

106TH CONGRESS
1ST SESSION

H. R. 2050

To provide consumers with a reliable source of electricity and a choice of electric providers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1999

Mr. LARGENT (for himself and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, Transportation and Infrastructure, and Resources, 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

A BILL

To provide consumers with a reliable source of electricity and a choice of electric providers, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electric Consumers’ Power To Choose Act of 1999”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

Sec. 2. Findings and purpose.

TITLE I—CONSUMER CHOICE AND COMPETITION FOR ELECTRIC UTILITIES

Sec. 101. Competition for retail electric distribution systems.

“Subtitle F—Retail Electric Competition

“Sec. 151. Definitions.

“Sec. 152. Retail competition for State-regulated local distribution systems.

“Sec. 153. Retail competition for nonregulated local distribution systems.

“Sec. 154. Grandfathering provision.

“Sec. 155. Retail reciprocity.

“Sec. 156. Aggregation for purchase of retail electric energy.

“Sec. 157. State jurisdiction.

“Sec. 158. Relation to NAFTA; imports.

“Sec. 159. Privacy of consumer proprietary information.

Sec. 102. Electric reliability.

Sec. 103. Federal interconnection authorities.

Sec. 104. Consumer protection, market power, and unfair trade practices.

Sec. 105. Antitrust savings clause.

Sec. 106. Mandatory open access for all transmitting utilities.

Sec. 107. Clarification of State and Federal authority over retail transmission services.

Sec. 108. Authority to establish regional transmission organizations.

Sec. 109. Special provisions respecting BPA and ERCOT transmission.

Sec. 110. Electric company mergers.

Sec. 111. Regional transmission planning agencies.

Sec. 112. Universal and affordable service.

Sec. 113. Conforming and technical amendments to the Federal Power Act.

Sec. 114. Study of grandfathered systems.

Sec. 115. Effective date.

TITLE II—PROVISIONS RESPECTING THE PUBLIC UTILITY
HOLDING COMPANY ACT OF 1935

Sec. 201. Short title.

Sec. 202. Reform of holding company regulation under PUHCA.

Sec. 203. Definitions.

Sec. 204. Federal access to books and records.

Sec. 205. State access to books and records.

Sec. 206. Exemption authority.

Sec. 207. Affiliate transactions.

Sec. 208. Applicability.

Sec. 209. Effect on other regulations.

Sec. 210. Enforcement.

Sec. 211. Savings provisions.

Sec. 212. Implementation.

Sec. 213. Transfer of resources.

Sec. 214. Authorization of appropriations.

Sec. 215. Conforming amendment to the Federal Power Act.

TITLE III—PROVISIONS RESPECTING THE PUBLIC UTILITY
REGULATORY POLICIES ACT OF 1978

Sec. 301. Short title.

Sec. 302. Findings.

Sec. 303. Prospective repeal.

Sec. 304. Recovery of costs.

TITLE IV—FEDERAL POWER MARKETING ADMINISTRATIONS AND TENNESSEE VALLEY AUTHORITY

Subtitle A—Tennessee Valley Authority

- Sec. 401. Definitions.
- Sec. 402. Wholesale competition in the Tennessee Valley region.
- Sec. 403. Tennessee Valley Authority power sales.
- Sec. 404. Prohibition on acquisition of new generating resources.
- Sec. 405. Renegotiation of long-term contracts.
- Sec. 406. Regulation of Tennessee Valley Authority transmission system.
- Sec. 407. Regulation of Tennessee Valley Authority distributors.
- Sec. 408. Stranded cost recovery.
- Sec. 409. Regional transmission planning agencies.
- Sec. 410. Application of antitrust law.
- Sec. 411. Disposition of surplus local distribution facilities.
- Sec. 412. Commission regulations.
- Sec. 413. Savings provision.

Subtitle B—Bonneville Power Administration

- Sec. 421. Definitions.
- Sec. 422. Application of Federal Power Act.
- Sec. 423. Surcharge on transmission rates to recover otherwise nonrecoverable costs.
- Sec. 424. Complaints.
- Sec. 425. Review of commission orders.
- Sec. 426. Antitrust laws application to BPA.
- Sec. 427. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

- Sec. 431. Definitions.
- Sec. 432. Accounting.
- Sec. 433. Regional transmission planning agencies.
- Sec. 434. Application of antitrust law.

TITLE V—RENEWABLE ENERGY

- Sec. 501. Renewable portfolio standard.
- Sec. 502. Net metering.

TITLE VI—PROVISIONS RELATING TO THE INTERNAL REVENUE CODE

- Sec. 601. 5-year extension of credit for producing electricity from renewable resources.
- Sec. 602. Credit for energy efficiency improvements to existing homes.
- Sec. 603. Business credit for construction of new energy efficient home.
- Sec. 604. Tax credit for combined heat and power system property.
- Sec. 605. Tax-exempt bond financing of certain electric facilities.

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

- 2 (a) FINDINGS.—The Congress finds the following:

1 (1) Electricity is used in virtually every home,
2 commercial enterprise, and manufacturing facility in
3 the United States; is a basic element of the inter-
4 state and foreign commerce of the United States;
5 and immediately, directly, and substantially affects
6 interstate and foreign commerce.

7 (2) Americans consume electricity worth more
8 than \$250,000,000,000 a year, approximately half of
9 which is for residential purposes, making the month-
10 ly electric utility bill one of the largest expenses for
11 most households.

12 (3) Traditional monopoly rate-of-return regula-
13 tion of electricity has failed. It has stifled competi-
14 tion, resulting in high electricity rates for many con-
15 sumers and few incentives for technological innova-
16 tion and good customer service by electric utilities.

17 (4) High electricity rates are regressive, placing
18 a disproportionate burden on poor ratepayers. A
19 competitive electric generation industry should pro-
20 vide benefits to all consumers by fostering innova-
21 tion and efficiency, rather than by allowing cost
22 shifting that lowers rates to some consumers but
23 raises rates to others.

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

4 (6) Lower priced electricity can be realized by
5 giving all American consumers the right to choose
6 among suppliers of electricity in a competitive mar-
7 ket, while maintaining, if not improving, the reli-
8 ability of service those consumers have come to ex-
9 pect.

10 (7) The development of vibrant competition in
11 the retail market for electric energy will—

12 (A) reduce the costs of electric energy to
13 even the smallest consumers of electricity;

14 (B) create jobs as American businesses are
15 able to lower costs and better compete in world
16 markets and against foreign competition here at
17 home; and

18 (C) result in a more efficient utility indus-
19 try.

20 (8) The Nation's interconnected electricity gen-
21 eration, transmission, and local distribution systems
22 critically affect the economy and productivity of the
23 United States, and the health, safety, welfare, and
24 security of all Americans.

1 (9) Congress has authority to enact laws, under
2 the Commerce Clause of the United States Constitu-
3 tion, regarding the generation, transmission, dis-
4 tribution, and sale of electric energy in interstate
5 commerce at the wholesale and retail levels.

6 (10) Only Congress can ensure that a competi-
7 tive retail electricity market is established through-
8 out the United States on an expeditious but orderly
9 basis. Regional and State variations, however, re-
10 quire that State regulatory authorities should receive
11 deference in implementing competition and consumer
12 choice in retail electricity markets.

13 (11) The success of competition in the whole-
14 sale electricity market under the Energy Policy Act
15 of 1992 and open access under Orders No. 888 and
16 889 of the Federal Energy Regulatory Commission,
17 as well as innovations in electricity generation and
18 transmission technologies, indicate that with appro-
19 priate transition measures, retail customer choice
20 and generation competition can substantially benefit
21 all classes of United States electricity consumers, in-
22 cluding residential, commercial, industrial, and other
23 consumers.

24 (12) In a competitive generation market, it is in
25 the national interest to continue to encourage the

1 development of emerging energy technologies in
 2 order to ensure energy diversity and security and to
 3 protect the environment.

4 (b) PURPOSE.—The purpose of this Act is to allow
 5 American electricity consumers to choose among com-
 6 peting providers of electricity, in order to secure lower
 7 electricity rates, higher quality services, and a more robust
 8 United States economy, and for other purposes.

9 **TITLE I—CONSUMER CHOICE**
 10 **AND COMPETITION FOR**
 11 **ELECTRIC UTILITIES**

12 **SEC. 101. COMPETITION FOR RETAIL ELECTRIC DISTRIBUTION SYSTEMS.**

14 (a) AMENDMENT OF PURPA.—Title I of the Public
 15 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601
 16 and following) is amended by adding the following new
 17 subtitle at the end thereof:

18 **“Subtitle F—Retail Electric Competition**

19 **“SEC. 151. DEFINITIONS.**

20 “For purposes of this subtitle:

21 “(1) CONSUMER.—The term ‘consumer’ means
 22 any person who purchases or offers to purchase any
 23 retail electric supply.

24 “(2) ELECTRIC SUPPLIER.—The term ‘electric
 25 supplier’ means any person who produces, generates,

1 manufactures, aggregates, markets, brokers, sells, or
2 otherwise supplies electric energy.

3 “(3) LOCAL DISTRIBUTION COMPANY.—The
4 term ‘local distribution company’ means any person
5 which owns, controls, or operates local distribution
6 facilities.

7 “(4) LOCAL DISTRIBUTION FACILITIES.—The
8 term ‘local distribution facilities’ means any facilities
9 used for the local distribution of electric energy, in-
10 cluding any facilities determined pursuant to section
11 201 of the Federal Power Act to be so used.

12 “(5) LOCAL DISTRIBUTION SERVICE.—The
13 term ‘local distribution service’ includes all services
14 necessary to, or customarily provided in the course
15 of, the delivery of electric energy to a consumer
16 through local distribution facilities, including the
17 construction, maintenance, and operation of local
18 distribution facilities, the metering and billing of re-
19 tail sales, and related management, accounting, and
20 other services. Such term shall not include the gen-
21 eration or sale of electric energy.

22 “(6) NONREGULATED LOCAL DISTRIBUTION
23 COMPANY.—The term ‘nonregulated local distribu-
24 tion company’ means any local distribution company

1 other than any State-regulated local distribution
2 company.

3 “(7) PERSON.—The term ‘person’ means any
4 entity, including an individual, a foreign govern-
5 mental entity, the United States Government or any
6 instrumentality or authority thereof (including the
7 Tennessee Valley Authority), or a State, or any in-
8 strumentality, authority, or political subdivision
9 thereof, including any municipality.

10 “(8) PUBLIC UTILITY.—The term ‘public util-
11 ity’ means a public utility as defined in section
12 201(e)(1) of the Federal Power Act.

13 “(9) STATE REGULATED LOCAL DISTRIBUTION
14 COMPANY.—The term ‘State regulated local distribu-
15 tion company’ means any local distribution company
16 with respect to which a State regulatory authority
17 has ratemaking jurisdiction.

18 “(10) STATE REGULATORY AUTHORITY.—Not-
19 withstanding section 3(17) of this Act, the term
20 ‘State regulatory authority’ means any State agency
21 which has ratemaking authority with respect to the
22 provision of local distribution services by any local
23 distribution company (other than such State agen-
24 cy).

1 “(11) TRANSMISSION FACILITIES.—The term
 2 ‘transmission facilities’ means any facilities used for
 3 the transmission of electric energy, including any fa-
 4 cilities determined pursuant to section 201 of the
 5 Federal Power Act to be so used.

6 **“SEC. 152. RETAIL COMPETITION FOR STATE REGULATED**
 7 **LOCAL DISTRIBUTION SYSTEMS.**

8 “(a) STATE ELECTIONS.—

9 “(1) IN GENERAL.—Every State may elect to
 10 require, by no later than January 1, 2002, retail
 11 electric competition in accordance with paragraph
 12 (2) of this subsection for every State regulated local
 13 distribution company providing local distribution
 14 service in such State. Such election shall be made by
 15 January 1, 2001. No such election may be partial or
 16 revocable. Such election shall be conclusively evi-
 17 denced by the submission to the Commission from
 18 the State regulatory authority by January 1, 2001,
 19 of a notice that the State will require such retail
 20 competition.

