

105TH CONGRESS
1ST SESSION

S. 1276

To amend the Federal Power Act, to facilitate the transition to more competitive and efficient electric power markets, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 1997

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Power Act, to facilitate the transition to more competitive and efficient electric power markets, 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 “Federal Power Act
5 Amendments of 1997”.

6 **SEC. 2. CLARIFICATION OF JURISDICTION.**

7 (a) DECLARATION OF POLICY.—Section 201(a) of
8 the Federal Power Act (16 U.S.C. 824(a)) is amended
9 by—

1 (1) inserting after “transmission of electric en-
2 ergy in interstate commerce” the following: “, in-
3 cluding the unbundled transmission of electric en-
4 ergy sold at retail,”; and

5 (2) striking “such Federal regulation, however,
6 to extend only to those matters which are not sub-
7 ject to regulation by the States.” and inserting the
8 following: “such Federal regulation shall not extend,
9 however, to the bundled retail sale of electric energy
10 or to unbundled local distribution service, which are
11 subject to regulation by the States.”.

12 (b) APPLICATION OF PART.—Section 201(b) of the
13 Federal Power Act (16 U.S.C. 824(b)(1)) is amended
14 by—

15 (1) inserting after “the transmission of electric
16 energy in interstate commerce” the following: “, in-
17 cluding the unbundled transmission of electric en-
18 ergy sold at retail,”; and

19 (2) adding at the end the following:

20 “(3) The Commission, after consulting with the
21 appropriate State regulatory authorities, shall deter-
22 mine, by rule or order, which facilities used for the
23 transmission and delivery of electric energy are used
24 for transmission in interstate commerce subject to
25 the jurisdiction of the Commission under this Part,

1 and which are used for local distribution subject to
 2 State jurisdiction.”.

3 (c) DEFINITION OF INTERSTATE COMMERCE.—Sec-
 4 tion 201(c) of the Federal Power Act (16 U.S.C. 824(c))
 5 is amended by inserting after “outside thereof” the follow-
 6 ing: “(including consumption in a foreign country)”.

7 (d) DEFINITIONS OF TYPES OF SALES.—Section
 8 201(d) of the Federal Power Act (16 U.S.C. 824(d)) is
 9 amended by—

10 (1) inserting “(1) after the subsection designa-
 11 tion;

12 (2) adding at the end the following:

13 “(2) The term ‘bundled retail sale of electric
 14 energy’ means the sale of electric energy to an ulti-
 15 mate consumer in which the generation and trans-
 16 mission service are not sold separately.

17 “(3) The term ‘unbundled local distribution
 18 service’ means the delivery of electric energy to an
 19 ultimate consumer if—

20 “(A) the electric energy and the service of
 21 delivering it are sold separately, and

22 “(B) the delivery uses facilities for local
 23 distribution as determined by the Commission
 24 under subsection (b)(3).

1 “(4) The term ‘unbundled transmission of elec-
 2 tric energy sold at retail’ means the transmission of
 3 electric energy to an ultimate consumer if—

4 “(A) the electric energy and the service of
 5 transmitting it are sold separately, and

6 “(B) the transmission uses facilities for
 7 transmission in interstate commerce as deter-
 8 mined by the Commission under subsection
 9 (b)(3).”.

10 (e) DEFINITIONS OF PUBLIC UTILITY.—Section 201
 11 of the Federal Power Act (16 U.S.C. 824) is amended by
 12 striking subsection (e) and inserting the following:

13 “(e) The term ‘public utility’ when used in this Part
 14 or in the Part next following means—

15 “(1) any person who owns or operates facilities
 16 subject to the jurisdiction of the Commission under
 17 this Part (other than facilities subject to such juris-
 18 diction solely by reason of section 210, 211, or 212);
 19 or

20 “(2) any electric utility or Federal power mar-
 21 keting agency not otherwise subject to the jurisdic-
 22 tion of the Commission under this Part, including—

23 “(A) the Tennessee Valley Authority,

24 “(B) a Federal power marketing agency,

1 “(C) a State or any political subdivision of
 2 a State, or any agency, authority, or instrumen-
 3 tality of a State or political subdivision,

4 “(D) a corporation or association that has
 5 ever received a loan for the purpose of provid-
 6 ing electric service from the Administrator of
 7 the Rural Electrification Administration or the
 8 Rural Utilities Service under the Rural Elec-
 9 trification Act of 1936; or

10 “(E) any corporation or association which
 11 is wholly owned, directly or indirectly, by any
 12 one or more of the foregoing,

13 but only with respect to determining, fixing, and
 14 otherwise regulating the rates, terms, and conditions
 15 for the transmission of electric energy under this
 16 Part (including sections 217, 218, and 219).”.

