

105TH CONGRESS
1ST SESSION

S. 1401

To provide for the transition to competition among electric energy suppliers for the benefit and protection of consumers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. BUMPERS (for himself and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for the transition to competition among electric energy suppliers for the benefit and protection of consumers, 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 “Transition to Electric Competition Act of 1997”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Severability.

Sec. 5. Enforcement.

TITLE I—RETAIL COMPETITION

Sec. 101. Mandatory retail access.
 Sec. 102. Aggregation.
 Sec. 103. Prior implementation.
 Sec. 104. State regulation.
 Sec. 105. Retail stranded cost recovery.
 Sec. 106. Wholesale stranded cost recovery.
 Sec. 107. Lost retail benefits.
 Sec. 108. Universal service.
 Sec. 109. Public benefits.
 Sec. 110. Renewable energy.
 Sec. 111. Determination of local distribution facilities.
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TITLE II—PUBLIC UTILITY HOLDING COMPANIES

Sec. 201. Repeal of the Public Utility Holding Company Act of 1935.
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 Sec. 204. States access to books and records.
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TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT

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 Sec. 302. Facilities.
 Sec. 303. Contracts.
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 Sec. 305. Effective date.

TITLE IV—ENVIRONMENTAL PROTECTION

Sec. 401. Study.

TITLE V—BONNEVILLE POWER ADMINISTRATION

Sec. 501. Findings and purposes.
 Sec. 502. Columbia River fish and wildlife coordination and governance.
 Sec. 503. Pacific Northwest federal transmission access.
 Sec. 504. Transition cost mechanism.
 Sec. 505. Independent system operator participation.
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 Sec. 507. Prohibition on retail sales.
 Sec. 508. Clarification of Commission authority.

Sec. 509. Repealed statute.

TITLE VI—TENNESSEE VALLEY AUTHORITY

Sec. 601. Competition in service territory.

Sec. 602. Ability to sell electric energy.

Sec. 603. Termination of contracts.

Sec. 604. Rates for electric energy.

Sec. 605. Privatization study.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (a) Congress has the authority to enact laws, under
4 the Commerce Clause of the United States Constitution,
5 regarding the wholesale and retail generation, trans-
6 mission, distribution, and sale of electric energy in inter-
7 state commerce.

8 (b) Several States have taken steps to require com-
9 petition among retail electric suppliers and a large number
10 of other States are expected to act.

11 (c) It has been the policy of Congress and the Com-
12 mission to promote competition among wholesale electric
13 suppliers.

14 (d) It is in the public interest that the transition to-
15 wards competition in electric service ensures that all con-
16 sumers receive reliable and competitively-priced electric
17 service.

18 (e) Electric utility companies that prudently incurred
19 costs pursuant to a regulatory structure that required
20 them to provide electricity to consumers should not be pe-
21 nalized during the transition to competition.

1 (f) Consumers will not benefit from the introduction
2 of competition among electric energy suppliers if certain
3 suppliers have undue market power.

4 (g) It is important to encourage conservation and the
5 use of renewable resources to reduce reliance on fossil
6 fuels, promote domestic energy security and protect the
7 environment.

8 (h) Competition among electric energy suppliers
9 should not degrade reliability nor cause consumers to lose
10 electric service.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act:

13 (a) The term “affiliate” of a specific company means
14 any company 5 percent or more of whose outstanding vot-
15 ing securities are owned, controlled, or held with power
16 to vote, directly or indirectly, by such specific company.

17 (b) The term “aggregator” means any person that
18 purchases or acquires retail electric energy on behalf of
19 two or more consumers.

20 (c) The term “ancillary services” shall have the same
21 meaning assigned to it by the Commission.

22 (d) The term “associate company” of a company
23 means any company in the same holding company system
24 with such company.

1 (e) The term “Commission” means the Federal En-
2 ergy Regulatory Commission.

3 (f) The term “company” means a corporation, joint
4 stock company, partnership, association, business trust,
5 organized group of persons, whether incorporated or not,
6 or a receiver or receivers, trustee or trustees of any of
7 the foregoing.

8 (g) The term “corporation” means any corporation,
9 joint-stock company, partnership, association, rural elec-
10 tric cooperative, municipal utility, business trust, orga-
11 nized group of persons, whether incorporated or not, or
12 a receiver or receivers, trustee or trustees of any of the
13 foregoing.

14 (h) The term “electric utility company” means any
15 company that owns or operates facilities used for the gen-
16 eration, transmission or distribution of electric energy for
17 sale.

18 (i) The term “gas utility company” means any com-
19 pany that owns or operates facilities used for distribution
20 at retail (other than the distribution only in enclosed port-
21 able containers) of natural or manufactured gas for heat,
22 light or power.

23 (j) The term “holding company system” means a
24 holding company together with its subsidiary companies.

1 (k) The term “large hydroelectric facility” means a
2 facility which has a power production capacity which, to-
3 gether with any other facilities located at the same site,
4 is greater than 80 megawatts.

5 (l) The term “local distribution facilities” means fa-
6 cilities used to provide retail electric energy for ultimate
7 consumption.

8 (m) The term “lost retail benefits” means the in-
9 creased cost of retail electric energy in a retail electric en-
10 ergy provider’s service territory resulting from the sale
11 subsequent to the implementation of retail electric com-
12 petition, outside such service territory, of electric energy
13 generated at facilities the cost of which were included in
14 the retail rate base of the retail electric energy provider
15 prior to the implementation of retail electric competition.

16 (n) The term “mitigation” means any widely accept-
17 ed business practice used by an electric utility company
18 to dispose of or reduce uneconomic assets or costs.

19 (o) The term “municipal utility” means a city, coun-
20 ty, irrigation district, drainage district, or other political
21 subdivision or agency of a State competent under the laws
22 thereof to carry on the business of a retail electric energy
23 provider and/or a retail electric energy supplier.

24 (p) The term “person” means an individual or cor-
25 poration.

1 (q) The term “public utility company” means an elec-
2 tric utility company or gas utility company but does not
3 mean a qualifying facility as defined in the Public Utility
4 Regulatory Policies Act, or an exempt wholesale generator
5 or a foreign utility company defined in the Energy Policy
6 Act of 1992.

7 (r) The term “public utility holding company” means
8 (A) any company that directly or indirectly owns, controls,
9 or holds with power to vote, 10 percent or more of the
10 outstanding voting securities of a public utility company
11 or of a holding company of any public utility company;
12 and (B) any person, determined by the Securities and Ex-
13 change Commission, after notice and opportunity for hear-
14 ing, to exercise directly or indirectly (either alone or pur-
15 suant to an arrangement or understanding with one or
16 more persons) such a controlling influence over the man-
17 agement or policies of any public utility or holding com-
18 pany as to make it necessary or appropriate for the protec-
19 tion of consumers with respect to rates that such person
20 be subject to the obligations, duties, and liabilities imposed
21 in this title upon holding companies.

