

106TH CONGRESS  
1ST SESSION

# H. R. 1486

To provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1999

Mr. FRANKS of New Jersey (for himself and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Transportation and Infrastructure, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, 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 “Power Marketing Ad-  
5 ministration Reform Act of 1999”.

1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 The Congress finds that:

3 (1) The use of fixed allocations of joint multi-  
4 purpose project costs and the failure to provide for  
5 the recovery of actual interest costs and depreciation  
6 have resulted in substantial failures to recover costs  
7 properly recoverable through power rates by the  
8 Federal Power Marketing Administrations and the  
9 Tennessee Valley Authority and have resulted in the  
10 imposition of unreasonable burdens on the taxpaying  
11 public.

12 (2) Existing under allocations and under recov-  
13 ery of costs have led to inefficiencies in the mar-  
14 keting of Federally generated electric power and to  
15 environmental damage.

16 (3) With the emergence of open access to power  
17 transmission and competitive bulk power markets,  
18 market prices will provide the lowest reasonable  
19 rates consistent with sound business principles, con-  
20 sistent with maximum recovery of costs properly al-  
21 located to power production and consistent with en-  
22 couraging the most widespread use of power mar-  
23 keted by Federal Power Marketing Administrations  
24 and the Tennessee Valley Authority.

1 **SEC. 3. PURPOSE.**

2       The purpose of this Act is to provide for full cost  
3 recovery rates for power sold by Federal Power Marketing  
4 Administrations and the Tennessee Valley Authority and  
5 a transition to market-based rates for such power.

6 **SEC. 4. MODIFICATION OF EXISTING POWER MARKETING**  
7 **ADMINISTRATIONS.**

8       (a) ACCOUNTING.—Notwithstanding any other provi-  
9 sion of law, the Secretary of Energy shall, in consultation  
10 with the Federal Energy Regulatory Commission, imme-  
11 diately upon enactment of this Act develop and implement  
12 procedures to ensure that the Federal Power Marketing  
13 Administrations utilize the same accounting principles and  
14 requirements, including those with respect to the accrual  
15 of actual interest costs during construction and pending  
16 repayment for any project and recognition of depreciation  
17 expenses, as are applied by the Commission to the electric  
18 operations of public utilities.

19       (b) DEVELOPMENT AND SUBMITTAL OF RATES TO  
20 THE COMMISSION.—Notwithstanding any other provision  
21 of law, each Federal Power Marketing Administration and  
22 the Tennessee Valley Authority shall, not later than 1 year  
23 after enactment of this Act (and periodically thereafter  
24 but not less frequently than once each 5 years), submit  
25 to the Federal Energy Regulatory Commission rates for  
26 the sale or disposition of Federal energy that will ensure

1 the recovery of all costs incurred by such Federal Power  
2 Marketing Administration or the Tennessee Valley Au-  
3 thority for the generation and marketing of such Federal  
4 energy. Such costs shall include all fish and wildlife ex-  
5 penditures required under existing treaty and legal obliga-  
6 tions associated with the construction and operation of the  
7 facilities from which the federally marketed power is gen-  
8 erated and sold. Such costs shall not include any cost of  
9 transmitting such Federal energy.

10 (c) COMMISSION REVIEW, APPROVAL OR MODIFICA-  
11 TION.—The Federal Energy Regulatory Commission shall  
12 review and either approve of or modify rates for the sale  
13 or disposition of Federal energy submitted to the Commis-  
14 sion by each Federal Power Marketing Administration and  
15 the Tennessee Valley Authority under this section, to en-  
16 sure that such rates will recover all costs of generating  
17 and marketing such Federal energy (including all fish and  
18 wildlife costs associated with such Federal energy as re-  
19 quired under existing treaty and legal obligations, but not  
20 including any cost of transmitting such Federal energy).  
21 Such review by the Commission shall be based on the  
22 record of proceedings before the Federal Power Marketing  
23 Administration or the Tennessee Valley Authority, except  
24 that all persons shall be afforded an opportunity by the  
25 Commission for an additional hearing in accordance with

1 the procedures established for ratemaking by the Commis-  
2 sion pursuant to the Federal Power Act.