17 (f) APPLICATION OF PART TO GOVERNMENT UTILI-
 18 TIES.—Section 201(f) of the Federal Power Act (16
 19 U.S.C. 824(f)) is amended by striking “No provision” and
 20 inserting “Except as provided in subsection (e)(2) and sec-
 21 tion 3(23), no provision”.

22 (g) DEFINITION OF TRANSMITTING UTILITY.—Sec-
 23 tion 3 of the Federal Power Act (16 U.S.C. 796) is
 24 amended by striking paragraph (23) and inserting the fol-
 25 lowing:

1 “(23) TRANSMITTING UTILITY.—The term
 2 ‘transmitting utility’ means any electric utility,
 3 qualifying cogeneration facility, qualifying small
 4 power production facility, Federal power marketing
 5 agency, or any public utility, as defined in section
 6 201(e)(2), that owns or operates electric power
 7 transmission facilities which are used for the sale of
 8 electric energy.”.

9 **SEC. 3. FEDERAL WHEELING AUTHORITY.**

10 (a) COMMISSION AUTHORITY TO ORDER RETAIL
 11 WHEELING.—

12 (1) Section 211(a) of the Federal Power Act
 13 (16 U.S.C. 824j(a)) is amended by striking “for re-
 14 sale”.

15 (2) Section 212(a) of the Federal Power Act
 16 (16 U.S.C. 824k(a)) is amended by striking “whole-
 17 sale transmission services” each place it appears and
 18 inserting “transmission services”.

19 (3) Section 212(g) of the Federal Power Act
 20 (16 U.S.C. 824k(g)) is repealed.

21 (b) LIMITATION ON COMMISSION AUTHORITY TO
 22 ORDER RETAIL WHEELING.—Section 212 of the Federal
 23 Power Act (16 U.S.C. 824k) is further amended by strik-
 24 ing subsection (h) and inserting the following:

1 “(h) LIMITATION ON COMMISSION AUTHORITY TO
 2 ORDER RETAIL WHEELING.—No rule or order issued
 3 under this Act shall require or be conditioned upon the
 4 transmission of electric energy:

5 “(1) directly to an ultimate consumer in con-
 6 nection with a sale of electric energy to the
 7 consumer unless the seller of such energy is per-
 8 mitted or required under applicable State law to
 9 make such sale to such consumer, or

10 “(2) to, or for the benefit of, an electric utility
 11 if such electric energy would be sold by such utility
 12 directly to an ultimate consumer, unless the utility
 13 is permitted or required under applicable State law
 14 to sell electric energy to such ultimate consumer.”.

15 (c) CONFORMING AMENDMENT.—Section 3 of the
 16 Federal Power Act (16 U.S.C. 796) is amended by strik-
 17 ing paragraph (24) and inserting the following:

18 “(24) TRANSMISSION SERVICES.—The term
 19 ‘transmission services’ means the transmission of
 20 electric energy in interstate commerce.”.

21 **SEC. 4. STATE AUTHORITY TO ORDER RETAIL ACCESS.**

22 Part II of the Federal Power Act is further amended
 23 by adding at the end the following:

1 **“SEC. 215. STATE AUTHORITY TO ORDER RETAIL ACCESS.**

2 “(a) STATE AUTHORITY.—Neither silence on the part
3 of Congress nor any Act of Congress shall be construed
4 to preclude a State or State commission, acting under au-
5 thority of state law, from requiring an electric utility sub-
6 ject to its jurisdiction to provide unbundled local distribu-
7 tion service to any electric consumer within such State.

8 “(b) NONDISCRIMINATORY SERVICE.—If a State or
9 State commission permits or requires an electric utility
10 subject to its jurisdiction to provide unbundled local dis-
11 tribution service to any electric consumer within such
12 State, the electric utility shall provide such service on a
13 not unduly discriminatory basis. Any law, regulation, or
14 order of a State or State commission that results in
15 unbundled local distribution service that is unjust, unrea-
16 sonable, unduly discriminatory, or preferential is hereby
17 preempted.