22 (s) The term “renewable energy” means electricity
23 generated from solar, wind, waste, including municipal
24 solid waste, biomass, hydroelectric or geothermal re-
25 sources.

1 (t) The term “Renewable Energy Credit” means a
2 tradable certificate of proof that one unit (as determined
3 by the Commission) of renewable energy was generated
4 by any person.

5 (u) The term “retail electric competition” means the
6 ability of each consumer in a particular State to purchase
7 retail electric energy from any person seeking to sell elec-
8 tric energy to such consumer.

9 (v) The term “retail electric energy” means electric
10 energy and ancillary services sold for ultimate consump-
11 tion.

12 (w) The term “retail electric energy provider” means
13 any person who distributes retail electric energy to con-
14 sumers regardless of whether the consumers purchase
15 such energy from the provider or an alternative supplier.
16 A retail electric energy provider may also be a retail elec-
17 tric energy supplier.

18 (x) The term “retail electric energy supplier” means
19 any person which sells retail electric energy to consumers.

20 (y) The term “retail stranded costs” means all legiti-
21 mate, prudent, verifiable and non-mitigatable costs in-
22 curred by an electric utility company in all of its genera-
23 tion assets which would have been recoverable in retail
24 rates but for the implementation of retail electric competi-
25 tion, less the total market value of these assets after retail

1 electric competition is implemented. Binding power pur-
 2 chase contracts and regulatory assets, the costs of which
 3 would have been recovered but for the implementation of
 4 retail electric competition, shall be considered generation
 5 assets for purposes of this subsection.

6 (z) The term “rural electric cooperative” means a
 7 corporation that is currently paying off a loan for the pur-
 8 poses of providing electric service from the Administrator
 9 of the Rural Electrification Administration or the Rural
 10 Utilities Service under the Rural Electrification Act of
 11 1936.

12 (aa) The term “State” means any State or the Dis-
 13 trict of Columbia.

14 (bb) The term “State regulatory authority” means
 15 the regulatory body of a State or municipality having sole
 16 jurisdiction to regulate rates and charges for the distribu-
 17 tion of electric energy to consumers within the State or
 18 municipality.

19 (cc) The term “subsidiary company” of a holding
 20 company means—

21 (1) any company 10 percent or more of the out-
 22 standing voting securities of which are directly or in-
 23 directly owned, controlled, or held with power to
 24 vote, by such holding company; and

1 (2) any person the management or policies of
2 which the Securities and Exchange Commission,
3 after notice and opportunity for hearing, determines
4 to be subject to a controlling influence, directly or
5 indirectly, by such holding company (either alone or
6 pursuant to an arrangement or understanding with
7 one or more other persons) so as to make it nec-
8 essary for the protection of consumers that such per-
9 son be subject to the obligations, duties, and liabil-
10 ities imposed upon subsidiary companies of public
11 utility holding companies.

12 (dd) The term “transmission system” means all fa-
13 cilities, including federally-owned facilities, transmitting
14 electricity in interstate commerce in a particular region,
15 including all facilities transmitting electricity in the State
16 of Texas and those providing international interconnec-
17 tions, but does not include local distribution facilities as
18 determined by the Commission.

19 (ee) The term “wholesale electric energy” means elec-
20 tric energy and ancillary services sold for resale.

21 (ff) The term “wholesale electric energy supplier”
22 means any person which sells wholesale electric energy.

23 (gg) The term “wholesale stranded costs” shall have
24 the same meaning as in the Commission’s Order No. 888.

1 (hh) The term “voting security” means any security
2 presently entitling the owner or holder thereof to vote in
3 the direction or management of the affairs of a company.

4 **SEC. 4. SEVERABILITY.**

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

11 **SEC. 5. ENFORCEMENT.**

12 (a) VIOLATION OF THE ACT.—If any individual or
13 corporation or any other retail electric energy supplier or
14 provider fails to comply with the requirements of this Act,
15 any aggrieved person may bring an action against such
16 entity to enforce the requirements of this Act in the appro-
17 priate Federal district court.

18 (b) STATE OR COMMISSION ACTION.—Notwithstand-
19 ing any other provision of law, any person seeking redress
20 from an action taken by a State regulatory authority, the
21 Commission or a regulatory board pursuant to this Act
22 shall bring such action in the appropriate circuit of the
23 United States Court of Appeals.

1 **TITLE I—ELECTRIC COMPETITION**

2 **SEC. 101. MANDATORY RETAIL ACCESS.**

3 (a) **CUSTOMER CHOICE.**—Beginning on January 1,
4 2002, each consumer shall have the right to purchase re-
5 tail electric energy from any person offering to sell retail
6 electric energy to such consumer, subject to any limita-
7 tions imposed pursuant to section 104(a) of this Act.

8 (b) **LOCAL DISTRIBUTION AND RETAIL TRANS-**
9 **MISSION FACILITIES.**—Beginning on January 1, 2002, all
10 persons seeking to sell retail electric energy shall have rea-
11 sonable and nondiscriminatory access, on an unbundled
12 basis, to the local distribution and retail transmission fa-
13 cilities of all retail electric energy providers and all ancil-
14 lary services.

15 **SEC. 102. AGGREGATION.**

16 Subject to any limitations imposed pursuant to sec-
17 tion 104(a) of this Act, a group of consumers or any per-
18 son acting on behalf of such group may purchase or ac-
19 quire retail electric energy for the members of the group
20 if they are located in a State or States where there is retail
21 electric competition.

22 **SEC. 103. PRIOR IMPLEMENTATION.**

23 (a) **STATE ACTION.**—Nothing in the Federal Power
24 Act (16 U.S.C. 824 et seq.) shall be deemed to prohibit
25 a State or State regulatory authority, if authorized under

1 State law, from requiring retail electric energy providers
2 selling retail electric energy to consumers in such State
3 to provide reasonable and nondiscriminatory access, on an
4 unbundled basis, to its local distribution facilities and all
5 ancillary services to any retail electric energy supplier
6 prior to January 1, 2002.

7 (b) GRANDFATHER.—Legislation enacted by a State
8 or a regulation issued by a State regulatory authority
9 which has the effect of providing all consumers in such
10 State the opportunity to purchase retail electric energy
11 from any retail electric energy supplier by January 1,
12 2002 and provides electric utility companies with the op-
13 portunity to recover their retail stranded costs as defined
14 by this Act (unless there is an agreement between a State
15 or State regulatory authority and a retail electric energy
16 provider which provides for a different level of recovery),
17 shall be deemed to be in compliance with the requirements
18 of sections 101 and 105 of this Act.

19 (c) RECIPROCITY.—A State or State regulatory au-
20 thority that provides for retail electric competition may
21 preclude any retail electric energy provider selling retail
22 electric energy to consumers in another State and their
23 affiliates from selling retail electric energy to consumers
24 in the State with retail electric competition if the retail
25 electric energy providers does not provide reasonable and

1 nondiscriminatory access, on an unbundled basis, to its
2 local distribution facilities to any retail electric energy sup-
3 plier.