21 “(2) RETAIL ELECTRIC COMPETITION.—If a
 22 State makes an election under paragraph (1), the
 23 State regulatory authority for that State shall estab-
 24 lish such terms and conditions as necessary and ap-
 25 propriate to ensure that—

1 “(A) all electric consumers in such State
2 served by State regulated local distribution
3 companies may choose from competing electric
4 suppliers; and

5 “(B) State regulated local distribution
6 companies shall provide local distribution serv-
7 ice under rates, charges, terms, and conditions
8 which—

9 “(i) are just and reasonable and not
10 unduly discriminatory or preferential;

11 “(ii) identify, offer, and sell local dis-
12 tribution service separately from any sales
13 of electric energy; and

14 “(iii) comply with State law and are
15 otherwise in the public interest; and

16 in the case of a local distribution company
17 which is also an electric supplier, such rates,
18 charges, terms, and conditions shall be com-
19 parable to those applicable to the use of local
20 distribution facilities owned, controlled, or oper-
21 ated by the company for the local distribution
22 of electric energy supplied by such company.

23 “(b) OPT OUT OF RETAIL COMPETITION.—If a State
24 regulatory authority does not make the election under sub-
25 section (a), subsection (c) shall apply unless the State reg-

1 ulatory authority finds, after notice and opportunity for
2 hearing, that making such election will have a negative
3 impact on the residential class, the commercial class, or
4 the industrial class of customers in that State that cannot
5 be reasonably mitigated. The State regulatory authority
6 shall publish the finding and its basis and shall file a no-
7 tice with the Commission of its determination by January
8 1, 2001.

9 “(c) FAILURE TO ELECT OR OPT OUT.—Except for
10 a State covered by section 154 (relating to
11 grandfathering), if a State does not make an election
12 under subsection (a), or file an opt-out notice under sub-
13 section (b), by January 1, 2001, each State regulated local
14 distribution company providing local distribution service
15 in such State shall establish retail electric competition for
16 its local distribution facilities in accordance with sub-
17 section (a)(2) by January 1, 2002.

18 “(d) AUTHORITY TO REQUIRE CHARGES.—Except as
19 provided in subsection (b), nothing in this subtitle shall
20 affect the authority of a State or a State regulatory au-
21 thority to require, as a condition for the purchase or re-
22 ceipt by any person located in such State of any retail
23 electric energy or services described in section 201(h) of
24 the Federal Power Act, the payment of any charge deemed

1 necessary by such State or State regulatory authority for
2 any of the following purposes:

3 “(1) To recover transition costs.

4 “(2) To ensure that adequate electric service is
5 available to all customers served by a retail distribu-
6 tion system.

7 “(3) To ensure and enhance the reliability of
8 retail electric service.

9 “(4) To fund assistance to low-income cus-
10 tomers.

11 “(5) To encourage, in a competitively neutral
12 fashion, environmental, emerging energy tech-
13 nologies, energy efficiency, or energy conservation
14 programs, or any combination of such programs.

15 “(6) To provide for transition costs of electric
16 utility workers adversely affected by restructuring.

17 “(7) To encourage research and development on
18 electric technologies.

19 “(8) Any combination of the purposes described
20 in paragraphs (1) through (7).

21 Nothing in this subsection shall require a State or State
22 regulatory authority to impose any charges under this sub-
23 section.

24 “(e) DISCRIMINATION PROHIBITED.—The calcula-
25 tion, assessment, or imposition of any fees and charges

1 described in subsection (d), or imposed pursuant to any
 2 other law, shall not unduly discriminate among different
 3 classes or categories of electric utilities, local distribution
 4 companies, electric energy consumers, or electric suppliers.
 5 Nothing in this subtitle shall affect the authority of a
 6 State under applicable State law to design rates for local
 7 distribution service.

8 “(f) ENFORCEMENT.—Any person may bring an ac-
 9 tion in the appropriate State court against any State regu-
 10 latory authority or State regulated local distribution com-
 11 pany to require compliance with this section.

12 **“SEC. 153. RETAIL COMPETITION FOR NONREGULATED**
 13 **LOCAL DISTRIBUTION SYSTEMS.**

14 “(a) NONREGULATED LOCAL DISTRIBUTION COMPA-
 15 NIES.—

16 “(1) ELECTION BY UTILITY.—Every nonregu-
 17 lated local distribution company may elect to estab-
 18 lish, by no later than January 1, 2002, retail com-
 19 petition in accordance with paragraph (2) for its
 20 local distribution facilities providing local distribu-
 21 tion service. Such election shall be made by January
 22 1, 2001. No such election may be partial or rev-
 23 ocable. For a nonregulated local distribution com-
 24 pany in any State, such election shall be conclusively
 25 evidenced by the submission from such company to

1 the Commission by January 1, 2001, of a notice
2 that the company will provide such retail competi-
3 tion.

4 “(2) RETAIL ELECTRIC COMPETITION.—If a
5 nonregulated local distribution company in any State
6 makes an election under paragraph (1), it shall es-
7 tablish such terms and conditions as it finds nec-
8 essary and appropriate to ensure that—

9 “(A) all electric consumers of local dis-
10 tribution service provided by such company may
11 choose from competing retail electric suppliers;
12 and

13 “(B) the company shall provide access to
14 its local distribution service under rates,
15 charges, terms, and conditions which—

16 “(i) are just and reasonable and not
17 unduly preferential or discriminatory;

18 “(ii) identify, offer, and sell local dis-
19 tribution service separately from any sales
20 of electric energy;

21 “(iii) comply with State law and are
22 otherwise in the public interest; and
23 in the case of a local distribution company
24 which is also an electric supplier, such rates,
25 charges, terms, and conditions shall be com-

1 parable to those applicable to the use of local
2 distribution facilities owned, controlled, or oper-
3 ated by the company for the local distribution
4 of electric energy supplied by such company.

5 “(b) OPT OUT OF RETAIL COMPETITION.—If a non-
6 regulated local distribution company does not make the
7 election under subsection (a), subsection (c) shall apply
8 unless the company finds, after notice and opportunity for
9 hearing, that implementation of retail competition in ac-
10 cordance with subsection (a) will have a negative impact
11 on the residential class, the commercial class, or the indus-
12 trial class of customers of that company that cannot be
13 reasonably mitigated. The nonregulated local distribution
14 company shall publish such determination and its basis
15 and shall file a notice with the Commission of its deter-
16 mination by January 1, 2001.

17 “(c) FAILURE TO ELECT.—Except for a nonregu-
18 lated local distribution company covered by section 154
19 (relating to grandfathering), each nonregulated local dis-
20 tribution company that does not make an election under
21 subsection (a), or file an opt-out notice under subsection
22 (b), by January 1, 2001, shall provide retail competition
23 for its local distribution facilities providing local distribu-
24 tion service in accordance with subsection (a)(2) by Janu-
25 ary 1, 2002.

1 “(d) CHARGES.—

2 “(1) AUTHORITY TO REQUIRE CHARGES.—Ex-
3 cept as provided in subsection (b), nothing in this
4 subtitle shall affect the authority of a nonregulated
5 local distribution company that provides local dis-
6 tribution service to require, as a condition for the
7 purchase or receipt by any electric consumers receiv-
8 ing local distribution service provided by such com-
9 pany, the payment of any charge deemed necessary
10 by such company for any of the following purposes:

11 “(A) To recover transition costs.

12 “(B) To ensure that adequate electric serv-
13 ice is available to all consumers served by such
14 company.

15 “(C) To ensure and enhance the reliability
16 of retail electric service.

17 “(D) To fund assistance to low-income
18 customers.

19 “(E) To encourage, in a competitively neu-
20 tral fashion, environmental, emerging energy
21 technologies, energy efficiency, or energy con-
22 servation programs, or any combination of such
23 programs.

1 “(F) To provide for transition costs of
2 electric utility workers adversely affected by re-
3 structuring.

4 “(G) To encourage research and develop-
5 ment on electric technologies.

6 “(H) Any combination of the purposes de-
7 scribed in subparagraphs (A) through (G).

8 Nothing in this subsection shall require a nonregu-
9 lated local distribution company to impose any
10 charges under this section.

11 “(2) DISCRIMINATION PROHIBITED.—The cal-
12 culation, assessment, or imposition of any fees and
13 charges described in paragraph (1), or imposed pur-
14 suant to any other law, shall not unduly discriminate
15 among different classes or categories of electric utili-
16 ties, local distribution companies, consumers, or elec-
17 tric suppliers. Nothing in this subtitle shall affect
18 the authority of a nonregulated local distribution
19 company under applicable State law to design rates
20 for local distribution service.

21 “(e) ENFORCEMENT.—Any person may bring an ac-
22 tion the appropriate State court against any nonregulated
23 local distribution company to require compliance with this
24 section.

1 **“SEC. 154. GRANDFATHERING PROVISION.**

2 “(a) STATE REGULATED COMPANIES.—A State shall
3 be exempt from section 152 if the State has—

4 “(1) adopted a plan to provide open access to
5 local distribution facilities of all State regulated local
6 distribution companies in the State for retail electric
7 suppliers seeking to make retail sales to all classes
8 of retail customers, and

9 “(2) submitted a notice to the Commission
10 within 30 days after the date of the enactment of
11 this section stating that such State has adopted such
12 plan..

13 “(b) NONREGULATED COMPANIES.—Any nonregu-
14 lated local distribution company shall be exempt from sec-
15 tion 153 if the company has—

16 “(1) adopted a plan to provide open access to
17 its local distribution facilities for retail electric sup-
18 pliers seeking to make retail sales to all classes of
19 retail customers, and

20 “(2) submitted a notice to the Commission
21 within 30 days after the date of the enactment of
22 this section stating that such company has adopted
23 such plan.

24 **“SEC. 155. RETAIL RECIPROCITY.**

25 “(a) STATE AUTHORITY.—

1 “(1) ELECTRICITY GENERATED IN A NON-
2 COMPETITIVE STATE.—Any State may prohibit any
3 person from selling to retail electric consumers of
4 State regulated local distribution companies in such
5 State any electric energy generated in a second
6 State which has not made a timely election under
7 section 152(a) or which has filed an opt-out notice
8 under section 152(b) unless—

9 “(A) such electric energy is generated by a
10 nonregulated electric utility in such second
11 State;

12 “(B) such other State has submitted a
13 timely notice under section 154 (relating to
14 grandfathering); or

15 “(C) all local distribution facilities in such
16 second State owned, controlled, or operated by
17 State regulated local distribution companies
18 providing local distribution service in such sec-
19 ond State are subject to retail competition con-
20 sistent with section 152(a)(2).

21 “(2) ELECTRICITY GENERATED BY NON-
22 COMPETITIVE NONREGULATED ELECTRIC UTILITY.—
23 Any State may prohibit any person from selling to
24 retail electric consumers of State regulated local dis-
25 tribution companies in such State any electric en-

1 ergy generated by a nonregulated electric utility
2 which has not made an election under section 153(a)
3 or which has filed an opt-out notice under section
4 153(b) unless—

5 “(A) such nonregulated electric utility has
6 submitted a timely notice under section 154 (re-
7 lating to grandfathering); or

8 “(B) all local distribution facilities of such
9 nonregulated electric utility are subject to retail
10 competition consistent with section 153(a)(2).