18 “(c) RECIPROCITY.—Notwithstanding subsection (b),
19 a State or state commission may bar an electric utility
20 from selling electric energy to an ultimate consumer using
21 local distribution facilities in such State if such utility or
22 any of its affiliates owns or controls local distribution fa-
23 cilities and is not itself providing unbundled local distribu-
24 tion service.

25 “(d) STATE CHARGES.—Nothing in this Act shall
26 prohibit a State or State regulatory authority from assess-

1 ing a nondiscriminatory charge on unbundled local dis-
 2 tribution service within the State, the retail sale of electric
 3 energy within the State, or the generation of electric en-
 4 ergy for consumption by the generator within the State.”.

5 **SEC. 5. UNIVERSAL AND AFFORDABLE SERVICE.**

6 Part II of the Federal Power Act is further amended
 7 by adding at the end the following:

8 **“SEC. 216. UNIVERSAL AND AFFORDABLE SERVICE.**

9 “(a) SENSE OF THE CONGRESS.—It is the sense of
 10 the Congress that—

11 “(1) every consumer of electric energy should
 12 have access to electric energy at reasonable and af-
 13 fordable rates, and

14 “(2) the Commission and the States should en-
 15 sure that competition in the electric energy business
 16 does not result in the loss of service to rural, resi-
 17 dential, or low-income consumers.

18 “(b) CONSIDERATION AND REPORTS.—Any State or
 19 State commission that requires an electric utility subject
 20 to its jurisdiction to provide unbundled local distribution
 21 service shall—

22 “(1) consider adopting measures to—

23 “(A) ensure that every consumer of electric
 24 energy within such State shall have access to

1 electric energy at reasonable and affordable
2 rates, and

3 “(B) prevent the loss of service to rural,
4 residential, or low-income consumers; and

5 “(2) report to the Commission on any measures
6 adopted under paragraph (1).”.

7 **SEC. 6. NATIONAL ELECTRIC RELIABILITY STANDARDS.**

8 Part II of the Federal Power Act is further amended
9 by adding at the end the following:

10 **“SEC. 217. NATIONAL ELECTRIC RELIABILITY STANDARDS.**

11 “(a) RELIABILITY STANDARDS.—The Commission
12 shall establish and enforce national electric reliability
13 standards to ensure the reliability of the electric trans-
14 mission system.

15 “(b) DESIGNATION OF NATIONAL AND REGIONAL
16 COUNCILS.—

17 “(1) For purposes of establishing and enforcing
18 national electric reliability standards under sub-
19 section (a), the Commission may designate an ap-
20 propriate number of regional electric reliability coun-
21 cils composed of electric utilities or transmitting util-
22 ities, and one national electric reliability council
23 composed of designated regional electric reliability
24 councils, whose mission is to promote the reliability
25 of electric transmission system.

1 “(2) The Commission shall not designate a re-
2 gional electric reliability council unless the Commis-
3 sion determines that the council—

4 “(A) permits open access to membership
5 from all entities engaged in the business of sell-
6 ing, generating, transmitting, or delivering elec-
7 tric energy within its region;

8 “(B) provides fair representation of its
9 members in the selection of its directors and
10 the management of its affairs; and

11 “(C) adopts and enforces appropriate
12 standards of operation designed to promote the
13 reliability electric transmission system.

14 “(c) INCORPORATION OF COUNCIL STANDARDS.—
15 The Commission may incorporate, in whole or in part, the
16 standards of operation adopted by the regional and na-
17 tional electric reliability councils in the national electric
18 reliability standards adopted by the Commission under
19 subsection (a).

20 “(d) ENFORCEMENT.—The Commission may, by rule
21 or order, require any public utility or transmitting utility
22 to comply with any standard adopted by the Commission
23 under this section.

1 **SEC. 7. SITING NEW INTERSTATE TRANSMISSION FACILI-**
2 **TIES.**

3 Part II of the Federal Power Act is further amended
4 by adding at the end the following:

5 **“SEC. 218. SITING NEW INTERSTATE TRANSMISSION FACILI-**
6 **TIES.**

7 “(a) COMMISSION AUTHORITY.—Whenever the Com-
8 mission, after notice and opportunity for hearing, finds
9 such action necessary or desirable in the public interest,
10 it may order a transmitting utility to enlarge, extend, or
11 improve its facilities for the interstate transmission of
12 electric energy.