4 **SEC. 104. STATE REGULATION.**

5 (a) STATE REQUIREMENTS.—A State or a State reg-
6 ulatory authority may impose requirements on persons
7 seeking to sell retail electric energy to consumers in that
8 State which are intended to promote the public interest,
9 including requirements related to generation reliability
10 and the provision of information to consumers and other
11 retail electric energy suppliers. Any such requirements
12 must be applied on a nondiscriminatory basis and may not
13 be used to exclude any class of potential suppliers, such
14 as retail electric energy providers, from the opportunity
15 to sell retail electric energy.

16 (b) MAINTENANCE OF STATE AUTHORITY.—Nothing
17 in this Act is intended to prohibit a State from enacting
18 laws or imposing regulations related to retail electric en-
19 ergy service that are consistent with the requirements of
20 this Act.

21 (c) CONTINUED STATE AUTHORITY OVER DISTRIBU-
22 TION.—A State or State regulatory authority may con-
23 tinue to regulate local distribution service currently sub-
24 ject to State regulation, including billing and metering in
25 any manner consistent with this Act.

1 **SEC. 105. RETAIL STRANDED COST RECOVERY.**

2 (a) APPLICATION FOR DETERMINATION.—Except as
3 provided in subsection (b) an electric utility company sub-
4 ject to the ratemaking jurisdiction of a State regulatory
5 authority prior to date of enactment of this Act may sub-
6 mit an application to the State regulatory authority seek-
7 ing a determination to its total stranded costs in that
8 State if—

9 (1) the State regulatory authority has issued a
10 regulation or the State has enacted legislation re-
11 quiring retail electric competition which does not
12 provide for the full recovery of retail stranded costs;
13 or

14 (2) the electric utility company's retail distribu-
15 tion customers have access to retail competition as
16 a result of the requirements of Section 101 of this
17 Act.

18 (3) If a State regulatory authority fails to de-
19 termine the electric utility company's retail stranded
20 costs within 18 months after the date upon which
21 the company applied for a determination of its
22 stranded costs, the Commission shall determine the
23 company's retail stranded costs.

24 (b) NONREGULATED UTILITIES.—A municipal or
25 rural electric cooperative that seeks to recover its retail

1 stranded costs may determine its total retail stranded
2 costs.

3 (c) RIGHT OF RECOVERY.—(1) An electric utility
4 company, municipal utility or retail electric cooperative
5 shall be entitled to full recovery of its retail stranded costs,
6 as determined pursuant to subsection (a) or (b), over a
7 reasonable period of time through a non-bypassable
8 Stranded Cost Recovery Charge imposed on its customers.

9 (2) A rural electric cooperative which sells wholesale
10 electric energy to rural electric cooperative retail electric
11 energy providers or a joint action agency which sells
12 wholesale electric energy to municipal retail electric energy
13 providers may recover wholesale stranded costs from such
14 rural electric cooperative or municipal retail electric en-
15 ergy providers. Such cost recovery shall be deemed a retail
16 stranded cost of the rural electric cooperative or municipal
17 retail energy provider.

18 (d) PROHIBITION ON COST-SHIFTING.—(1) No class
19 of consumers in a State shall be assessed a Stranded Cost
20 Recovery Charge that a State regulatory authority or the
21 Commission, whichever is applicable, determines is in ex-
22 cess of the class' proportional responsibility for the retail
23 electric energy provider's costs that existed prior to the
24 implementation of retail electric competition in such State.

1 (2) Customers of a retail electric energy provider that
 2 serves consumers in more than one State or that is affili-
 3 ated with another retail electric energy provider shall only
 4 be responsible for stranded costs associated with retail
 5 electric competition in the State or area in which such cus-
 6 tomers are located.

7 (e) PRIOR PRUDENCE DETERMINATIONS.—Nothing
 8 in this Act is intended to affect or modify or permit the
 9 modification of a final determination made by the Com-
 10 mission or a State regulatory authority or an agreement
 11 entered into by the Commission or a State regulatory au-
 12 thority with regard to the prudence of any costs associated
 13 with a particular generating facility or contract.

14 **SEC. 106. WHOLESALE STRANDED COST RECOVERY.**

15 (a) COMMISSION REGULATION.—The Commission
 16 shall have sole jurisdiction to determine and provide for
 17 the recovery of wholesale stranded costs associated with
 18 wholesale electric competition with regard to public utili-
 19 ties subject to jurisdiction of the Commission pursuant to
 20 the Federal Power Act.

21 (b) REGIONAL GENERATING FACILITIES.—

22 (1) The consent of Congress is given for the
 23 creation of a regional board if—

24 (A) each State regulatory authority regu-
 25 lating an affiliate of a public utility holding

1 company with affiliate retail electric energy pro-
2 viders serving customers in more than one
3 State elects to join such a board;

4 (B) an affiliate of the public utility holding
5 company owns and/or operates a generating fa-
6 cility and sells power from that facility to two
7 or more affiliates of the same holding company
8 and did not sell retail electric energy prior to
9 January 30, 1997 (hereinafter referred to as
10 the “wholesale generating company”); and

11 (C) the public utility holding company no-
12 tifies each State regulatory authority which reg-
13 ulates a retail electric energy provider affiliated
14 with the holding company that it intends to
15 seek recovery of the wholesale stranded costs
16 associated with the generating facility or facili-
17 ties (described in subsection (b)(1)(B)) owned
18 by the wholesale generating company affiliated
19 with such holding company.

20 (2) The regional board shall be formed if each
21 State regulatory authority elects to create the board
22 within six months after receiving the notification de-
23 scribed in subsection (b)(1)(C). If such elections are
24 not made within the requisite time period, the Com-

1 mission shall assume the responsibilities of the board
2 as described in this section.

3 (3) The regional board shall have 18 months
4 after the date it is formed to determine, on a unani-
5 mous basis, the wholesale stranded costs associated
6 with the generating facility which is the subject of
7 the proceeding and to allocate such costs among the
8 retail electric energy provider affiliates of the public
9 utility holding company on a just and reasonable
10 and nondiscriminatory basis.

11 (4) If the regional board fails to make either or
12 both determinations, as described in subsection
13 (b)(3) in the requisite time period, the Commission
14 shall make the determination or determinations that
15 have yet to be made.

16 (5) After its level of wholesale stranded costs is
17 determined pursuant to this subsection, the whole-
18 sale generating company affiliate of the holding com-
19 pany shall be entitled to fully recover its stranded
20 costs, over a reasonable period of time, from the re-
21 tail electric energy provider affiliates to which it sells
22 electric energy pursuant to the procedures estab-
23 lished by this subsection.