11 “(b) AUTHORITY OF NONREGULATED ELECTRIC
12 UTILITIES.—

13 “(1) ELECTRICITY GENERATED IN A NON-
14 COMPETITIVE STATE.—Any nonregulated electric
15 utility in a State may prohibit any person from sell-
16 ing to its retail electric consumers any electric en-
17 ergy generated in a second State which has not
18 made a timely election under section 152(a) or
19 which has filed an opt-out notice under section
20 152(b) unless—

21 “(A) such electric energy is generated by a
22 nonregulated electric utility in such second
23 State;

1 “(B) such other State has submitted a
2 timely notice under section 154 (relating to
3 grandfathering); or

4 “(C) all local distribution facilities in such
5 second State owned, controlled, or operated by
6 State regulated local distribution companies
7 providing local distribution service in such sec-
8 ond State are subject to retail competition con-
9 sistent with section 152(a)(2).

10 “(2) ELECTRICITY GENERATED BY NON-
11 COMPETITIVE NONREGULATED ELECTRIC UTILITY.—
12 Any nonregulated electric utility may prohibit any
13 person from selling to its retail electric consumers
14 any electric energy generated by a nonregulated elec-
15 tric utility which has not made an election under
16 section 153(a) or which has filed an opt-out notice
17 under section 153(b) unless—

18 “(A) such nonregulated electric utility has
19 submitted a timely notice under section 154 (re-
20 lating to grandfathering); or

21 “(B) all local distribution facilities of such
22 nonregulated electric utility are subject to retail
23 competition consistent with section 153(a)(2).

1 **“SEC. 156. AGGREGATION FOR PURCHASE OF RETAIL ELEC-**
2 **TRIC ENERGY.**

3 “Notwithstanding any other provision of Federal or
4 State law, and subject to legitimate and nondiscriminatory
5 State requirements imposed on retail electric suppliers, a
6 group of customers or any entity acting on behalf of such
7 group may acquire retail electric energy on an aggregate
8 basis if the group of customers is served by 1 or more
9 local distribution companies for which a State regulatory
10 authority or nonregulated local distribution company has
11 filed a notice of retail competition under section 152(a)(1)
12 or 153(a)(1).

13 **“SEC. 157. STATE JURISDICTION.**

14 “(a) PRIMARY STATE JURISDICTION.—Except for re-
15 view of any action in the Supreme Court of the United
16 States in accordance with sections 1257 and 1258 of title
17 28, United States Code, no court of the United States
18 shall have jurisdiction over any action arising under the
19 provisions of section 152 or 153 (relating to retail electric
20 competition).

21 “(b) STATE COURT PROCEDURES.—Except for Su-
22 preme Court review, any appeal, review, or other action
23 in State court shall be pursuant to any applicable State
24 procedures.

25 “(c) PARITY OF FRANCHISE AND OTHER
26 CHARGES.—A State or local government, under State law,

1 may impose or collect any franchise, license, permit fee,
2 or equivalent thereof, from any electric supplier as a condi-
3 tion for operating in the State or locality, only to the ex-
4 tent such charge is imposed on a just and reasonable and
5 not unduly discriminatory or preferential basis.

6 **“SEC. 158. RELATION TO NAFTA; IMPORTS.**

7 “(a) NATIONAL TREATMENT AS REQUIRED BY
8 NAFTA.—The provisions of section 155 (relating to retail
9 reciprocity) shall apply on a not unduly discriminatory or
10 preferential basis, and to the same extent, to any foreign
11 person or foreign electric utility which is a citizen of a
12 nation which has ratified the North American Free Trade
13 Agreement, as such provisions apply to any person or elec-
14 tric utility which is a citizen of the United States.

15 “(b) IMPORTS.—The provisions of section 155 (relat-
16 ing to respecting retail reciprocity) shall apply pursuant
17 to subsection (a) to any imports of electric energy into
18 the United States.

19 **“SEC. 159. PRIVACY OF CONSUMER PROPRIETARY INFOR-**
20 **MATION.**

21 “(a) PRIVACY REQUIREMENTS.—Except as required
22 by law or with the prior written affirmative approval of
23 the consumer, any person that receives or obtains cus-
24 tomer information by virtue of its provision of retail elec-
25 tric service or metering and billing service shall only use,

1 disclose, or permit access to individually identifiable con-
2 sumer information in its provision of (1) retail electric
3 service or metering and billing service from which such
4 information is derived, or (2) services necessary to, or used
5 in, the provision of such service.

6 “(b) DISCLOSURE ON REQUEST BY CONSUMERS.—
7 An electric utility or metering and billing service provider
8 shall disclose consumer information, upon affirmative
9 written request by the consumer, to any person designated
10 by the consumer.

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

23 “(d) EXCEPTIONS.—Nothing in this section prohibits
24 an electric utility or metering and billing service provider
25 from using, disclosing, or permitting access to consumer

1 information obtained from its consumers, either directly
2 or indirectly through its agents—

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

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

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

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

14 “(1) CONSUMER INFORMATION.—The term
15 ‘consumer information’ means—

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

23 “(B) information contained in the bills per-
24 taining to retail electric service received by a
25 consumer.

1 “(2) AGGREGATE CONSUMER INFORMATION.—

2 The term ‘aggregate consumer information’ means
3 collective data that relates to a group or category of
4 services or consumers, from which individual con-
5 sumer identities and characteristics have been re-
6 moved.”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 title I of the Public Utility Regulatory Policies Act of 1978
9 (16 U.S.C. 2601 and following) is amended by adding the
10 following at the end thereof:

“Subtitle F—Retail Electric Competition

“Sec. 151. Definitions.

“Sec. 152. Retail competition for State regulated local distribution sys-
tems.

“Sec. 153. Retail competition for nonregulated local distribution systems.

“Sec. 154. Grandfathering provision.

“Sec. 155. Retail reciprocity.

“Sec. 156. Aggregation for purchase of retail electric energy.

“Sec. 157. State jurisdiction.

“Sec. 158. Relation to NAFTA; imports.

“Sec. 159. Privacy of consumer proprietary information.”.

11 **SEC. 102. ELECTRIC RELIABILITY.**

12 The Federal Power Act (16 U.S.C. 791a et seq.) is
13 amended by adding the following new Part at the end
14 thereof:

15 **“PART IV—ELECTRIC RELIABILITY**

16 **“SEC. 401. ELECTRIC RELIABILITY ORGANIZATION AND**
17 **OVERSIGHT.**

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

19 “(1) AFFILIATED REGIONAL LIABILITY ENTI-
20 TY.—The term ‘affiliated regional reliability entity’

1 means an entity delegated authority under the provi-
2 sions of subsection (h).

3 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
4 power system’ means all facilities and control sys-
5 tems necessary for operating an interconnected
6 transmission grid (or any portion thereof), including
7 high-voltage transmission lines, substations, control
8 centers, communications, data, and operations plan-
9 ning facilities, and the output of generating units
10 necessary to maintain transmission system reli-
11 ability.

12 “(3) ELECTRIC RELIABILITY ORGANIZATION, OR
13 ORGANIZATION.—The term ‘electric reliability orga-
14 nization’ or ‘organization’ means the organization
15 approved by the Commission under subsection
16 (d)(4).

17 “(4) ENTITY RULE.—The term ‘entity rule’
18 means a rule adopted by an affiliated regional reli-
19 ability entity for a specific region and designed to
20 implement or enforce one or more organization
21 standards. An entity rule shall be approved by the
22 Organization and once approved, shall be treated as
23 an organization standard.

24 “(5) INDUSTRY SECTOR.—The term ‘industry
25 sector’ means a group of users of the bulk power

1 system with substantially similar commercial inter-
2 ests, as determined by the Board of the Electric Re-
3 liability Organization.

4 “(6) INTERCONNECTION.—The term ‘inter-
5 connection’ means a geographic area in which the
6 operation of bulk-power system components is syn-
7 chronized such that the failure of one or more of
8 such components may adversely effect the ability of
9 the operators of other components within the inter-
10 connection to maintain safe and reliable operation of
11 the facilities within their control.

12 “(7) ORGANIZATION STANDARD.—The term ‘or-
13 ganization standard’ means a policy or standard
14 duly adopted by the Electric Reliability Organization
15 to provide for the reliable operation of a bulk power
16 system.

17 “(8) PUBLIC INTEREST GROUP.—The term
18 ‘public interest group’ means any nonprofit private
19 or public organization that has an interest in the ac-
20 tivities of the Electric Reliability Organization, in-
21 cluding, but not limited to, ratepayer advocates, en-
22 vironmental groups, and State and local government
23 organizations that regulate market participants and
24 promulgate government policy.

1 “(9) VARIANCE.—The term ‘variance’ means an
2 exception or variance from the requirements of an
3 organization standard (including a proposal for an
4 organization standard where there is no organization
5 standard) that is adopted by an affiliated regional
6 reliability entity and applicable to all or a part of the
7 region for which the affiliated regional reliability en-
8 tity responsible. A variance shall be approved by the
9 organization and once approved, shall be treated as
10 an organization standard.

11 “(10) SYSTEM OPERATOR.—The term ‘system
12 operator’ means any entity that operates or is re-
13 sponsible for the operation of a bulk-power system,
14 including but not limited to a control area operator,
15 an independent system operator, a transmission
16 company, a transmission system operator, or a re-
17 gional security coordinator.

18 “(11) USER OF THE BULK-POWER SYSTEM.—
19 The term ‘user of the bulk-power system’ means any
20 entity that sells, purchases, or transmits electric
21 power over a bulk-power system, or that owns, oper-
22 ates or maintains facilities or control systems that
23 are part of a bulk-power system, or that is a system
24 operator.

1 “(b) COMMISSION AUTHORITY.—(1) Within the
2 United States, the Commission shall have jurisdiction over
3 the Electric Reliability Organization, all affiliated regional
4 reliability entities, all system operators, and all users of
5 the bulk-power system, for purposes of approving and en-
6 forcing compliance with the requirements of this section.

7 “(2) The Commission may, by rule, define any other
8 term used in this section, provided such definition is con-
9 sistent with the definitions in, and the purpose and intent
10 of, this Act.

11 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
12 lowing enactment of this section, and prior to the approval
13 of an organization under subsection (d), any person, in-
14 cluding the North American Electric Reliability Council
15 and its member regional reliability councils, may file any
16 reliability standard, guidance or practice that they would
17 propose to be made mandatory and enforceable. The Com-
18 mission, after allowing interested persons an opportunity
19 to submit comments, may approve any such proposed
20 mandatory standard, guidance or practice, or any amend-
21 ment thereto, if it finds that the standard, guidance, or
22 practice, or amendment is just, reasonable, not unduly dis-
23 criminatory or preferential, and in the public interest. The
24 Commission may, without further proceeding or finding,
25 grant its approval to any standard, guidance or practice

1 for which no substantive objections are filed in the com-
2 ment period. Filed standards, guidances, or practices, in-
3 cluding any amendments thereto, shall be mandatory and
4 applicable according to their terms following approval by
5 the Commission and shall remain in effect until (1) with-
6 drawn, disapproved or superseded by an organization
7 standard, issued or approved by the Electric Reliability
8 Organization and made effective by the Commission under
9 subsection (e); or (2) disapproved or suspended by the
10 Commission if, upon complaint or upon its own motion
11 and after notice and an opportunity for comment, the
12 Commission finds the standard, guidance or practice un-
13 just, unreasonable, unduly discriminatory, or preferential
14 or not in the public interest. Standards, guidances or prac-
15 tices in effect pursuant to the provisions of this subsection
16 shall be enforceable by the Commission.

17 “(d) ORGANIZATION APPROVAL.—(1) Not later than
18 90 days after the date of enactment of this section, the
19 Commission shall issue proposed rules specifying proce-
20 dures and requirements for an entity to apply for approval
21 as the Electric Reliability Organization. The Commission
22 shall provide notice and opportunity for comment on the
23 proposed rules. The Commission shall issue a final rule
24 under this subsection within 180 days after the date of
25 enactment of this section.