3 (d) APPLICATION OF RATES.—Immediately upon ap-  
4 proval or modification by the Commission of rates under  
5 this section for the sale or disposition of Federal energy  
6 by a Federal Power Marketing Administration or the Ten-  
7 nessee Valley Authority, the Federal Power Marketing Ad-  
8 ministration shall apply such rates, as approved or modi-  
9 fied by the Commission, to each existing contract for the  
10 sale or disposition of Federal energy by such Federal  
11 Power Marketing Administration or the Tennessee Valley  
12 Authority to the maximum extent permitted by such con-  
13 tract. This section shall not apply to any Federal Power  
14 Marketing Administration or the Tennessee Valley Au-  
15 thority if and at such time as it no longer has any out-  
16 standing commitments under any contract for the sale or  
17 disposition of Federal energy that were in existence as of  
18 the date of enactment of this Act.

19 (e) ACCOUNTING PRINCIPLES AND REQUIRE-  
20 MENTS.—In developing or reviewing the rates required by  
21 this section, the Federal Power Marketing Administra-  
22 tions, the Tennessee Valley Authority, and the Commis-  
23 sion shall rely upon the accounting principles and require-  
24 ments developed pursuant to subsection (a).

1       (f) INTERIM RATES.—Until market pricing for such  
2 power sales is fully implemented, such full cost recovery  
3 rates shall be implemented for all new contracts for power  
4 sales by the Federal Power Marketing Administrator and  
5 the Tennessee Valley Authority entered into after the en-  
6 actment of this Act and for renewals after the enactment  
7 of this Act for existing contracts for power sales by Fed-  
8 eral Power Marketing Administrations and the Tennessee  
9 Valley Authority.

10       (g) TRANSITION TO MARKET-BASED RATES.—If the  
11 transition to full cost recovery rates would result in rates  
12 that exceed market rates, the Secretary of Energy is au-  
13 thorized to price power sold by Federal Power Marketing  
14 Administrations at market rates, and the Tennessee Val-  
15 ley Authority is authorized to price power sold by the Ten-  
16 nessee Valley Authority at market rates, if—

17           (1) operation and maintenance costs are recov-  
18 ered, including all fish and wildlife costs required  
19 under existing treaty and legal obligations;

20           (2) the contribution toward recovery of invest-  
21 ment pertaining to power production is maximized;  
22 and

23           (3) purchasers of power under existing con-  
24 tracts consent to the remarketing by the relevant  
25 Federal Power Marketing Administration or the

1 Tennessee Valley Authority of such power not later  
2 than 3 years thereafter through competitive bidding.  
3 Competitive bidding shall be utilized to remarket power  
4 that is not accepted by existing customers under this sec-  
5 tion.

6 (h) MARKET-BASED PRICING.—Within 2 years after  
7 the enactment of this Act, the Secretary of Energy shall  
8 develop and implement procedures to assure that all power  
9 sold by Federal Power Marketing Administrations and the  
10 Tennessee Valley Authority is sold at prices set by demand  
11 and supply within the relevant bulk power supply market.  
12 The Secretary of Energy shall establish through notice  
13 and comment rulemaking bid and auction procedures to  
14 implement market-based pricing for power sold pursuant  
15 to any power sales contract entered into by a Federal  
16 Power Marketing Administration or the Tennessee Valley  
17 Authority after the date 2 years after the enactment of  
18 this Act, including power that is under contract but which  
19 is declined by the party entitled to purchase such power  
20 and remarketed after such date.

21 (i) USE OF REVENUES COLLECTED THROUGH MAR-  
22 KET-BASED PRICING.—

23 (1) IN GENERAL.—Revenues collected through  
24 market-based pricing shall be disposed of as follows:

1 (A) Revenues shall be remitted to the Sec-  
2 retary of the Treasury, first, to cover all power-  
3 related operations and maintenance expenses,  
4 all fish and wildlife costs required under exist-  
5 ing treaty and legal obligations, and the project  
6 investment cost pertaining to power production.

7 (B) Such revenues as shall remain after re-  
8 mission to the Secretary of the Treasury pursu-  
9 ant to subparagraph (A) shall be divided as fol-  
10 lows:

11 (i) 50 percent of such revenues shall  
12 be remitted to the Secretary of the Treas-  
13 ury for the purpose of reducing the Fed-  
14 eral budget deficit.