24 (6) A retail electric energy provider's wholesale
25 stranded cost payment obligations pursuant to this

1 subsection shall be deemed retail stranded costs for
2 the purposes of section 105 of this Act.

3 **SEC. 107. LOST RETAIL BENEFITS.**

4 A State may require a retail electric energy provider
5 to compensate its retail customers for lost retail benefits
6 if, after retail competition is implemented, the market
7 value of all of the provider's generating assets in the rate
8 base prior to the implementation of retail electric competi-
9 tion is greater than the total costs of these assets that
10 would have been recoverable in retail rates but for the im-
11 plementation of retail electric competition. No retail elec-
12 tric energy provider shall be required to compensate its
13 customers in an amount that exceeds the increased market
14 value of its generating assets resulting from the implemen-
15 tation of retail electric competition.

16 **SEC. 108. UNIVERSAL SERVICE.**

17 (a) STATE UNIVERSAL SERVICE PROGRAMS.—A
18 State may establish a Universal Service Program that en-
19 sures that all consumers have access to purchase retail
20 electric energy from at least one retail electric energy sup-
21 plier at a just and reasonable rate.

22 (b) SERVICE OBLIGATION.—(1) After January 1,
23 2002, each retail electric energy provider located in a
24 State that has not yet established a Universal Service Pro-
25 gram described in subsection (a) shall be obligated to sell

1 retail electric energy to, or purchase retail electric energy
2 on behalf of, any of its customers in a particular geo-
3 graphic area in which a State regulatory authority or the
4 Commission, if the State regulatory authority fails to
5 make a determination pursuant to a request by an affected
6 person, determines that there is not effective retail electric
7 competition in such area and the consumer has not affirm-
8 atively chosen a retail electric energy supplier.

9 (2) The retail electric energy provider performing the
10 service described in subsection (b)(1) is entitled to a just
11 and reasonable rate from the consumer receiving such
12 service.

13 (c) UNIVERSAL SERVICE FUND.—A State or a State
14 regulatory authority, if authorized by the State, may im-
15 pose a non-bypassable Universal Service Charge on all
16 customers of every retail electric energy provider in such
17 State to fund all or part of the costs of a Universal Service
18 Program, including the partial or full payment of the
19 charges a provider may recover pursuant to subsection
20 (b)(2).

21 **SEC. 109. PUBLIC BENEFITS.**

22 Nothing in this Act shall prohibit a State or State
23 regulatory authority from assessing charges on retail con-
24 sumers of energy to fund public benefits programs such
25 as those designed to aid low-income energy consumers,

1 promote energy research and development or achieve en-
2 ergy efficiency and conservation.

3 **SEC. 110. RENEWABLE ENERGY.**

4 (a) MINIMUM RENEWABLE REQUIREMENT.—Begin-
5 ning on January 1, 2004 and each year thereafter, every
6 retail electric energy supplier shall submit to the Commis-
7 sion Renewable Energy Credits in an amount equal to the
8 required annual percentage of the total retail electric en-
9 ergy sold by such supplier in the preceding calendar year.

10 (b) STATE RENEWABLE ENERGY PROGRAMS.—Noth-
11 ing in this section shall be construed to prohibit any State
12 or any State regulatory authority from requiring addi-
13 tional renewable energy generation in that State under
14 any program adopted by the State.

15 (c) REQUIRED ANNUAL PERCENTAGE.—Beginning in
16 calendar year 2003, the required annual percentage for
17 each retail electric energy supplier shall be 5 percent.
18 Thereafter, the required annual percentage for each such
19 supplier shall be 9 percent beginning in calendar year
20 2008 and 12 percent beginning in calendar year 2013.

21 (d) SUBMISSION OF CREDITS.—A retail electric en-
22 ergy supplier may satisfy the requirements of subsection
23 (a) through the submission of—

1 (1) Renewable Energy Credits issued by the
2 Commission under this section for renewable energy
3 sold by such supplier in such calendar year.

4 (2) Renewable Energy Credits issued by the
5 Commission under this section to any other retail
6 electric energy supplier for renewable energy sold in
7 such calendar year by such other supplier and ac-
8 quired by such retail electric energy supplier.

9 (3) Any combination of the foregoing.

10 A Renewable Energy Credit that is submitted to the Com-
11 mission for any year may not be used for any other pur-
12 pose thereafter.

13 (e) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

14 (1) The Commission shall establish by rule
15 after notice and opportunity for hearing but not
16 later than one year after the date of enactment of
17 this Act, a National Renewable Energy Trading Pro-
18 gram to issue Renewable Energy Credits to retail
19 electric suppliers. Renewable Energy Credits shall be
20 identified by type of generation and the State in
21 which the facility is located. Under such program,
22 the Commission shall issue—

23 (A) one-half of one Renewable Energy
24 Credit to any retail electric energy supplier who

1 sells one unit of renewable energy generated at
2 a large hydroelectric facility;

3 (B) one Renewable Energy Credit to any
4 retail electric energy supplier who sells one unit
5 of renewable energy generated at a facility,
6 other than a large hydroelectric facility, built
7 prior to the date of enactment of this Act; and

8 (C) two Renewable Energy Credits to any
9 retail electric supplier who sells one unit of re-
10 newable energy generated at a facility, other
11 than a large hydroelectric facility, built on or
12 after the date of enactment of this Act.

13 (2) The Commission shall impose and collect a
14 fee on recipients of Renewable Energy Credits in an
15 amount equal to the administrative costs of issuing,
16 recording, monitoring the sale or exchange, and
17 tracking such Credits.

18 (f) SALE OR EXCHANGE.—Renewable Energy Credits
19 may be sold or exchanged by the person issued or the per-
20 son who acquires the Credit. A Renewable Energy Credit
21 for any year that is not used to satisfy the minimum re-
22 newable sales requirement of this section for that year
23 may not be carried forward for use in another year. The
24 Commission shall promulgate regulations to provide for
25 the issuance, recording, monitoring the sale or exchange,

1 and tracking of such Credits. The Commission shall main-
2 tain records of all sales and exchanges of Credits. No such
3 sale or exchange shall be valid unless recorded by the
4 Commission.

5 (g) USE OF PROCEEDS BY BPA.—The Administrator
6 of the Bonneville Power Administration shall use the pro-
7 ceeds from the sale of any Renewable Energy Credit is-
8 sued to the Bonneville Power Administration under this
9 section for its retail electric energy sales to repay the Ad-
10 ministration’s outstanding debt to the United States
11 Treasury and bondholders of securities backed by the Bon-
12 neville Power Administration.

13 (h) RULES AND REGULATIONS.—The Commission
14 shall promulgate such rules and regulations as may be
15 necessary to carry out this section, including such rules
16 and regulations requiring the submission of such informa-
17 tion as may be necessary to verify the annual electric gen-
18 eration and renewable energy generation which is supplied
19 by any person applying for Renewable Energy Credits
20 under this section or to verify and audit the validity of
21 Renewable Energy Credits submitted by any person to the
22 Commission.