1 “(2) Following the issuance of a final Commission
2 rule under paragraph (1), an entity may submit an appli-
3 cation to the Commission for approval as the Electric Reli-
4 ability Organization. The applicant shall specify in its ap-
5 plication its governance and procedures, as well as its
6 funding mechanism and initial funding requirements.

7 “(3) The Commission shall provide public notice of
8 the application and afford interested parties an oppor-
9 tunity to comment.

10 “(4) The Commission shall approve the application
11 if the Commission determines that the applicant—

12 “(A) has the ability to develop, implement and
13 enforce standards that provide for an adequate level
14 of reliability of the bulk-power system;

15 “(B) permits voluntary membership to any user
16 of the bulk-power system or public interest group;

17 “(C) assures fair representation of its members
18 in the selection of its directors and fair management
19 of its affairs, taking into account the need for effi-
20 ciency and effectiveness in decisionmaking and oper-
21 ations and the requirements for technical com-
22 petency in the development of organization stand-
23 ards and the exercise of oversight of bulk-power sys-
24 tem reliability;

1 “(D) assures that no two industry sectors have
2 the ability to control, and no one industry sector has
3 the ability to veto, the Electric Reliability Organiza-
4 tion’s discharge of its responsibilities (including ac-
5 tions by committees recommending standards to the
6 board or other board actions to implement and en-
7 force standards);

8 “(E) provides for governance by a board wholly
9 comprised of independent directors;

10 “(F) provides a funding mechanism and re-
11 quirements that are just, reasonable and not unduly
12 discriminatory or preferential and are in the public
13 interest, and which satisfies the requirements of sub-
14 section (l);

15 “(G) establishes procedures for development of
16 organization standards that provide reasonable no-
17 tice and opportunity for public comment, taking into
18 account the need for efficiency and effectiveness in
19 decisionmaking and operations and the requirements
20 for technical competency in the development of orga-
21 nization standards, and which standards develop-
22 ment process has the following attributes:

23 “(i) openness,

24 “(ii) balance of interests, and

1 “(iii) due process, except that the proce-
2 dures may include alternative procedures for
3 emergencies;

4 “(H) establishes fair and impartial procedures
5 for implementation and enforcement of organization
6 standards, either directly or through delegation to
7 an affiliated regional reliability entity, including the
8 imposition of penalties, limitations on activities,
9 functions, or operations, or other appropriate sanc-
10 tions;

11 “(I) establishes procedures for notice and op-
12 portunity for public observation of all meetings, ex-
13 cept that the procedures for public observation may
14 include alternative procedures for emergencies or for
15 the discussion of information the directors determine
16 should take place in closed session, such as litiga-
17 tion, personnel actions, or commercially sensitive in-
18 formation;

19 “(J) provides for the consideration of rec-
20 ommendations of States and State commissions, and

21 “(K) addresses other matters that the Commis-
22 sion may deem necessary or appropriate to ensure
23 that the procedures, governance, and funding of the
24 Electric Reliability Organization are just, reason-

1 able, not unduly discriminatory or preferential, and
2 are in the public interest.

3 “(5) The Commission shall approve only one electric
4 reliability organization. If the Commission receives two or
5 more timely applications that satisfy the requirements of
6 this subsection, the Commission shall approve only the ap-
7 plication it concludes will best implement the provisions
8 of this section.

9 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
10 ORGANIZATION STANDARDS.—(1) The Electric Reliability
11 Organization shall file with the Commission any new or
12 modified organization standards, including any variances
13 or entity rules, and the Commission shall follow the proce-
14 dures under paragraph (2) for review of that filing.

15 “(2) Submissions under paragraph (1) shall include:

16 “(A) a concise statement of the purpose of the
17 proposal, and

18 “(B) a record of any proceedings conducted
19 with respect to such proposal.

20 The Commission shall provide notice of the filing of such
21 proposal and afford interested persons 30 days to submit
22 comments. The Commission, after taking into consider-
23 ation any submitted comments, shall approve or dis-
24 approve such proposal not later than 60 days after the
25 deadline for the submission of comments, except that the

1 Commission may extend the 60-day period for an addi-
2 tional 90 days for good cause, and except further that if
3 the Commission does not act to approve or disapprove a
4 proposal within the foregoing periods the proposal shall
5 go into effect subject to its terms, without prejudice to
6 the authority of the Commission thereafter to suspend or
7 modify the proposal in accordance with the standards and
8 requirements of this section. Proposals approved by the
9 Commission shall take effect according to their terms but
10 not earlier than 30 days after the effective date of the
11 Commission's order, except as provided in paragraph (3)
12 of this subsection.

13 “(3)(A) In the exercise of its review responsibilities
14 under this subsection, the Commission shall give due
15 weight to the technical expertise of the Electric Reliability
16 Organization with respect to the content of a new or modi-
17 fied organization standard, but shall not defer to the Or-
18 ganization with respect to the effect of the standard on
19 competition. The Commission shall approve a proposed
20 new or modified organization standard if it determines the
21 proposal to be just, reasonable, not unduly discriminatory
22 or preferential, and in the public interest. The Commis-
23 sion, either upon complaint or upon its own motion, shall
24 suspend an existing organization standard, if it determines

1 the standard to be unjust, unreasonable, unduly discrimi-
2 natory or preferential or not in the public interest.

3 “(B) An existing or proposed organization standard
4 which is disapproved or suspended in whole or in part by
5 the Commission shall be remanded to the Electric Reli-
6 ability Organization for further consideration.

7 “(C) The Commission, on its own motion or upon
8 complaint, may direct the Electric Reliability Organization
9 to develop an organization standard, including modifica-
10 tion to an existing organization standard, addressing a
11 specific matter by a date certain if the Commission con-
12 siders such new or modified organization standard nec-
13 essary or appropriate to further the purposes of this sec-
14 tion. The Electric Reliability Organization shall file any
15 such new or modified organization standard in accordance
16 with this subsection.

17 “(D) An affiliated regional reliability entity may pro-
18 pose a Variance or Entity Rule to the Electric Reliability
19 Organization. The affiliated regional reliability entity may
20 request that the Electric Reliability Organization expedite
21 consideration of the proposal, and may file a notice of such
22 request with the Commission, if expedited consideration
23 is necessary to provide for bulk-power system reliability.
24 If the Electric Reliability Organization fails to adopt the
25 variance or entity rule, either in whole or in part, the affli-

1 ated regional reliability entity may request that the Com-
2 mission review such action. If the Commission determines,
3 after its review of such a request, that the action of the
4 Electric Reliability Organization did not conform to the
5 applicable standards and procedures approved by the
6 Commission, or if the Commission determines that the
7 variance or entity rule is just, reasonable, not unduly dis-
8 criminatory or preferential, and in the public interest, and
9 that the Electric Reliability Organization has unreason-
10 ably rejected the proposed variance or entity rule, then
11 the Commission may remand the proposed variance or en-
12 tity rule for further consideration by the Electric Reli-
13 ability Organization or may direct the Electric Reliability
14 Organization or the affiliated regional reliability entity to
15 develop a variance or entity rule consistent with that re-
16 quested by the affiliated regional reliability entity. Any
17 such variance or entity rule proposed by an affiliated re-
18 gional reliability entity shall be submitted to the Electric
19 Reliability Organization for review and filing with the
20 Commission in accordance with the procedures specified
21 in this subsection.

22 “(E) Notwithstanding any other provision of this sub-
23 section, a proposed organization standard or amendment
24 shall take effect according to its terms if the Electric Reli-
25 ability Organization determines that an emergency exists

1 requiring that such proposed organization standard or
2 amendment take effect without notice or comment. The
3 Electric Reliability Organization shall notify the Commis-
4 sion immediately following such determination and shall
5 file such emergency organization standard or amendment
6 with the Commission not later than 5 days following such
7 determination and shall include in such filing an expla-
8 nation of the need for such emergency standard. Subse-
9 quently, the Commission shall provide notice of the organi-
10 zation standard or amendment for comment, and shall fol-
11 low the procedures set out in paragraphs (2) and (3) for
12 review of the new or modified organization standard. Any
13 such organization standard that has gone into effect shall
14 remain in effect unless and until suspended or disapproved
15 by the Commission. If the Commission determines at any
16 time that the emergency organization standard or amend-
17 ment is not necessary, the Commission may suspend such
18 emergency organization standard or amendment.

19 “(4) All users of the bulk-power system shall comply
20 with any organization standard that takes effect under
21 this section.

22 “(f) COORDINATION WITH CANADA AND MEXICO.—
23 The Electric Reliability Organization shall take all appro-
24 priate steps to gain recognition in Canada and Mexico.
25 The United States shall use its best efforts to enter into

1 international agreements with the appropriate govern-
2 ments of Canada and Mexico to provide for effective com-
3 pliance with organization standards and to provide for the
4 effectiveness of the Electric Reliability Organization in
5 carrying out its mission and responsibilities. All actions
6 taken by the Electric Reliability Organization, any affili-
7 ated regional reliability entity, and the Commission shall
8 be consistent with the provisions of such international
9 agreements.

10 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
11 FUNDING.—(1) The Electric Reliability Organization shall
12 file with the Commission any proposed change in its proce-
13 dures, governance, or funding, or any changes in the affili-
14 ated regional reliability entity’s procedures, governance or
15 funding relating to delegated functions, and shall include
16 with the filing an explanation of the basis and purpose
17 for the change.

18 “(2) A proposed procedural change may take effect
19 90 days after filing with the Commission if the change
20 constitutes a statement of policy, practice, or interpreta-
21 tion with respect to the meaning or enforcement of an ex-
22 isting procedure. Otherwise, a proposed procedural change
23 shall take effect only upon a finding by the Commission,
24 after notice and opportunity for comments, that the
25 change is just, reasonable, not unduly discriminatory or

1 preferential, is in the public interest, and satisfies the re-
2 quirements of subsection (d)(4).

3 “(3) A change in governance or funding shall not
4 take effect unless the Commission finds that the change
5 is just, reasonable, not unduly discriminatory or pref-
6 erential, and is in the public interest, and satisfies the re-
7 quirements of subsection (d)(4).

8 “(4)(A) The Commission, either upon complaint or
9 upon its own motion, may suspend a procedure or govern-
10 ance or funding provision if it determines the procedure
11 or provision does not meet the requirements of subsection
12 (d)(4) or is unjust, unreasonable, unduly discriminatory
13 or preferential, or otherwise not in the public interest.

14 “(B) The Commission, upon complaint or upon its
15 own motion, may require the Electric Reliability Organiza-
16 tion to amend the procedures, governance or funding if
17 the Commission determines that the amendment is nec-
18 essary to meet the requirements of this section. The Elec-
19 tric Reliability Organization shall file the amendment in
20 accordance with paragraph (1) of this subsection.

21 “(h) DELEGATIONS OF AUTHORITY.—(1) The Elec-
22 tric Reliability Organization shall, upon request by an en-
23 tity, enter into an agreement with such entity for the dele-
24 gation of authority to implement and enforce compliance
25 with organization standards in a specified geographic area

1 if the Organization finds that the entity requesting the
2 delegation satisfies the requirements of subsection (d)(4)
3 (A), (B), (C), (D), (F), and (K), and if the delegation pro-
4 motes the effective and efficient implementation and ad-
5 ministration of bulk-power system reliability. The Electric
6 Reliability Organization may enter into an agreement to
7 delegate to the entity any other authority, except that the
8 Electric Reliability Organization shall reserve the right to
9 set and approve standards for bulk-power system reli-
10 ability.