13 “(b) PROCEDURE.—The Commission may commence
14 a proceeding for the issuance of an order under subsection
15 (a) upon the application of an electric utility, transmitting
16 utility, or state regulatory authority, or upon its own mo-
17 tion.

18 “(c) COMPLIANCE WITH OTHER LAWS.—Commis-
19 sion action under this section shall be subject to the Na-
20 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
21 et seq.) and all other applicable state and federal laws.

22 “(d) USE OF JOINT BOARDS.—Before issuing an
23 order under subsection (a), the Commission shall refer the
24 matter to a joint board appointed under section 209(a)
25 for advice and recommendations on the need for, design
26 of, and location of the proposed enlargement, extension,

1 or improvement. The Commission shall consider the advice
 2 and recommendations of the Board before ordering such
 3 enlargement, extension, or improvement.

4 “(e) LIMITATION ON AUTHORITY.—The Commission
 5 shall have no authority to compel a transmitting utility
 6 to extend or improve its transmission facilities if such en-
 7 largement, extension, or improvement would unreasonably
 8 impair the ability of the transmitting utility to render ade-
 9 quate service to its customers.”.

10 **SEC. 8. REGIONAL INDEPENDENT SYSTEM OPERATORS.**

11 Part II of the Federal Power Act is further amended
 12 by adding at the end the following:

13 **“SEC. 219. REGIONAL INDEPENDENT SYSTEM OPERATORS.**

14 “(a) REGIONAL TRANSMISSION SYSTEMS.—When-
 15 ever the Commission finds such action necessary or desir-
 16 able in the public interest to ensure the fair and non-dis-
 17 criminatory access to transmission services within a re-
 18 gion, the Commission may order the formation of a re-
 19 gional transmission system and may order any transmit-
 20 ting utility operating within such region to participate in
 21 the regional transmission system.

22 “(b) OVERSIGHT BOARD.—The Commission shall ap-
 23 point a regional oversight board to oversee the operation
 24 of the regional transmission system. Such oversight board
 25 shall be composed of a fair representation of all of the

1 transmitting utilities participating in the regional trans-
 2 mission system, electric utilities and consumers served by
 3 the system, and State regulatory authorities within the re-
 4 gion. The regional oversight board shall ensure that the
 5 independent system operator formulates policies, operates
 6 the system, and resolves disputes in a fair and non-dis-
 7 criminatory manner.

8 “(c) INDEPENDENT SYSTEM OPERATOR.—The re-
 9 gional oversight board shall appoint an independent sys-
 10 tem operator to operate the regional transmission system.
 11 No independent system operator shall—

12 “(1) own generating facilities or sell electric en-
 13 ergy, or

14 “(2) be subject to the control of, or have a fi-
 15 nancial interest in, any electric utility or transmit-
 16 ting utility within the region served by the independ-
 17 ent system operator.

18 “(d) COMMISSION RULES.—The Commission shall es-
 19 tablish rules necessary to implement this section.”.

20 **SEC. 9. ENFORCEMENT.**

21 “(a) GENERAL PENALTIES.—Section 316(c) of the
 22 Federal Power Act (16 U.S.C. 825o(c)) is amended by—

23 (1) striking “subsection” and inserting “sec-
 24 tion”; and

1 (2) striking “or 214” and inserting: “214, 217,
2 218, or 219”.

3 “(b) CIVIL PENALTIES.—Section 316A of the Fed-
4 eral Power Act (16 U.S.C. 825o–1) is amended by striking
5 “or 214” each place it appears and inserting: “214, 217,
6 218, or 219”.

7 **SEC. 10. AMENDMENT TO THE PUBLIC UTILITY REGU-**
8 **LATORY POLICIES ACT.**

9 Section 210 of the Public Utility Regulatory Policies
10 Act of 1978 (16 U.S.C. 824a–3) is amended by adding
11 at the end the following:

12 “(m) PROTECTION OF EXISTING WHOLESALE
13 POWER PURCHASE CONTRACTS.—No State or State regu-
14 latory authority may bar a State regulated electric utility
15 from recovering the cost of electric energy the utility is
16 required to purchase from a qualifying cogeneration facil-
17 ity or qualifying small power production facility under this
18 section.”.

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