23 (i) ANNUAL REPORTS.—The Commission shall gath-
24 er available data and measure compliance with the re-
25 quirements of this section and the success of the National

1 Renewable Energy Trading Program established under
 2 this section. On an annual basis not later than May 31
 3 of each year, the Commission shall publish a report for
 4 the previous year that includes compliance data, National
 5 Renewable Energy Trading Program results, and steps
 6 taken to improve the Program results.

7 (j) SUNSET.—The requirements of this section shall
 8 cease to apply on December 31, 2019.

9 **SEC. 111. DETERMINATION OF LOCAL DISTRIBUTION**
 10 **FACILITIES.**

11 (a) APPLICATION BY STATE REGULATORY AUTHOR-
 12 ITY.—A State regulatory authority may apply to the Com-
 13 mission for a determination whether a particular facility
 14 used for the transportation of electric energy located in
 15 such State is a local distribution facility subject to the ju-
 16 risdiction of that State regulatory authority or is a trans-
 17 mission facility subject to the jurisdiction of the Commis-
 18 sion.

19 (b) COMMISSION FINDINGS.—If an application is
 20 submitted pursuant to subsection (a) the Commission
 21 shall make a determination giving the maximum prac-
 22 ticable deference to the position taken by the State regu-
 23 latory authority, in accordance with the following factors
 24 associated with the facility:

25 (1) function and purpose;

- 1 (2) size;
- 2 (3) location;
- 3 (4) voltage level and other technical characteris-
- 4 tics;
- 5 (5) historic, current and planned usage pat-
- 6 terns;
- 7 (6) interconnection and coordination with other
- 8 facilities; and
- 9 (7) any other factor the Commission deems rel-
- 10 evant.

11 **SEC. 112. TRANSMISSION.**

12 (a) TRANSMISSION REGIONS.—Within two years
13 after the date of enactment of this Act, the Commission
14 shall establish the broadest feasible transmission regions
15 and designate an Independent System Operator to manage
16 and operate the transmission system in each region begin-
17 ning on January 1, 2002. In establishing transmission re-
18 gions and designating Independent System Operators the
19 Commission shall give deference to Independent System
20 Operators approved by the Commission prior to the date
21 of enactment of this Act, if it would be consistent with
22 the requirements of this section.

23 (b) INDEPENDENT SYSTEM OPERATORS.—A person
24 designated as an Independent System Operator shall not
25 be subject to the control of—

1 (1) any person owning any transmission facili-
 2 ties located in the region in which the Independent
 3 System Operator will operate; or

4 (2) any retail electric energy supplier selling re-
 5 tail electric energy to consumers in the region in
 6 which the Independent System Operator will oper-
 7 ate.

8 (c) TRANSMISSION REGULATION.—

9 (1) The Commission shall continue to have au-
 10 thority over the transmission of electric energy in
 11 interstate commerce by the Independent System Op-
 12 erator within the transmission region designated by
 13 the Commission.

14 (2) The Commission shall have authority over
 15 the transmission of electric energy in interstate com-
 16 merce between two or more transmission regions
 17 designated by the Commission.

18 (3) Sections 212(f) and 212(j) of the Federal
 19 Power Act (16 U.S.C. 824k(f)) are repealed effective
 20 January 1, 2002.

21 (4) Section 212(g) of the Federal Power Act
 22 (16 U.S.C. 824k(g)) is amended by adding “prior to
 23 January 1, 2002” immediately following “utilities”.

24 (5) Section 212(h) of the Federal Power Act
 25 (16 U.S.C. 824k(h))—

(A) shall not apply after the date of enactment of this Act where a retail electric energy supplier is seeking access to a transmission facility for the purpose of selling retail electric energy to a consumer located in a State that has authorized retail electric competition prior to January 1, 2002; or

(B) is repealed effective January 1, 2002.

(f) RULES.—On or before January 1, 2001, the Commission shall issue binding rules governing oversight of the Independent System Operators and designed to promote transmission reliability and efficiency and competition among retail and wholesale electric energy suppliers, including rules related to transmission rates that inhibit competition and efficiency.

SEC. 113. COMPETITIVE GENERATION MARKETS.

(a) MERGERS.—

(1) Section 203(a) of the Federal Power Act (16 U.S.C. 824(a)) is amended by adding “including the promotion of competitive wholesale and retail electric generation markets,” immediately following “public interest”.

(2) Section 203 of the Federal Power Act (16 U.S.C. 824b) is further amended by adding at the end the following:

1 “(c) ACQUISITION OF NATURAL GAS UTILITY COM-
2 PANY.—No public utility shall acquire the facilities or se-
3 curities of a natural gas utility company unless the Com-
4 mission finds that such acquisition is in the public inter-
5 est.

6 “(d) DEFINITION.—For purposes of this section, the
7 term ‘natural gas utility company’ means any company
8 that owns or operates facilities used for the transportation
9 at wholesale, or the distribution at retail (other than the
10 distribution only in enclosed portable containers) of natu-
11 ral or manufactured gas for heat, light, or power.”.

12 (b) MARKET POWER.—The Commission may take
13 such actions as it determines are necessary, including the
14 following:

15 (1) ordering the physical connection of generat-
16 ing or transmission facilities,

17 (2) ordering a transmitting utility (as defined
18 in section 3(23) of the Federal Power Act (16
19 U.S.C. 796(23)) to provide transmission services (in-
20 cluding any enlargement of transmission capacity
21 (consistent with applicable state law) necessary to
22 provide such services), or

23 (3) requiring the divestiture of generating or
24 transmission facilities,

1 in order to prohibit any retail or wholesale electric energy
2 supplier or retail electric energy provider or any affiliate
3 thereto, from using its ownership or control of resources
4 to maintain a situation inconsistent with effective competi-
5 tion among retail and wholesale electric suppliers.

6 **SEC. 114. NUCLEAR DECOMMISSIONING COSTS.**

7 To ensure safety with regard to the public health and
8 safe decommissioning of nuclear generating units, any re-
9 tail and wholesale electric energy supplier owning nuclear
10 generating units prior to the date of enactment of this
11 Act shall recover all reasonable costs (as determined by
12 the Commission and relevant State regulatory authorities)
13 associated with Federal and State requirements for the
14 decommissioning of such nuclear generating units pursu-
15 ant to a non-bypassable charge imposed on all consumers
16 located in the service territories purchasing power, or that
17 had purchased power, from such nuclear generating units.
18 In overseeing the non-bypassable charge, a State regu-
19 latory authority may take into account the greater cost
20 responsibility of those consumers which continue to pur-
21 chase power generated at a nuclear unit.