11 “(2) The Electric Reliability Organization shall file
12 with the Commission any agreement entered into under
13 this subsection and any information the Commission re-
14 quires with respect to the affiliated regional reliability en-
15 tity to which authority is to be delegated. The Commission
16 shall approve the agreement, following public notice and
17 an opportunity for comment, if it finds that the agreement
18 meets the requirements of paragraph (1), and is just, rea-
19 sonable, not unduly discriminatory or preferential, and is
20 in the public interest. A proposed delegation agreement
21 with an affiliated regional reliability entity organized on
22 an interconnection-wide basis shall be rebuttably pre-
23 sumed by the Commission to promote the effective and
24 efficient implementation and administration of bulk-power
25 system reliability. No delegation by the Electric Reliability

1 Organization shall be valid unless approved by the Com-
2 mission.

3 “(3)(A) A delegation agreement entered into under
4 this subsection shall specify the procedures for an affili-
5 ated regional reliability entity to propose entity rules or
6 variances for review by the Electric Reliability Organiza-
7 tion. With respect to any such proposal that would apply
8 on an interconnection-wide basis, the Electric Reliability
9 Organization shall presume such proposal valid if made
10 by an interconnection-wide affiliated regional reliability
11 entity unless the Electric Reliability Organization makes
12 a written finding that the proposal:

13 “(i) was not developed in a fair and open proc-
14 ess that provided an opportunity for all interested
15 parties to participate;

16 “(ii) has a significant adverse impact on reli-
17 ability or commerce in other interconnections;

18 “(iii) fails to provide a level of reliability of the
19 bulk-power system within the interconnection such
20 that it would constitute a serious and substantial
21 threat to public health, safety, welfare, or national
22 security; or

23 “(iv) creates a serious and substantial burden
24 on competitive markets within the interconnection
25 that is not necessary for reliability.

1 “(B) With respect to any such proposal that would
2 apply only to part of an interconnection, the Electric Reli-
3 ability Organization shall find such proposal valid if the
4 affiliated regional reliability entity or entities making the
5 proposal demonstrate that it:

6 “(i) was developed in a fair and open process
7 that provided an opportunity for all interested par-
8 ties to participate;

9 “(ii) would not have an adverse impact on com-
10 merce that is not necessary for reliability;

11 “(iii) provides a level of bulk-power system reli-
12 ability adequate to protect public health, safety, wel-
13 fare, and national security, and would not have a
14 significant adverse impact on reliability; and

15 “(iv) in the case of a Variance, is based on le-
16 gitimate differences between regions or between sub-
17 regions within the affiliated regional reliability enti-
18 ty’s geographic area.

19 The Electric Reliability Organization shall approve or dis-
20 approve such proposal within 120 days, or the proposal
21 shall be deemed approved. Following approval of any such
22 proposal under this paragraph, the Electric Reliability Or-
23 ganization shall seek Commission approval pursuant to
24 the procedures prescribed under subsection (e)(3). Affili-
25 ated regional reliability entities may not make requests for

1 approval directly to the Commission except pursuant to
2 subsection (e)(3)(D).

3 “(4) If an affiliated regional reliability entity re-
4 quests, consistent with paragraph (1) of this subsection,
5 that the Electric Reliability Organization delegate author-
6 ity to it, but is unable within 180 days to reach agreement
7 with the Electric Reliability Organization with respect to
8 such requested delegation, such entity may seek relief
9 from the Commission. If, following notice and opportunity
10 for comment, the Commission determines that a delega-
11 tion to the entity would meet the requirements of sub-
12 section (1) above, and that the delegation would be just,
13 reasonable, not unduly discriminatory or preferential, and
14 in the public interest, and that the Electric Reliability Or-
15 ganization has unreasonably withheld such delegation, the
16 Commission may, by order, direct the Electric Reliability
17 Organization to make such delegation.

18 “(5)(A) The Commission may, upon its own motion
19 or upon complaint, and with notice to the appropriate af-
20 filiated regional reliability entity or entities, direct the
21 Electric Reliability Organization to propose a modification
22 to an agreement entered into under this subsection if the
23 Commission determines that—

24 “(i) the affiliated regional reliability entity no
25 longer has the capacity to carry out effectively or ef-

1 ficiently its implementation or enforcement respon-
2 sibilities under that agreement, has failed to meet its
3 obligations under that agreement, or has violated
4 any provision of this section,

5 “(ii) the rules, practices, or procedures of the
6 affiliated regional reliability entity no longer provide
7 for fair and impartial discharge of its implementa-
8 tion or enforcement responsibilities under the agree-
9 ment,

10 “(iii) the geographic boundary of a transmission
11 entity approved by the Commission is not wholly
12 within the boundary of an affiliated regional reli-
13 ability entity and such difference is inconsistent with
14 the effective and efficient implementation and ad-
15 ministration of bulk-power system reliability, or

16 “(iv) the agreement is inconsistent with another
17 delegation agreement as a result of actions taken
18 under paragraph (4) of this subsection.

19 “(B) Following an order of the Commission issued
20 under subparagraph (A), the Commission may suspend
21 the affected agreement if the Electric Reliability Organiza-
22 tion or the affiliated regional reliability entity does not
23 propose an appropriate and timely modification. If the
24 agreement is suspended, the Electric Reliability Organiza-
25 tion shall assume the previously delegated responsibilities.

1 The Commission shall allow the Electric Reliability Orga-
2 nization and the affiliated regional reliability entity an op-
3 portunity to appeal the suspension.

4 “(i) ORGANIZATION MEMBERSHIP.—Every System
5 Operator shall be required to be a member of the Electric
6 Reliability Organization and shall be required also to be
7 a member of any affiliated regional reliability entity oper-
8 ating under an agreement effective pursuant to subsection
9 (h) applicable to the region in which the system operator
10 operates or is responsible for the operation of bulk-power
11 system facilities.

12 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
13 Consistent with the range of actions approved by the Com-
14 mission under subsection (d)(4)(H), the Electric Reli-
15 ability Organization may impose a penalty, limitation of
16 activities, functions, or operations, or other disciplinary
17 action the Electric Reliability Organization finds appro-
18 priate against a user of the bulk-power system if the Elec-
19 tric Reliability Organization, after notice and an oppor-
20 tunity for interested parties to be heard, issues a finding
21 in writing that the user of the bulk-power system has vio-
22 lated an organization standard. The Electric Reliability
23 Organization shall immediately notify the Commission of
24 any disciplinary action imposed with respect to an act or
25 failure to act of a user of the bulk-power system that af-

1 fected or threatened to affect bulk-power system facilities
2 located in the United States, and the sanctioned party
3 shall have the right to seek modification or rescission of
4 such disciplinary action by the Commission. If the Organi-
5 zation finds it necessary to prevent a serious threat to reli-
6 ability, the Organization may seek injunctive relief in a
7 Federal Court in the district in which the affected facili-
8 ties are located.

9 “(2) A disciplinary action taken under paragraph (1)
10 may take effect not earlier than the 30th day after the
11 Electric Reliability Organization files with the Commission
12 its written finding and record of proceedings before the
13 Electric Reliability Organization and the Commission
14 posts its written finding, unless the Commission, on its
15 own motion or upon application by the user of the bulk-
16 power system which is the subject of the action, suspends
17 the action. The action shall remain in effect or remain
18 suspended unless and until the Commission, after notice
19 and opportunity for hearing, affirms, sets aside, modifies,
20 or reinstates the action, but the Commission shall conduct
21 such hearing under procedures established to ensure expe-
22 dited consideration of the action taken.

23 “(3) The Commission, on its own motion, may order
24 compliance with an organization standard and may impose
25 a penalty, limitation of activities, functions, or operations,

1 or take such other disciplinary action as the Commission
2 finds appropriate, against a user of the bulk-power system
3 with respect to actions affecting or threatening to affect
4 bulk-power system facilities located in the United States
5 if the Commission finds, after notice and opportunity for
6 a hearing, that the user of the bulk-power system has vio-
7 lated or threatens to violate an organization standard.

8 “(4) The Commission may take such action as is nec-
9 essary against the Electric Reliability Organization or an
10 affiliated regional reliability entity to assure compliance
11 with an organization standard, or any Commission order
12 affecting the Electric Reliability Organization or an affili-
13 ated regional reliability entity.

14 “(k) RELIABILITY REPORTS.—The Electric Reli-
15 ability Organization shall conduct periodic assessments of
16 the reliability and adequacy of the interconnected bulk-
17 power system in North America and shall report annually
18 to the Secretary of Energy and the Commission its find-
19 ings and recommendations for monitoring or improving
20 system reliability and adequacy.

21 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
22 COSTS.—The reasonable costs of the Electric Reliability
23 Organization, and the reasonable costs of each affiliated
24 regional reliability entity that are related to implementa-
25 tion and enforcement of organization standards or other

1 requirements contained in a delegation agreement ap-
 2 proved under subsection (h), shall be assessed by the Elec-
 3 tric Reliability Organization and each affiliated regional
 4 reliability entity, respectively, taking into account the rela-
 5 tionship of costs to each region and based on an allocation
 6 that reflects an equitable sharing of the costs among all
 7 end-users. The Commission shall provide by rule for the
 8 review of such costs and allocations, pursuant to the
 9 standards in this subsection and subsection (d)(4)(F).

10 **“SEC. 402. APPLICATION OF ANTITRUST LAWS.**

11 “Notwithstanding any other provision of law, each of
 12 the following activities are rebuttably presumed to be in
 13 compliance with the antitrust laws of the United States:

14 “(1) Activities undertaken by the Electric Reli-
 15 ability Organization under section 401 or affiliated
 16 regional reliability entity operating under an agree-
 17 ment in effect under section 401(h).

18 “(2) Activities of a member of the Electric Reli-
 19 ability Organization or affiliated regional reliability
 20 entity in pursuit of organization objectives under
 21 section 401 undertaken in good faith under the rules
 22 of the organization.

23 Primary jurisdiction, and immunities and other affirma-
 24 tive defenses, shall be available to the extent otherwise ap-
 25 plicable.”.

1 **SEC. 103. FEDERAL INTERCONNECTION AUTHORITIES.**

2 (a) INTERCONNECTIONS FOR CERTAIN FACILI-
3 TIES.—Section 210 of the Federal Power Act is amended
4 by adding the following at the end thereof:

5 “(f) SPECIAL RULE FOR CERTAIN FACILITIES.—

6 “(1) DEFINITION.—As used in this subsection
7 the term ‘facility’ means—

8 “(A) a small-scale electric power genera-
9 tion facility that is designed to serve customers
10 at or near the facility, or

11 “(B) a facility using a single fuel source to
12 produce at the point of use either electric or
13 mechanical power and thermal energy.

14 “(2) INTERCONNECTION.—A local distribution
15 company (as defined in section 151 of the Public
16 Utility Regulatory Policies Act of 1978) shall allow
17 a facility to interconnect with the local distribution
18 facilities of such company if the facility owner (A)
19 is an electric customer provided local distribution
20 service by such company and (B) complies with the
21 final rule issued under paragraph (3).

22 “(3) RULES.—Within 1 year from the date of
23 enactment of this subsection, the Commission shall
24 issue a final rule to implement paragraph (2) and
25 issue related safety and power quality standards. To
26 the extent feasible, the Commission shall develop the

1 standards through a process involving interested
 2 parties. The Commission shall enforce the rule es-
 3 tablished under this subsection using its authority
 4 under this Act.”.

5 (b) AMENDMENTS TO EXISTING INTERCONNECTION
 6 AUTHORITIES.—Section 210 of the Federal Power Act is
 7 amended as follows:

8 (1) In section 210(a)(1) (16 U.S.C.
 9 824i(a)(1))—

10 (A) by inserting “transmitting utility,”
 11 after “electric utility,”;

12 (B) by inserting “any transmitting utility,”
 13 after “small power production facility,” in sub-
 14 paragraph (A); and

15 (C) by inserting “or distribution” after
 16 “transmission” in subparagraph (D).

17 (2) In section 210(b)(2) (16 U.S.C. 824i(b)(2))
 18 by striking “an evidentiary hearing” and inserting
 19 “a hearing”.

20 (3) In section 210(d) by deleting the last sen-
 21 tence.

