
15 as to make it necessary or appropriate for the pro-
16 tection of consumers with respect to rates that such
17 person be subject to the obligations, duties, and li-
18 abilities imposed in this title upon subsidiary compa-
19 nies of holding companies.

20 (17) The term “voting security” means any se-
21 curity presently entitling the owner or holder thereof
22 to vote in the direction or management of the affairs
23 of a company.

1 **SEC. 203. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) **HOLDING COMPANIES AND SUBSIDIARIES.**—

3 Every holding company and associate company thereof
4 shall maintain, and make available to the Commission,
5 such books, accounts, documents, and other records as the
6 Commission deems relevant to costs incurred by a public
7 utility or natural gas company that is an associate com-
8 pany of such holding company and necessary or appro-
9 priate for the protection of consumers with respect to ju-
10 risdictional rates.

11 (b) **AFFILIATES AND SUBSIDIARIES.**—Every affiliate
12 of a holding company or of any subsidiary company there-
13 of shall maintain, and make available to the Commission,
14 such books, accounts, documents, and other records with
15 respect to any transaction that is subject to this title, as
16 the Commission deems relevant to costs incurred by a pub-
17 lic utility or natural gas company that is an associate com-
18 pany of such holding company and necessary or appro-
19 priate for the protection of consumers with respect to ju-
20 risdictional rates.

21 (c) **AUTHORITY TO EXAMINE.**—The Commission
22 may examine the books, accounts, documents, and other
23 records of any company in a holding company system, or
24 any affiliate thereof, as the Commission deems relevant
25 to costs incurred by a public utility or natural gas com-
26 pany within such holding company system and necessary

1 or appropriate for the protection of consumers with re-
 2 spect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-
 4 ployee of the Commission shall divulge any fact or infor-
 5 mation that may come to his knowledge during the course
 6 of examination of books, accounts, documents, and other
 7 records as provided in this section, except insofar as he
 8 may be directed by the Commission or by a court of com-
 9 petent jurisdiction.

10 **SEC. 204. EXEMPTION AUTHORITY REGARDING FEDERAL**
 11 **ACCESS.**

12 (a) RULEMAKING.—Not later than 90 days after the
 13 enactment of this Act, the Commission shall promulgate
 14 a final rule to exempt from the requirements of section
 15 203 any person that is a holding company, solely with re-
 16 spect to one or more—

17 (1) qualifying facilities under the Public Utility
 18 Regulatory Policies Act of 1978;

19 (2) exempt wholesale generators; or

20 (3) foreign utility companies.

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

1 any class of transactions is not relevant to the jurisdic-
2 tional rates of a public utility or a natural gas company,
3 the Commission shall exempt such person or transaction
4 from the requirements of section 203.

5 **SEC. 205. STATE ACCESS TO BOOKS AND RECORDS.**

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

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

18 (2) the State commission deems are relevant to
19 costs incurred by such public utility 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) **SAVINGS.**—Nothing in this section shall preempt
24 applicable State law concerning the provision of books, ac-
25 counts, documents, and other records, or in any way limit

1 the rights of a State to obtain books, accounts, documents,
 2 and other records under Federal law, contracts, or other-
 3 wise.

4 (c) COURT JURISDICTION.—Any district court of the
 5 United States located in the State in which the State com-
 6 mission referred to in subsection (a) is located shall have
 7 jurisdiction to enforce compliance with this section.

8 **SEC. 206. AFFILIATE TRANSACTIONS.**

9 Nothing in this title shall preclude the Commission
 10 or a State commission from exercising its jurisdiction
 11 under otherwise applicable law to determine whether a
 12 public utility company may recover in rates any costs of
 13 an activity performed by an associate company, or any
 14 costs of goods or services acquired by such public utility
 15 company from an associate company.

16 **SEC. 207. APPLICATION OF TITLE.**

17 No provision in this title shall apply to, or be deemed
 18 to include—

19 (1) the United States;

20 (2) a State or any political subdivision of a
 21 State;

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

24 (4) any agency, authority, or instrumentality of
 25 any entity referred to in paragraph (1), (2), or (3),

1 or of any corporation that is wholly owned, directly
2 or indirectly by 1 or more of such entities; or
3 (5) any officer, agent, or employee of any entity
4 referred to in paragraph (1), (2), (3), or (4) acting
5 as such in the course of his official duty.

6 **SEC. 208. EFFECT ON OTHER REGULATION.**

7 Nothing in this title shall preclude the Commission
8 or a State commission from exercising its jurisdiction
9 under otherwise applicable law to protect utility consum-
10 ers.

11 **SEC. 209. ENFORCEMENT.**

12 The Commission shall have the same powers as set
13 forth in sections 306 through 317 of the Federal Power
14 Act (16 U.S.C. 825e–825p) to enforce the provisions of
15 this title.

16 **SEC. 210. SAVING PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this title prohibits a
18 person from engaging in or continuing to engage in activi-
19 ties or transactions in which it is legally engaged or au-
20 thorized to engage on the date on which the Public Utility
21 Holding Company Act of 1935 ceases to apply to such
22 person pursuant to this title, provided that it complies
23 with the terms of any such authorization, whether by rule
24 or by order.

1 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
2 Nothing in this title limits the authority of the Commis-
3 sion under the Federal Power Act (including section 301
4 of that Act) or the Natural Gas Act (including section 8
5 of that Act).

6 **SEC. 211. IMPLEMENTATION.**

7 Not later than 18 months after the date of the enact-
8 ment of this Act, the Commission shall—

9 (1) promulgate such regulations as may be nec-
10 essary or appropriate to implement this title; and

11 (2) submit to the Congress detailed rec-
12 ommendations on technical and conforming amend-
13 ments to Federal law necessary to carry out this
14 title and the amendments made by this title.

15 **SEC. 212. TRANSFERS.**

16 All books, accounts, documents, and other records
17 that relate primarily to the functions hereby vested in the
18 Commission under this title shall be transferred from the
19 Securities and Exchange Commission to the Commission.

20 **SEC. 213. CONFORMING CHANGE.**

21 Section 318 of the Federal Power Act (16 U.S.C.
22 825q) is repealed.

1 **TITLE III—PUBLIC UTILITY REG-**
2 **ULATORY POLICIES ACT OF**
3 **1978**

4 **SEC. 301. APPLICATION OF PURPA PROVISIONS.**

5 Section 210 of the Public Utility Regulatory Policies
6 Act of 1978 is amended by adding the following new sub-
7 section at the end thereof:

8 “(m) UTILITIES SUBJECT TO RETAIL COMPETI-
9 TION.—

10 “(1) IN GENERAL.—The preceding provisions of
11 this section requiring electric utilities to offer to pur-
12 chase electric energy from qualifying cogeneration
13 facilities and qualifying small power production fa-
14 cilities at the incremental cost to the utility of alter-
15 native electric energy shall cease to apply to an elec-
16 tric utility if the State makes a determination that
17 the retail customers of such utility in such State are
18 able to purchase electric energy at retail from any
19 person offering electric energy to the purchaser on
20 a competitively neutral and nondiscriminatory basis
21 and if the State notifies the Commission of such de-
22 termination.

23 “(2) RIGHTS AND REMEDIES NOT AFFECTED.—
24 Nothing in the Electric Consumers’ Power to Choose
25 Act of 1997 affects the rights or remedies of any

1 party with respect to the purchase or sale of electric
2 energy or capacity from or to a facility determined
3 to be a qualifying small power production facility or
4 a qualifying cogeneration facility pursuant to this
5 Act.”.

○