22 **SEC. 115. RIGHT TO KNOW.**

23 Beginning on January 1, 2002, the Commission shall
24 ensure that each retail electric energy supplier discloses
25 to the public information on the types of fuel used to gen-

1 erate the electricity sold by the supplier, including the per-
 2 centage of the electric energy sold by the supplier that is
 3 generated by each fuel type.

4 **SEC. 116. EXEMPTION OF ALASKA AND HAWAII.**

5 This title shall not apply to any person located in
 6 Alaska or Hawaii with regard to any activity or trans-
 7 action occurring in Alaska or Hawaii.

8 TITLE II—PUBLIC UTILITY HOLDING
 9 COMPANIES

10 **SEC. 201. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
 11 **PANY ACT OF 1935.**

12 The Public Utility Holding Company Act of 1935, as
 13 amended, 15 U.S.C. 79 et seq., is hereby repealed, effec-
 14 tive one year from the date of enactment of this Act.

15 **SEC. 202. EXEMPTIONS.**

16 (a) FEDERAL AND STATE AGENCIES.—No provision
 17 of this title shall apply to: (1) the United States, (2) a
 18 State or any political subdivision of a State, (3) any for-
 19 eign governmental authority not operating in the United
 20 States, (4) any agency, authority, or instrumentality of
 21 any of the foregoing, or (5) any officer, agent, or employee
 22 of any of the foregoing acting as such in the course of
 23 his official duty.

24 (b) UNNECESSARY PROVISIONS.—The Commission,
 25 by rule or order, may conditionally or unconditionally ex-

1 empt any person or transaction, or any class or classes
 2 of persons or transactions, from any provision or provi-
 3 sions of this title or of any rule or regulation thereunder,
 4 if the Commission finds that regulation of such person or
 5 transaction is not relevant to the rates of a public utility
 6 company. The Commission shall not grant such as exemp-
 7 tion, except with regard to section 204 of this Act, unless
 8 all affected State regulatory authorities consent.

9 (c) RETAIL COMPETITION.—The provisions of this
 10 title shall not apply to a holding company and every asso-
 11 ciate company of such holding company if the Commission
 12 certifies that the retail customers of every public utility
 13 subsidiary of such holding company have access to retail
 14 electric competition and each State regulatory authority
 15 regulating the retail electric energy provider subsidiaries
 16 of the holding company certify that they will have suffi-
 17 cient access to the holding company's books and records
 18 relevant to their regulatory responsibilities.

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

20 (a) PROVISION OF BOOKS AND RECORDS.—Every
 21 holding company and associate company thereof shall
 22 maintain, and make available to the Commission, such
 23 books, records, accounts, and other documents as the
 24 Commission deems relevant to costs incurred by a public
 25 utility company that is an associate company of such hold-

1 ing company and necessary or appropriate for the protec-
 2 tion of consumers with respect to rates.

3 (b) EXAMINATION OF BOOKS AND RECORDS.—The
 4 Commission may examine the books and records of any
 5 company in a holding company system, or any affiliate
 6 thereof, as the Commission deems relevant to costs in-
 7 curred by a public utility company within such holding
 8 company system and necessary or appropriate for the pro-
 9 tection of consumers with respect to rates.

10 (c) PROTECTED INFORMATION.—No member, officer,
 11 or employee of the Commission shall divulge any fact or
 12 information that may come to his knowledge during the
 13 course of examination of books, accounts, or other infor-
 14 mation as hereinbefore provided, except insofar as he may
 15 be directed by the Commission or by a court.

16 **SEC. 204. STATE ACCESS TO BOOKS AND RECORDS.**

17 (a) PROVISION OF BOOKS AND RECORDS.—Every
 18 holding company and associate company thereof, shall
 19 maintain, and make available to each State regulatory au-
 20 thority regulating the rates of any public utility subsidiary
 21 of such holding company, such books, records, accounts,
 22 and other documents as the State regulatory authority
 23 deems relevant to costs incurred by a public utility com-
 24 pany that is an associate company of such holding com-

pany and necessary or appropriate for the protection of consumers with respect to rates.

(b) PROTECTED INFORMATION.—No member, officer, or employee of a State regulatory authority shall divulge any fact or information that may come to his knowledge during the course of examination of books, accounts, or other information as hereinbefore provided, except insofar as he may be directed by the State regulatory authority or a court.

SEC. 205. AFFILIATE TRANSACTIONS.

(a) INTERAFFILIATE TRANSACTIONS.—Both the Commission, with regard to wholesale rates, and State regulatory authorities, with regard to retail rates, shall have the authority to determine whether a public utility company may recover in rates any costs of goods and services acquired by such public utility company from an associate company after the date of enactment regardless of when the contract for the acquisition of such goods and services was entered into.

(b) ASSOCIATE COMPANIES.—Both the Commission, with regard to wholesale rates, and State regulatory authorities, with regard to retail rates, shall have the authority to determine whether a public utility company may recover in rates any costs associated with an activity performed by an associate company.

1 (c) INTERAFFILIATE POWER TRANSACTIONS.—

2 (1) Each State regulatory authority shall have
3 the authority to examine the prudence of a wholesale
4 electric power purchase made by a public utility,
5 which is not an associate company of a public utility
6 holding company, providing retail electric service
7 subject to regulation by the State regulatory author-
8 ity.

9 (2) Each State regulatory authority shall have
10 the authority to examine the prudence of a wholesale
11 electric power purchase made by a public utility,
12 which is an associate company of a public utility
13 holding company, providing retail electric service
14 subject to regulation by the State regulatory author-
15 ity, provided that the costs related to such purchase
16 have not been allocated among two or more associ-
17 ated companies of such public utility holding com-
18 pany, by the Commission prior to the date of enact-
19 ment and there is no subsequent reallocation after
20 the date of enactment.

21 **SEC. 206. CLARIFICATION OF REGULATORY AUTHORITY.**

22 No public utility which is an associate company of
23 a holding company may recover in rates from wholesale
24 or retail customers any costs (other than wholesale or re-
25 tail stranded costs) not associated with the provision of

1 electric service to such customers, including those direct
2 and indirect costs related to investments not associated
3 with the provision of electric service to those customers,
4 unless the Commission, with regard to wholesale rates, or
5 a State regulatory authority, with regard to retail rates,
6 explicitly consents.

7 **SEC. 207. EFFECT ON OTHER REGULATION.**

8 Nothing in this Act shall preclude a State regulatory
9 authority from exercising its jurisdiction under otherwise
10 application law to protect utility consumers.

11 **SEC. 208. 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. 825d–825p) to enforce the provisions of
15 this title.

16 **SEC. 209. SAVINGS PROVISION.**

17 Nothing in this title prohibits a person from engaging
18 in activities in which it is legally engaged or authorized
19 to engage on the date of enactment of this title provided
20 that it continues to comply with the terms of any author-
21 ization, whether by rule or by order.

22 **SEC. 210. IMPLEMENTATION.**

23 The Commission shall promulgate regulations nec-
24 essary or appropriate to implement this title not later than
25 six months after the date of enactment of this Act.