22 **SEC. 104. CONSUMER PROTECTION, MARKET POWER AND**
 23 **UNFAIR TRADE PRACTICES.**

24 (a) ELECTRIC SUPPLIER INFORMATION DISCLOSURE.

1 (1) DISCLOSURE RULES.—Not later than Janu-
2 ary 1, 2000, the Federal Trade Commission, in con-
3 sultation with the Federal Energy Regulatory Com-
4 mission, the Secretary of Energy, and the Adminis-
5 trator of the Environmental Protection Agency shall
6 issue rules prescribing the form, placement, content,
7 and timing of the supplier disclosure required under
8 this subsection.

9 (2) DISCLOSURE TO ELECTRIC CONSUMERS.—
10 In order to assist consumers in making informed
11 purchasing decisions, any electric supplier with a ca-
12 pacity in excess of 5 megawatts that sells or makes
13 an offer to sell electric energy to consumers, or solie-
14 its consumers to purchase electric energy, shall pro-
15 vide the consumers, in accordance with rules issued
16 under this subsection, a statement containing the
17 following information:

18 (A)(i) The nature of the service being of-
19 fered, including information about
20 interruptibility of service.

21 (ii) The price of electric energy, including
22 a description of any variable charges.

23 (iii) A description of all other charges that
24 are associated with the service being offered in-
25 cluding, but not limited to, access charges, exit

1 charges, back-up service charges, stranded cost
2 recovery charges, and customer service charges.

3 (iv) Such other information concerning the
4 product or price as the Federal Trade Commis-
5 sion determines can be feasibly provided and
6 would be useful to consumers in making pur-
7 chasing decisions.

8 (B)(i) The share of electric energy that is
9 generated by each of the following types of en-
10 ergy generation resource: coal, natural gas, oil,
11 nuclear, hydroelectric, solar, geothermal, wind,
12 biomass, waste, and other.

13 (ii) Such information concerning genera-
14 tion emissions characteristics as the Federal
15 Trade Commission determines can be provided
16 feasibly and would be useful to consumers in
17 making purchasing decisions, including (I)
18 emissions in each of the following categories per
19 megawatt-hour of generation from the sup-
20 plier's energy portfolio dedicated to the energy
21 product being offered: sulfur dioxide, nitrogen
22 oxides, and carbon dioxide and (II) the average
23 emissions of the pollutants identified in sub-
24 clause (I) for all generation in any regional

1 power pool or control area in which such sup-
2 plier participates.

3 (3) DISCLOSURE TO WHOLESALE CUS-
4 TOMERS.—In every sale of electric energy for resale,
5 the seller shall provide to the purchaser such infor-
6 mation respecting generation source and emissions
7 characteristics as may be required by rules under
8 this subsection.

9 (4) AUTHORITY TO OBTAIN BOOKS AND
10 RECORDS.—Authority to obtain information under
11 section 11 of the Energy Supply and Environmental
12 Coordination Act of 1974 (15 U.S.C. 796) shall be
13 available to the Federal Trade Commission to ad-
14 minister and enforce this section.

15 (5) PROHIBITED ACTS AND ENFORCEMENT.—
16 The failure of any person to provide information re-
17 quired under the rules issued under this subsection
18 or the providing by any person of false or misleading
19 information with respect to the disclosures required
20 by this section or the rules issued under this sub-
21 section shall be treated as a violation of a rule under
22 section 18 of the Federal Trade Commission Act (15
23 U.S.C. 41 and following) regarding unfair or decep-
24 tive acts or practices in or affecting commerce.

1 (6) STATE AUTHORITY.—Nothing in this sub-
2 section shall affect the authority of any State to pre-
3 scribe disclosure requirements in addition to and not
4 inconsistent with this section.

5 (b) MARKET POWER.—

6 (1) AMENDMENT OF FEDERAL POWER ACT.—
7 Part II of the Federal Power Act is amended by
8 adding after section 214 the following new section:

9 **“SEC. 215. MARKET POWER IN ELECTRIC SALES.**

10 “(a) FERC DETERMINATION.—On its own motion or
11 upon complaint of any affected person, the Commission
12 may, after notice and opportunity for a hearing on the
13 record, make a determination that—

14 “(1) any electric utility is exercising, or has ex-
15 ercised, market power in the sale of electric energy
16 by reason of its ownership or control of local dis-
17 tribution facilities (as defined in section 151 of the
18 Public Utility Regulatory Policies Act of 1978) or
19 transmission facilities;

20 “(2) such exercise of market power results in
21 prices for electric energy that exceed the prices that
22 would be charged in a fully competitive market; and

23 “(3) action under this section is required to re-
24 duce or eliminate such market power.

1 “(b) MITIGATION PLAN.—Whenever the Commission
2 makes a determination under subsection (a) with respect
3 to any electric utility, the Commission shall issue an order
4 requiring the utility to submit to the Commission a plan
5 to reduce or eliminate the market power concerned and
6 to implement such plan.

7 “(c) ADDITIONAL REMEDIES.—If the Commission
8 disapproves a plan submitted under subsection (b) or de-
9 termines that the utility is failing to properly implement
10 any such plan, the Commission shall—

11 “(1) issue an order under subsection (h) of sec-
12 tion 202 requiring the utility to relinquish control
13 over any transmission facilities owned or controlled
14 by such utility to any entity established under such
15 subsection (h) for the purpose of independent oper-
16 ation, control, and planning of interconnected trans-
17 mission facilities;

18 “(2) require the utility to establish just and
19 reasonable rates and charges for the retail sale of
20 electric energy that are based on the cost of service,
21 plus a reasonable rate of return on investment, not-
22 withstanding any provision of Federal or State law;
23 and

24 “(3) require the utility to establish just and
25 reasonable rates and charges for the wholesale sale

1 of electric energy that are based on the cost of serv-
2 ice, plus a reasonable rate of return on investment.
3 The Commission may elect not to take action under para-
4 graph (1), (2), or (3) in any case in which the Commission
5 finds that such action will not mitigate the market power
6 issues involved.

7 “(d) RELIABILITY.—No order or plan under this sub-
8 section shall unreasonably impair the reliability of any
9 local distribution system affected by such order or plan.

10 “(e) STATE AUTHORITY.—Nothing in this section
11 shall be construed to preempt any State authority to re-
12 quire any State regulated electric utility to take any ac-
13 tion, or cease taking any action, in addition to the actions
14 required by the Commission or by a plan under this sec-
15 tion to remedy the exercise of market power by such utility
16 to the extent such State actions are not inconsistent with
17 any order or plan under this section.

18 “(f) RETURN TO MARKET-BASED RATES.—The
19 Commission shall terminate an order issued under sub-
20 section (c)(2) to any electric utility whenever, on its own
21 motion or upon petition of any affected person, the Com-
22 mission determines that such order is no longer necessary
23 to reduce or eliminate the exercise of market power by
24 such utility.

1 “(g) EFFECTIVE DATE.—This section shall take ef-
2 fect on January 1, 2002.”.

3 (2) CONFORMING AMENDMENT.—Section
4 201(b)(2) of the Federal Power Act (relating to
5 Commission jurisdiction) is amended by striking
6 “and 212” and inserting “212, and 215”.

7 (c) UNFAIR TRADE PRACTICES.—The Federal Trade
8 Commission Act (15 U.S.C. 41 et seq.) is amended by in-
9 serting the following new section after section 5:

10 **“SEC. 5A. ELECTRICITY SUPPLY UNFAIR TRADE PRAC-**
11 **TICES.**

12 “(a) DEFINITION.—For purposes of this section the
13 term, ‘retail electric supplier’ has the meaning given that
14 term in section 3(25) of the Public Utility Regulatory
15 Policies Act of 1978.

16 “(b) SLAMMING.—(1) The Federal Trade Commis-
17 sion shall establish rules in accordance with section 553
18 of title 5, United States Code, for the submittal and
19 verification of a retail electric customer’s selection or
20 change in selection of a retail electric supplier and for the
21 assessment of penalties for violation of these rules. These
22 rules shall ensure that the customer receives electric serv-
23 ice from the retail electric supplier of the customer’s
24 choice.

1 “(2) A person shall not submit or change the selec-
2 tion made by a retail electric customer except in accord-
3 ance with procedures established in paragraph (1).

4 “(c) CRAMMING.—(1) The Federal Trade Commis-
5 sion shall establish rules in accordance with section 553
6 of title 5, United States Code, for obtaining the consent
7 of a retail electric customer for purchase of goods and
8 services other than those expressly authorized by law or
9 by the customer’s electricity supply and metering agree-
10 ment and for the assessment of penalties for violation of
11 these rules.

12 “(2) A person shall not charge a retail electric
13 customer for a particular service except in accord-
14 ance with procedures established in paragraph (1).

15 “(d) FEDERAL TRADE COMMISSION ENFORCE-
16 MENT.—Violation of this section or of a rule prescribed
17 under this section constitutes an unfair and deceptive act
18 or practice in violation of section 5 of this Act and shall
19 be treated as a violation of a rule under section 18 of this
20 Act. All functions and powers of the Federal Trade Com-
21 mission under this Act are available to the Federal Trade
22 Commission to enforce compliance with this section not-
23 withstanding any jurisdictional limitations in this Act.

24 “(e) STATE PROCEEDINGS AND OTHER REMEDIES.—
25 (1) This section does not preclude a State or State com-

1 mission from prescribing and enforcing additional laws,
 2 regulations, or procedures regarding the practices which
 3 are the subject of this section, so long as such laws, regu-
 4 lations, or procedures do not conflict with the provisions
 5 of this section or with any rule prescribed by the Federal
 6 Trade Commission pursuant to it.

7 “(2) The remedies provided by this section are in ad-
 8 dition to any other remedies available by law.”.

9 **SEC. 105. ANTITRUST SAVINGS CLAUSE.**

10 Nothing in this title or any amendment made by this
 11 title shall be construed to modify, impair, or supersede the
 12 operation of the antitrust laws. For purposes of this sec-
 13 tion, the term “antitrust laws” has the meaning given it
 14 in subsection (a) of the first section of the Clayton Act
 15 (15 U.S.C. 12(a)), except that such term includes the Act
 16 of June 19, 1936 (15 U.S.C. 13 and following), commonly
 17 known as the Robinson-Patman Act, and section 5 of the
 18 Federal Trade Commission Act (15 U.S.C. 45) to the ex-
 19 tent that such section 5 applies to unfair methods of com-
 20 petition.

21 **SEC. 106. MANDATORY OPEN ACCESS FOR ALL TRANSMIT-**
 22 **TING UTILITIES.**

23 (a) DEFINITION OF PUBLIC UTILITY.—Section
 24 201(e) of the Federal Power Act (16 U.S.C. 824(e)) is
 25 amended to read as follows:

1 “(e) DEFINITION OF PUBLIC UTILITY.—The term
 2 ‘public utility’, when used in this Part and Parts III and
 3 IV, means—

4 “(1) any person who owns or operates facilities
 5 subject to the jurisdiction of the Commission under
 6 this Part (other than facilities subject to such juris-
 7 diction solely by reason of section 210, 211, or 212);
 8 or

9 “(2) any transmitting utility (other than the
 10 Federal power marketing administrations and the
 11 Tennessee Valley Authority) which owns or operates
 12 transmission facilities not otherwise subject to the
 13 jurisdiction of the Commission under this Part, but
 14 only with respect to determining, fixing, and other-
 15 wise regulating the rates, terms, and conditions for
 16 the transmission of electric energy under this Part.”.

17 (b) 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 (c) NONJURISDICTIONAL STATUS RESULTING FROM
 23 COMPLIANCE WITH ORDERS UNDER SECTIONS 210 AND
 24 211; LIMITATION.—Section 201(b)(2) of the Federal
 25 Power Act (16 U.S.C. 824(b)(2)) is amended by striking

1 the period at the end of the second sentence and inserting
 2 the following: “except with respect to determining, fixing,
 3 and otherwise regulating the rates, terms, and conditions
 4 for the transmission of electric energy under this Part
 5 pursuant to subsection (e)(2).”.