15 (ii) 35 percent of such revenues shall  
16 be deposited in the fund established under  
17 paragraph (2)(A) for the purpose of help-  
18 ing cover the costs of mitigating the dam-  
19 age to, and restoring the health of, fish,  
20 wildlife, and other environmental resources  
21 that is attributable to the construction and  
22 operation of the facilities from which power  
23 is generated and sold.

24 (iii) 15 percent of such revenues shall  
25 be deposited in the fund established under



paragraph (3)(A) for the purpose of helping cover the costs of the incremental cost (above the expected market cost of electricity) of nonhydroelectric renewable resources in the region in which power is marketed by the applicable power marketing administration.

(2) FUND REGARDING ENVIRONMENTAL MITIGATION.—

(A) There is hereby established a fund to hold and expend the revenues allocated for environmental mitigation and restoration pursuant to paragraph (1)(B)(ii). The fund shall be established within the Department of Interior and shall be governed by a Board of Directors consisting of the Secretary of the Interior, the Secretary of Energy, and the Administrator of the Environmental Protection Agency or their designees. Other than expenditure of revenues to cover the costs of establishing and managing the fund, all revenues may be spent only pursuant to project-specific plans to mitigate damage to, and restore the health of, the environment.

(B) At no time may the fund established under subparagraph (A) hold more than

1           \$200,000,000 that is not necessary to cover the  
2           costs of 1 or more project-specific mitigation  
3           plans. Revenues that would otherwise be depos-  
4           ited in the fund but for the absence of 1 or  
5           more project-specific plans for environmental  
6           mitigation shall be remitted to the Secretary of  
7           the Treasury for purposes of Federal budget  
8           deficit reduction.

9           (C) The Board of Directors of the fund es-  
10          tablished under subparagraph (A) shall develop  
11          project-specific mitigation plans for each project  
12          used to generate power marketed by the power  
13          marketing administrations or the Tennessee  
14          Valley Authority. In developing such plans, the  
15          Board is directed, where feasible, to rely on  
16          data, information, and mitigation and restora-  
17          tion plans already developed by the United  
18          States Bureau of Reclamation, the United  
19          States Fish and Wildlife Service, the Environ-  
20          mental Protection Agency, and other Federal,  
21          State, and tribal agencies.

22          (3) FUND REGARDING RENEWABLE RE-  
23          SOURCES.—

24                 (A) There is hereby established a fund to  
25                 hold and expend the revenues allocated for re-

1           newable resources pursuant to paragraph  
2           (1)(B)(iii). The fund shall be established within  
3           the Department of Energy. Revenues in the  
4           fund may be expended to pay for the incre-  
5           mental costs of nonhydroelectric renewable re-  
6           sources in the States in which the applicable  
7           power marketing administration markets power.  
8           Other than expenditure of revenues to cover the  
9           costs of establishing and managing the fund, all  
10          revenues may be spent only—

11                   (i) pursuant to a plan developed by  
12                   the Secretary of Energy designed to foster  
13                   the development of nonhydroelectric renew-  
14                   able resources that show substantial long-  
15                   term promise but which are presently too  
16                   expensive to attract private capital suffi-  
17                   cient to develop or ascertain their poten-  
18                   tial; and

19                   (ii) on recipients chosen by a process  
20                   of competitive bidding.

21           (B) At no time may the fund established  
22           under subparagraph (A) hold more than  
23           \$50,000,000 that is not necessary to meet the  
24           plan developed pursuant to such subparagraph.  
25           Revenues that would otherwise be deposited in

1           this fund but for the absence of such a plan  
2           shall be remitted to the Secretary of the Treas-  
3           ury for purposes of Federal budget deficit re-  
4           duction.

5           (j) PREFERENCE.—Public bodies and cooperatives  
6   shall be given a preference to future power allocations or  
7   reallocations of Federal power through a right of first re-  
8   fusal at market prices. Power obtained through preference  
9   rights shall be consumed by the preference customer or  
10  resold for consumption by the constituent end-users of the  
11  preference customer and may not be resold to other enti-  
12  ties. As regulated by the Federal Energy Regulatory Com-  
13  mission, preference recipients shall have transmission ac-  
14  cess to this purchased power. If a public body or coopera-  
15  tive does not take allocation, the next highest bidder takes  
16  the allocation.