1 **SEC. 211. RESOURCES.**

2 All books and records that relate primarily to the
3 function hereby vested in the Commission shall be trans-
4 ferred from the Securities and Exchange Commission to
5 the Commission.

6 **TITLE III—PUBLIC UTILITY REGULATORY**
7 **POLICIES ACT**

8 **SEC. 301. DEFINITION.**

9 For purposes of this title, the term “facility” means
10 a facility for the generation of electric energy or an addi-
11 tion to or expansion of the generating capacity of such
12 a facility.

13 **SEC. 302. FACILITIES.**

14 Section 210 of the Public Utility Regulatory Policies
15 Act of 1978 (16 U.S.C. 824a–3) shall not apply to any
16 facility which begins commercial operation after the effec-
17 tive date of this title, except a facility for which a power
18 purchase contract entered into under such section was in
19 effect on such effective date.

20 **SEC. 303. CONTRACTS.**

21 After the effective date of this title or after the date
22 on which retail electric competition, as defined in title I
23 of this Act, is implemented in all of its service territories,
24 whichever is earlier, no public utility company shall be re-
25 quired to enter into a new contract or obligation to pur-

1 chase or sell electric energy pursuant to section 210 of
 2 the Public Utility Regulatory Policies Act of 1978.

3 **SEC. 304. SAVINGS CLAUSE.**

4 Notwithstanding sections 302 and 303, nothing in
 5 this title shall be construed:

6 (a) As granting authority to the Commission, a State
 7 regulatory authority, electric utility company, or electric
 8 consumer, to reopen, force, the renegotiation of, or inter-
 9 fere with the enforcement of power purchase contracts or
 10 arrangements in effect on the effective date of this Act
 11 between a qualifying small power producer and any elec-
 12 tric utility or electric consumer, or any qualifying co-
 13 generator and any electric utility or electric consumer.

14 (b) To affect the rights and remedies of any party
 15 with respect to such a power purchase contract or arrange-
 16 ment, or any requirement in effect on the effective date
 17 of this Act to purchase or to sell electric energy from or
 18 to a qualifying small power production facility or qualify-
 19 ing cogeneration facility.

20 **SEC. 305. EFFECTIVE DATE.**

21 This title shall take effect on January 1, 2002.

22 **TITLE IV—ENVIRONMENTAL PROTECTION**

23 **SEC. 401. STUDY**

24 The Environmental Protection Agency, in consulta-
 25 tion with other relevant federal agencies, shall prepare and

1 submit a report to Congress by January 1, 2000, which
 2 examines the implications of differences in applicable air
 3 pollution emissions standards for wholesale and retail elec-
 4 tric generation competition and for public health and the
 5 environment. The report shall recommend changes to fed-
 6 eral law, if any are necessary, to protect public health and
 7 the environment.

8 TITLE V—BONNEVILLE POWER
 9 ADMINISTRATION

10 **SEC. 501. FINDINGS AND PURPOSES.**

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

12 (1) The multi-purpose Federal Columbia River
 13 Power System’s Federal and non-Federal dams have
 14 provided immeasurable benefits to the Pacific North-
 15 west by providing flood control, renewable hydro-
 16 electric power, irrigation, navigation, and recreation;

17 (2) The dams provide the Northwest with a
 18 continuing source of clean and renewable power but,
 19 along with over-fishing and other natural and
 20 human impacts on the ecosystem, have adversely af-
 21 fected the Columbia Basin’s fish and wildlife;

22 (3) Enactment of the Energy Policy Act of
 23 1992 established competition for the wholesale sup-
 24 ply of electricity, and market forces have driven the
 25 cost of power down nationally, the Northwest in-

1 cluded, and has allowed utilities and large users to
2 buy power at rates below those offered by the Bon-
3 neville Power Administration;

4 (4) Realizing the new economic forces impact-
5 ing electricity, the four Northwest state governors
6 undertook a year-long review in 1996 of the regional
7 electricity system and made recommendations for
8 the future of the system;

9 (5) Among these recommendations is the separa-
10 tion of the transmission and power marketing
11 functions of the Bonneville Power Administration,
12 with Commission oversight of access to Bonneville's
13 transmission system, and undertaking this separa-
14 tion in a way that does not impair Bonneville's abil-
15 ity to meet its obligations to the U.S. Treasury, fish
16 and wildlife programs, and bondholders of the Wash-
17 ington Public Power Supply System;

18 (6) There are ongoing efforts by Bonneville to
19 reduce its costs and require accountability of its
20 funds, including those of its funds used for salmon
21 recovery; and

22 (7) There is a need to provide a regional proc-
23 ess involving the Federal Government, state govern-
24 ments, tribal governments, utilities and other users
25 of the water of the Columbia and Snake River Sys-

1 tem, to balance the multiple objectives of the river
2 system.

3 (b) PURPOSES.—The purposes of this title are:

4 (1) To establish authority in a consolidated re-
5 gional governing body that will balance the multiple
6 uses of the Columbia and Snake River system, for
7 hydroelectric production, for irrigation, for recre-
8 ation, for the protection and enhancement of fish
9 and wildlife populations, and for flood control, with
10 that body to be responsible and accountable for
11 spending funds for these purposes;

12 (2) To facilitate the maintenance of an open
13 transmission system in the Northwest based on
14 Commission rules and to ensure its reliability; and

15 (3) To assure that the Bonneville Power Ad-
16 ministration retains the ability to meet its unique fi-
17 nancial obligations to the U.S. Treasury, to fish and
18 wildlife projects, to the bondholders of the Washing-
19 ton Public Power Supply System, and to remain a
20 competitive wholesale supplier of electricity.

21 **SEC. 502. COLUMBIA RIVER FISH AND WILDLIFE COORDI-**
22 **NATION AND GOVERNANCE.**

23 This section is reserved.

1 **SEC. 503. PACIFIC NORTHWEST FEDERAL TRANSMISSION**
2 **ACCESS.**

3 The Commission's rules on nondiscriminatory open
4 access to transmission services provided by public utilities,
5 including its rules on standards of conduct, shall also
6 apply to transmission services provided by the Bonneville
7 Power Administration, except as otherwise provided by the
8 Commission by rule if it is in the public interest, or except
9 as necessitated by the requirements of section 504 or 506
10 of this Act. Except as provided in sections 504 and 508
11 of this Act, rates for transmission imposed by the Admin-
12 istrator shall continue to be established and reviewed and
13 approved in accordance with the provisions of otherwise
14 applicable Federal laws.

15 **SEC. 504. TRANSITION COST MECHANISM.**

16 If the Bonneville Power Administration proposes a
17 charge to recover its transition costs resulting from this
18 Act, the Energy Policy Act, or the Commission's Order
19 No. 888, a transition cost recovery mechanism shall be
20 developed and adopted by the Commission within 180 days
21 of the filing of the proposal with the Commission.