6 (d) DEFINITION.—Section 3(23) of the Federal
 7 Power Act (16 U.S.C. 796) is amended to read as follows:

8 “(23) TRANSMITTING UTILITY.—The term
 9 ‘transmitting utility’ means any entity that owns or
 10 operates facilities used for the transmission of elec-
 11 tric energy.”.

12 **SEC. 107. CLARIFICATION OF STATE AND FEDERAL AU-**
 13 **THORITY OVER RETAIL TRANSMISSION SERV-**
 14 **ICES.**

15 (a) NONPREEMPTION OF STATE AUTHORITY TO
 16 ORDER RETAIL WHEELING AND TO IMPOSE LOCAL DE-
 17 LIVERY CHARGES.—Section 201(b) of the Federal Power
 18 Act is amended by adding the following new paragraph
 19 after paragraph (2):

20 “(3) This Act shall not preempt or otherwise affect
 21 any authority under the law of a State or municipality
 22 to—

23 “(A) require unbundled transmission and local
 24 distribution service (as defined in section 151 of the
 25 Public Utility Regulatory Policies Act of 1978) for

1 the delivery of electric energy directly to an ultimate
2 consumer, or

3 “(B) impose a delivery charge on an ultimate
4 consumer’s receipt of electric energy.

5 If such unbundled transmission is in interstate commerce,
6 the rate, terms, and conditions of the transmission shall
7 be subject to the exclusive jurisdiction of the Commission
8 under this part.”.

9 (b) OPEN ACCESS TRANSMISSION AUTHORITY; RE-
10 TAIL WHEELING IN RETAIL COMPETITION STATES.—

11 (1) APPLICABILITY OF OPEN ACCESS TRANS-
12 MISSION RULES.—Section 206 of the Federal Power
13 Act is amended by adding the following new sub-
14 section after subsection (d):

15 “(e) OPEN ACCESS TRANSMISSION SERVICES.—(1)
16 Under section 205 and this section, the Commission may
17 require, by rule or order, public utilities and transmitting
18 utilities to provide open access transmission services, sub-
19 ject to section 212(h), and may authorize recovery of
20 stranded costs, as defined by the Commission, arising
21 from any requirement to provide open access transmission
22 services. This section applies to any rule or order issued
23 by the Commission before, on, or after the date of enact-
24 ment of this Act.”.

1 (2) AUTHORITY TO ORDER RETAIL WHEEL-
2 ING.—Section 212(h) of the Federal Power Act is
3 amended as follows:

4 (A) By inserting “(1)” before “No”.

5 (B) By striking “(1)”, “(2)”, “(A)”, and
6 “(B)” and inserting in their places “(A)”,
7 “(B)”, “(i)”, and “(ii)” respectively.

8 (C) By striking from redesignated para-
9 graph (1)(B)(ii) “the date of enactment of this
10 subsection” and inserting “October 24, 1992,”.

11 (D) By adding the following new para-
12 graphs at the end:

13 “(2) Notwithstanding paragraph (1), the Commission
14 may issue an order that requires the transmission of elec-
15 tric energy directly or indirectly to an ultimate consumer
16 if a notice of retail competition under section 152(a)(1)
17 or section 153(a)(1) of the Public Utility Regulatory Poli-
18 cies Act of 1978 has been filed and is in effect with respect
19 to the ultimate consumer or if a distribution utility offers
20 open access to its delivery facilities to the ultimate con-
21 sumer.

22 “(3) Notwithstanding any provision of this Part to
23 the contrary, and whether or not a notice of retail competi-
24 tion under section 152(a)(1) or section 153(a)(1) of the
25 Public Utility Regulatory Policies Act of 1978 has been

1 filed, upon application by a designated representative of
 2 (A) a military base facility of the Department of Defense
 3 or a supplier or proposed supplier of electric energy there-
 4 to, or (B) an Indian tribe, or a supplier or proposed sup-
 5 plier thereto, the Commission shall issue an order requir-
 6 ing the transmission of electric energy directly or indi-
 7 rectly to such facility or Indian tribe. Any order under
 8 this paragraph shall establish rates, terms and conditions
 9 that are consistent with the requirements for open access
 10 transmission services provided pursuant to this Act. Noth-
 11 ing in this paragraph shall affect the authority of a State
 12 under section 152(d) and 153(d) of the Public Utility Reg-
 13 ulatory Policies Act of 1978.”.

14 (3) CONFORMING AMENDMENTS.—

15 (A) Section 3(24) of the Federal Power
 16 Act is amended to read as follows:

17 “(24) ‘transmission services’ means the trans-
 18 mission of electric energy sold or to be sold.”.

19 (B) Section 211(a) of the Federal Power
 20 Act is amended by striking “for resale”.

21 (C) Section 212(a) of the Federal Power
 22 Act is amended by striking “wholesale” each
 23 time it appears, except the last time.

1 (D) Section 3 of the Federal Power Act is
2 amended by adding the following new para-
3 graph at the end thereof:

4 “(26) INDIAN TRIBE.—The term ‘Indian tribe’
5 means any Indian tribe, band group, and nation, in-
6 cluding Alaska Indians, Aleuts, and Eskimos, and
7 any Alaskan Native Village, of the United States,
8 which is considered an eligible recipient under the
9 Indian Self Determination and Education Assistance
10 Act (Public Law 93–638) or was considered an eligi-
11 ble recipient under chapter 67 of title 31, United
12 States Code, prior to the repeal of such chapter.”.

13 (c) DETERMINATION OF LOCAL DISTRIBUTION AND
14 TRANSMISSION FACILITIES.—Section 201 of the Federal
15 Power Act is amended by adding the following new sub-
16 section at the end thereof:

17 “(h) DETERMINATION OF LOCAL DISTRIBUTION AND
18 TRANSMISSION FACILITIES.—

19 “(1) APPLICATION BY STATE REGULATORY AU-
20 THORITY.—A State regulatory authority, a transmit-
21 ting utility, or a local distribution company may
22 apply to the Commission for a determination wheth-
23 er a particular facility used for the transportation of
24 electric energy located in such State is a local dis-
25 tribution facility subject to the jurisdiction of that

1 State regulatory authority or is a transmission facil-
2 ity subject to the jurisdiction of the Commission.
3 The Commission may make such determination pur-
4 suant to such a request or on its own motion.

5 “(2) COMMISSION FINDINGS.—If an application
6 is submitted pursuant to this subsection by a State
7 regulatory authority, the Commission shall make a
8 determination giving the maximum practicable def-
9 erence to the position taken by the State regulatory
10 authority, in accordance with the following factors
11 associated with the facility:

12 “(A) function and purpose;

13 “(B) size;

14 “(C) location;

15 “(D) voltage level and other technical char-
16 acteristics;

17 “(E) historic, current and planned usage
18 patterns;

19 “(F) interconnection and coordination with
20 other facilities; and

21 “(G) any other factor the Commission
22 deems relevant.”.

1 **SEC. 108. AUTHORITY TO ESTABLISH REGIONAL TRANS-**
2 **MISSION ORGANIZATION.**

3 Section 202 of the Federal Power Act is amended by
4 adding the following new subsections after subsection (g):

5 “(h) REGIONAL TRANSMISSION ORGANIZATION.—(1)

6 Upon its own motion or upon application or complaint and
7 after notice and an opportunity for a hearing, the Com-
8 mission may order the establishment of entities for the
9 purpose of independent ownership or independent oper-
10 ation, control, and planning of interconnected trans-
11 mission facilities; order a transmitting utility to relinquish
12 ownership or control over operation of its transmission fa-
13 cilities to an entity for the purpose of independent owner-
14 ship or independent operation, control, and planning of
15 interconnected transmission facilities; subject generators
16 to the control of such entity consistent with other laws
17 to the extent necessary to permit reliable operation of the
18 transmission facilities; or take any combination of these
19 actions, if the Commission finds that—

20 “(A) this action is appropriate to promote com-
21 petitive electricity markets and efficient, economical,
22 and reliable operation of the interstate transmission
23 grid;

24 “(B) the entity established for the purpose of
25 independent ownership or independent operation,
26 control, and planning of interconnected transmission

1 facilities will manage the transmission facilities in a
2 manner that assures that—

3 “(i) ownership of transmission facilities
4 provides no advantage in competitive electricity
5 markets;

6 “(ii) the transmission customers of the
7 Tennessee Valley Authority, the Bonneville
8 Power Administration, the Administrator of the
9 Southwestern Power Administration, and the
10 Administrator of the Western Area Power Ad-
11 ministration will not pay an unreasonable share
12 of the entity’s costs and will not experience un-
13 reasonable transmission rate increases resulting
14 from the establishment of the entity; and

15 “(iii) as applicable, the respective statutory
16 and treaty obligations and contractual obliga-
17 tions existing on the date of enactment of this
18 Act of the Board of Directors of the Tennessee
19 Valley Authority, the Administrator of the Bon-
20 neville Power Administration, the Administrator
21 of the Southwestern Power Administration, the
22 Administrator of the Western Area Power Ad-
23 ministration, the Bureau of Reclamation, and
24 the Corps of Engineers can be met;

1 “(C) any transmitting utility ordered to trans-
2 fer ownership or control of its transmission facilities
3 will receive just and reasonable compensation for the
4 use of its facilities; and

5 “(D) adequate reliability of the affected trans-
6 mission facilities will be maintained.

7 Nothing in this subsection limits States from addressing
8 transmission facility maintenance, planning, siting, and
9 other utility functions in a manner consistent with this
10 Act or Commission action under this Act.

11 “(2) If not ordered under paragraph (1), the Ten-
12 nessee Valley Authority, the Administrator of the Bonne-
13 ville Power Administration, the Administrator of the
14 Southwestern Power Administration, or the Administrator
15 of the Western Area Power Administration is authorized
16 to participate in a regional transmission organization after
17 conducting a public process in the relevant service area
18 to receive comments. Notwithstanding any other law, par-
19 ticipation may include delegation of operation and control
20 of the Authority or Administration’s transmission system
21 to that entity, or other method of participation, under
22 terms and conditions the Authority or Administrator de-
23 termines necessary or appropriate, including being bound
24 by operational and other orders of the entity and by the

1 results of arbitration of disputes with the entity or with
2 other participants.

3 “(3) If the Commission determines, after notice and
4 opportunity for hearing, that the rates, charges, or classi-
5 fications demanded, observed, charged, or collected by any
6 entity established for the purpose of independent owner-
7 ship or independent operation, control, and planning of
8 interconnected transmission facilities for any transmission
9 or sale, or that any rule, regulation, practice, or contract
10 affecting such rate, charge, or classification is unjust, un-
11 reasonable, unduly discriminatory or preferential, or fur-
12 thers or maintains the existence of market power, the
13 Commission shall, pursuant to the standards and proce-
14 dures in section 206 of this Act, determine the rate,
15 charge, classification, rule, regulation, practice or contract
16 that eliminates such market power and is just and reason-
17 able, and shall fix the same by order.

18 “(4) Upon request by an entity established for the
19 purpose of independent ownership or independent oper-
20 ation, control, and planning of interconnected trans-
21 mission facilities or any other person, the Commission
22 shall issue a declaratory order determining whether such
23 entity covers a sufficiently broad geographic region so as
24 to ensure the development of efficient regional electricity

1 markets that encourage regional efficiencies in both gen-
2 eration dispatch and reliability of service.”.

3 **SEC. 109. SPECIAL PROVISIONS RESPECTING BPA AND**
4 **ERCOT TRANSMISSION.**

5 (a) REPEAL OF SPECIAL BPA WHEELING PROVI-
6 SIONS.—Section 212(i) of the Federal Power Act (16
7 U.S.C. 824k(i)), relating to laws applicable to the Federal
8 Columbia River Transmission System, is repealed.