17          (k) REFORMS.—The Secretary of Energy shall re-  
18  quire each Federal Power Marketing Administration to  
19  implement—

20           (1) program management in order to assign  
21   personnel and incur expenses for authorized power  
22   marketing, reclamation, and flood control activities  
23   only, and not diversification into ancillary activities  
24   including consulting or operating services for other  
25   entities; and

1           (2) annual reporting plainly disclosing to the  
2       American public, the activities of the Power Mar-  
3       keting Administration including, but not limited to,  
4       the full cost of such power projects and power mar-  
5       keting programs.

6       (l) CONTRACT RENEWAL.—After the enactment of  
7       this Act, no Federal Power Marketing Administration may  
8       enter into or renew any power marketing contract for a  
9       term that exceeds 5 years.

10       (m) RESTRICTIONS.—Excepting only the Bonneville  
11       Power Administration, each Federal Power Marketing Ad-  
12       ministration shall be subject to the restrictions on the con-  
13       struction of transmission and additional facilities estab-  
14       lished by section 5 of the Flood Control Act of 1944.

15       **SEC. 5. FEDERAL ENERGY REGULATORY COMMISSION JU-**  
16                               **RISDICTION OVER TRANSMISSION SERVICE**  
17                               **PROVIDED BY POWER MARKETING ADMINIS-**  
18                               **TRATIONS AND TENNESSEE VALLEY AUTHOR-**  
19                               **ITY.**

20       Transmission service provided by Federal Power  
21       Marketing Administrations shall be provided on an open  
22       access basis and at just and reasonable rates approved or  
23       established by the Federal Energy Regulatory Commission  
24       under part II of the Federal Power Act in the same man-  
25       ner as such service is provided pursuant to Commission

1 rules by any public utility subject to the jurisdiction of  
2 the Commission under such Part II. The preceding sen-  
3 tence shall not require any Federal Power Marketing Ad-  
4 ministration to expand transmission or interconnection ca-  
5 pabilities or transmissions in the absence of other author-  
6 ity of law.

7 **SEC. 6. IMPLEMENTATION BY THE FEDERAL ENERGY REG-**  
8 **ULATORY COMMISSION.**

9 Pending the implementation of market-based pricing,  
10 the Federal Energy Regulatory Commission shall have au-  
11 thority to review and approve, reject, or revise power rate  
12 schedules recommended for approval by the Secretary of  
13 Energy, and existing rate schedules, for power sales by  
14 the Federal Power Marketing Administrations. The Fed-  
15 eral Energy Regulatory Commission shall base its ap-  
16 proval of final rates upon the protection of the public in-  
17 terest and shall undertake to protect the interest of the  
18 taxpaying public as well as the interests of consumers in  
19 accordance with section 4. The Federal Energy Regulatory  
20 Commission may review the factual basis for determina-  
21 tions made by the Secretary of Energy and may revise  
22 or modify those findings as appropriate and may revise  
23 proposed or effective rate schedules or remand the rate  
24 schedules to the Secretary of Energy as the Federal En-  
25 ergy Regulatory Commission determines is necessary to

1 protect the public interest in accordance with section 4  
2 until a full transition is made to market-based rates for  
3 power sold by Federal Power Marketing Administrations.  
4 The Federal Energy Regulatory Commission is authorized  
5 to proceed pursuant to informal notice and comment rule-  
6 making pursuant to section 553(c) of title 5, United  
7 States Code. Any affected party, including a taxpayer, bid-  
8 der, preference customer, or affected competitor may seek  
9 a rehearing and judicial review of a final decision of the  
10 Federal Energy Regulatory Commission pursuant to sec-  
11 tion 313 of the Federal Power Act (16 U.S.C. 8251).

12 **SEC. 7. REPEALS.**

13 The following provisions are repealed:

14 (1) The last sentence of section 302(a)(3) of  
15 the Department of Energy Organization Act.

16 (2) Section 505 of Public Law 102–377.

17 **SEC. 8. EFFECTIVE DATE.**

18 Except as otherwise specifically provided in this Act,  
19 the provisions of this Act and the amendments made by  
20 this Act shall take effect with respect to power sales con-  
21 tracts entered into by a Federal Power Marketing Admin-  
22 istration or the Tennessee Valley Authority after July 23,  
23 1997.