22 **SEC. 505. INDEPENDENT SYSTEM OPERATOR PARTICIPA-**
23 **TION.**

24 Notwithstanding any other provision of law, the Ad-
25 ministrator of the Bonneville Power Administration may
26 participate in a regulated Independent System Operator

1 subject to the jurisdiction of the Commission pursuant to
2 section 112 of this Act.

3 **SEC. 506. FINANCIAL OBLIGATIONS.**

4 Section 503, 504 and 505 of this Act shall be inter-
5 preted and implemented in a manner that does not ad-
6 versely affect the security of the Bonneville Power Admin-
7 istration's Washington Public Power Supply System net-
8 billing and other third-party financing arrangements.

9 **SEC. 507. PROHIBITION ON RETAIL SALES.**

10 Except as provided in section 5(d) of the Northwest
11 Power Act (16 U.S.C. 839c(d)), the Administrator shall
12 not market, sell or dispose of electric power to any end
13 use or retail customers that did not have a contract for
14 the purchase of electric power with the Administrator for
15 services to specific facilities as of October 1, 1997.

16 **SEC. 508. CLARIFICATION OF COMMISSION AUTHORITY.**

17 Section 7(a)(2) of the Pacific Northwest Electric
18 Power Planning and Conservation Act (16 U.S.C.
19 839e(a)(2)) is amended—

20 (1) by deleting the word “costs,” in paragraph
21 (B);

22 (2) by striking the period at the end of para-
23 graph (C) and inserting in lieu thereof “, and”; and

24 (3) by adding at the end thereof the following
25 new paragraph:

1 “(D) insofar as transmission rates are con-
 2 cerned, the rates do not discriminate between
 3 transmission users or classes of users in a man-
 4 ner that has the effect of unreasonably denying
 5 transmission access under section 503 of this
 6 Act.”

7 **SEC. 509. REPEALED STATUTE.**

8 Section 6 of the Federal Columbia River Trans-
 9 mission System Act (16 U.S.C. 838d) is hereby repealed.

10 **TITLE VI—TENNESSEE VALLEY AUTHORITY**

11 **SEC. 601. COMPETITION IN SERVICE TERRITORY.**

12 Notwithstanding any other provision of law, begin-
 13 ning on January 1, 2002, all retail and wholesale electric
 14 energy suppliers shall have the right to sell retail and
 15 wholesale electric energy to persons that currently pur-
 16 chase retail or wholesale electric energy either directly
 17 from the Tennessee Valley Authority or persons purchas-
 18 ing electric energy from the Tennessee Valley Authority.

19 **SEC. 602. ABILITY TO SELL ELECTRIC ENERGY.**

20 (a) TVA.—Notwithstanding any other provision of
 21 law, the Tennessee Valley Authority may sell wholesale
 22 electric energy to any person, subject to any restrictions
 23 imposed pursuant to Section 104(a) of this Act, beginning
 24 on January 1, 2002.

1 (b) POWER CUSTOMERS.—Notwithstanding any
 2 other provision of law, persons that currently purchase
 3 wholesale electric energy from the Tennessee Valley Au-
 4 thority may sell wholesale and retail electric energy to any
 5 persons subject to any restrictions imposed pursuant to
 6 section 104(a) of this Act, beginning on January 1, 2002.

7 **SEC. 603. TERMINATION OF CONTRACTS.**

8 (a) NOTICE.—Beginning on January 1, 2001, the
 9 Tennessee Valley Authority shall allow any person that
 10 has executed a contract to purchase retail or wholesale
 11 electric energy from it to terminate such contract upon
 12 one year's notice.

13 (b) STRANDED COSTS.—Each person holding a con-
 14 tract that is terminated pursuant to subsection (a) shall
 15 be responsible for retail or wholesale stranded costs as de-
 16 termined by the Commission.

17 **SEC. 604. RATES FOR ELECTRIC ENERGY.**

18 (a) ESTABLISHMENT.—Notwithstanding any other
 19 provision of law, the Board of Directors of the Tennessee
 20 Valley Authority shall establish, and periodically review
 21 and revise, rates for the sale and disposition of wholesale
 22 and retail electric energy and for the transmission of elec-
 23 tric energy by the Tennessee Valley Authority. Such rates
 24 shall be established and, as appropriate, revised to recover,
 25 in accordance with sound business principles, the costs as-

1 sociated with the generation, acquisition, conservation,
 2 transmission, and distribution of electric energy, including
 3 the payment of principal and interest on the Authority's
 4 bonds over a reasonable period.

5 (b) COMMISSION REVIEW.—Rates established under
 6 this section shall become effective only upon confirmation
 7 and approval by the Commission, upon a finding by the
 8 Commission that such rates are sufficient to ensure repay-
 9 ment of the Authority's bonds over a reasonable number
 10 of years after first meeting the Authority's legitimate, pru-
 11 dent, and verifiable costs.

12 **SEC. 605. PRIVATIZATION STUDY.**

13 (a) REQUIREMENT FOR PREPARATION OF STUDY.—
 14 The Board of Directors of the Tennessee Valley Authority
 15 shall prepare a study for selling its electric power program
 16 (excluding dams and appurtenant works and structures)
 17 to private investors and, not later than two years after
 18 the date of enactment of this Act, shall submit such plan
 19 to the Congress.

20 (b) CONTENTS OF STUDY.—The study shall consider
 21 the following—

22 (1) both the sale of the Authority's electric
 23 power program as a whole and the sale of some or
 24 all of its component parts;

1 (2) alternative means of selling the Authority's
2 electric power program or its component parts, in-
3 cluding a public stock offering, a private placement
4 of stock, or the sale of assets; and

5 (3) the effect of any sale on—

6 (A) electric rates and competition in the
7 regional electricity market,

8 (B) the operation of the Authority's
9 nonpower programs, and

10 (C) the repayment of the Authority's debt.

11 (c) ADDITIONAL ELEMENTS.—The study shall also
12 include—

13 (1) An estimate of the amount of revenue that
14 the United States Treasury would receive under
15 each of the alternatives considered;

16 (2) the Board's analysis of the feasibility of
17 each of the alternatives considered and its rec-
18 ommendation either for retaining the Authority's
19 power program under federal ownership or the pre-
20 ferred alternative for selling it to private investors;
21 and

22 (3) the Board's recommendation of whether the
23 Authority's dams should—

24 (A) be transferred to the Department of
25 the Army Corps of Engineers and responsibility

1 for marketing electric energy produced by such
2 dams assigned to the Southeastern Power Mar-
3 keting Administration, or

4 (B) continue to be controlled by, and the
5 electric energy they produce continue to be
6 marketed by the Tennessee Valley Authority.

7 (d) FURTHER ACTION.—The Board of Directors
8 shall take not action to implement the sale of the
9 Authority's power program without further legislation au-
10 thorizing such action.

○