9 (b) REPEAL OF SPECIAL ERCOT WHEELING PROVI-
10 SIONS.—Section 212(k) of the Federal Power Act (16
11 U.S.C. 824k(k)), relating to ERCOT utilities, is repealed.

12 **SEC. 110. ELECTRIC COMPANY MERGERS.**

13 Section 203(a) of the Federal Power Act is amended
14 as follows:

15 (1) By striking “public utility” each place it ap-
16 pears and inserting “electric utility company”.

17 (2) By inserting after the first sentence the fol-
18 lowing: “Except as the Commission may otherwise
19 provide by rule, no holding company in a holding
20 company system that includes an electric utility com-
21 pany shall, directly or indirectly, purchase, acquire,
22 or take any security of any electric utility company
23 or of a holding company in a holding company sys-
24 tem that includes an electric utility company, with-

1 out first having secured an order of the Commission
 2 authorizing it to do so.”.

3 (3) By striking “hearing” in the last sentence
 4 and inserting “oral or written presentation of
 5 views”.

6 (4) By adding at the end the following: “For
 7 purposes of this subsection, the terms ‘electric utility
 8 company’, ‘holding company’, and ‘holding company
 9 system’ have the meaning given them in section 2 of
 10 the Public Utility Holding Company Act of 1935.
 11 Notwithstanding section 201(b)(1), generation facili-
 12 ties shall be subject to the jurisdiction of the Com-
 13 mission for purposes of this section, except as the
 14 Commission may otherwise provide by rule.”.

15 **SEC. 111. REGIONAL TRANSMISSION PLANNING AGENCIES.**

16 Part II of the Federal Power Act is amended by add-
 17 ing after section 215, as added by this Act, the following
 18 new section:

19 **“SEC. 216. REGIONAL TRANSMISSION PLANNING AGENCIES.**

20 “(a) CONSENT.—The consent of Congress is given for
 21 agreements among two or more States to establish re-
 22 gional transmission planning agencies to—

23 “(1) facilitate coordination among the States
 24 within a particular region with regard to the plan-

1 ning of future transmission and distribution facili-
2 ties;

3 “(2) carry out State siting responsibilities more
4 effectively;

5 “(3) facilitate regulation of transmission system
6 operation within the region;

7 “(4) meet the other requirements of this section
8 and rules prescribed by the Commission under this
9 section; and

10 “(5) otherwise be consistent with the public in-
11 terest.

12 “(b) AUTHORITY.—(1) If the Commission determines
13 that an agreement meets the requirements of subsection
14 (a), the agency established under the agreement has such
15 authority with respect to matters otherwise within the ju-
16 risdiction of the Commission as is expressly provided in
17 the agreement and is necessary or appropriate for carrying
18 out the planning, siting, and regulatory responsibilities of
19 the agency.

20 “(2) The Commission’s approval under this section
21 may be subject to any terms and conditions the Commis-
22 sion determines are necessary to ensure that the agree-
23 ment is in the public interest.

24 “(c) RULES.—(1) The Commission shall prescribe by
25 rule—

1 “(A) criteria for use in making the determina-
2 tion regarding a regional transmission planning
3 agreement under subsection (a) (including criteria
4 specifying the extent to which a tribal government is
5 treated as a State for purposes of this section); and

6 “(B) standards for its administration of a re-
7 gional transmission planning agency established
8 under the agreement.

9 “(2) The rule shall require that—

10 “(A) a regional transmission planning agency
11 operate within a region that includes all or part of
12 each State that is a party to the agreement;

13 “(B) a regional transmission planning agency
14 be composed of 1 or more members from each State
15 that is a party to the agreement;

16 “(C) each participating State vest in the re-
17 gional transmission planning agency the authority
18 that otherwise would be exercised by the State and
19 that is necessary to provide for a comprehensive pro-
20 gram for planning and siting of transmission facili-
21 ties and to carry out the agreement and this section;
22 and

23 “(D) the agency follow reasonable procedures in
24 making its decisions, in governing itself, and in reg-
25 ulating the entities subject to its jurisdiction, includ-

1 ing a requirement that all decisions of the agency be
2 made by majority vote (or majority of weighted
3 votes) of the members present and voting.

4 “(3) The rule may include any other requirement to
5 ensure that the regional transmission planning agency’s
6 organization, practices, and procedures are sufficient to
7 carry out this section and the rules issued under it.

8 “(d) TERMINATION.—The Commission, after notice
9 and opportunity for comment, may terminate the approval
10 of an agreement under this section at any time if it deter-
11 mines that the regional transmission planning agency fails
12 to comply with the provisions of this section or Commis-
13 sion rules under subsection (c) or that the agreement is
14 contrary to the public interest.

15 “(e) APPLICATION OF SECTION 313.—Section 313
16 shall apply to rehearing before a regional transmission
17 planning agency and judicial review of any action of a re-
18 gional transmission planning agency in the same manner
19 as that section applies to rehearing and judicial review of
20 orders of the Commission.”.

21 **SEC. 112. UNIVERSAL AND AFFORDABLE SERVICE.**

22 Section 201 of the Federal Power Act (16 U.S.C.
23 824) is amended by adding at the end thereof the fol-
24 lowing new subsection:

1 “(i) UNIVERSAL AND AFFORDABLE SERVICE.—It is
2 the sense of the Congress that—

3 “(1) every consumer of electric energy should
4 have access to electric energy at reasonable and af-
5 fordable rates; and

6 “(2) the Commission and the States should en-
7 sure that competition in the electric energy business
8 does not result in the loss of service to rural, resi-
9 dential, or low-income consumers.”.

10 **SEC. 113. CONFORMING AND TECHNICAL AMENDMENTS TO**
11 **THE FEDERAL POWER ACT.**

12 Subsections (a) and (b) of section 316A of the Fed-
13 eral Power Act (16 U.S.C. 791a et seq.) are each amended
14 by striking “section 211, 212, 213, or 214,” in each place
15 such phrase appears and inserting “section 211, 212, 213,
16 214, 215, or 216”.

17 **SEC. 114. STUDY OF GRANDFATHERED SYSTEMS.**

18 The Federal Energy Regulatory Commission shall
19 undertake a study of the extent to which retail electric
20 customers of local distribution companies subject to sec-
21 tion 154 of the Public Utility Regulatory Policies Act of
22 1978 (relating to grandfathering) benefit from the adop-
23 tion of retail electric competition and submit a report to
24 Congress not later than January 1, 2005, containing the
25 results of such study.

1 **SEC. 115. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall be effective on the date of enactment of this Act.

4 **TITLE II—PROVISIONS RESPECT-**
5 **ING THE PUBLIC UTILITY**
6 **HOLDING COMPANY ACT OF**
7 **1935**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Public Utility Holding
10 Company Act of 1999”.

11 **SEC. 202. REFORM OF HOLDING COMPANY REGULATION**
12 **UNDER PUHCA.**

13 Eighteen months after the enactment of this Act, the
14 provisions of this title shall apply in lieu of the provisions
15 of the Public Utility Holding Company Act of 1935, except
16 that the Public Utility Holding Company Act of 1935 shall
17 remain in effect with respect to any holding-company system
18 which includes one or more subsidiary companies that
19 are public-utility companies, if such public-utility company
20 or companies provide retail electric or gas service in two
21 or more States in which the State regulatory authority has
22 not provided notice of retail competition pursuant to section
23 152 of the Public Utility Regulatory Policies Act of
24 1978 or which has not otherwise required distribution utilities
25 to provide open access service over the distribution

1 facilities of each distribution utility subject to its jurisdic-
2 tion.

3 **SEC. 203. DEFINITIONS.**

4 For purposes of this title:

5 (1) AFFILIATE.—The term “affiliate” of a com-
6 pany means any company 5 percent or more of the
7 outstanding voting securities of which are owned,
8 controlled, or held with power to vote, directly or in-
9 directly, by such company.

10 (2) ASSOCIATE COMPANY.—The term “associate
11 company” of a company means any company in the
12 same holding company system with such company.

13 (3) COMMISSION.—The term “Commission”
14 means the Federal Energy Regulatory Commission.

15 (4) COMPANY.—The term “company” means a
16 corporation, partnership, association, joint stock
17 company, business trust, or any organized group of
18 persons, whether incorporated or not, or a receiver,
19 trustee, or other liquidating agent of any of the fore-
20 going.

21 (5) ELECTRIC UTILITY COMPANY.—The term
22 “electric utility company” means any company that
23 owns or operates facilities used for the generation,
24 transmission, or distribution of electric energy for
25 sale.

1 (6) EXEMPT WHOLESALE GENERATOR AND
2 FOREIGN UTILITY COMPANY.—The terms “exempt
3 wholesale generator” and “foreign utility company”
4 have the same meanings as in section 32 and 33, re-
5 spectively, of the Public Utility Holding Company
6 Act of 1935.

7 (7) GAS UTILITY COMPANY.—The term “gas
8 utility company” means any company that owns or
9 operates facilities used for distribution at retail
10 (other than the distribution only in enclosed portable
11 containers, or distribution to tenants or employees of
12 the company operating such facilities for their own
13 use and not for resale) of natural or manufactured
14 gas for heat, light, or power.

15 (8) HOLDING COMPANY.—The term “holding
16 company” means—

17 (A) any company that directly or indirectly
18 owns, controls, or holds, with power to vote, 10
19 percent or more of the outstanding voting secu-
20 rities of a public utility company or of a holding
21 company of any public utility company; and

22 (B) any person, determined by the Com-
23 mission, after notice and opportunity for hear-
24 ing, to exercise directly or indirectly (either
25 alone or pursuant to an arrangement or under-

1 standing with one or more persons) such a con-
2 trolling influence over the management or poli-
3 cies of any public utility company or holding
4 company as to make it necessary or appropriate
5 for the rate protection of utility customers with
6 respect to rates that such person be subject to
7 the obligations, duties, and liabilities imposed
8 by this Act upon holding companies.

9 (9) HOLDING COMPANY SYSTEM.—The term
10 “holding company system” means a holding com-
11 pany, together with its subsidiary companies.

12 (10) JURISDICTIONAL RATES.—The term “ju-
13 risdictional rates” means rates established by the
14 Commission for the transmission of electric energy,
15 the sale of electric energy at wholesale in interstate
16 commerce, the transportation of natural gas, and the
17 sale in interstate commerce of natural gas for resale
18 for ultimate public consumption for domestic, com-
19 mercial, industrial, or any other use.

20 (11) NATURAL GAS COMPANY.—The term “nat-
21 ural gas company” means a person engaged in the
22 transportation of natural gas in interstate commerce
23 or the sale of such gas in interstate commerce for
24 resale.

1 (12) PERSON.—The term “person” means an
2 individual or company.

3 (13) PUBLIC UTILITY.—The term “public util-
4 ity” means any person who owns or operates facili-
5 ties used for transmission of electric energy or sales
6 of electric energy at wholesale in interstate com-
7 merce.

8 (14) PUBLIC UTILITY COMPANY.—The term
9 “public utility company” means an electric utility
10 company or a gas utility company.

11 (15) STATE COMMISSION.—The term “State
12 commission” means any commission, board, agency,
13 or officer, by whatever name designated, of a State,
14 municipality, or other political subdivision of a State
15 that, under the laws of such State, has jurisdiction
16 to regulate public utility companies.

17 (16) SUBSIDIARY COMPANY.—The term “sub-
18 sidiary company” of a holding company means—

19 “(A) any company, 10 percent or more of
20 the outstanding voting securities of which are
21 directly or indirectly owned, controlled, or held
22 with power to vote, by such holding company;
23 and

24 (B) any person, the management or poli-
25 cies of which the Commission, after notice and

1 opportunity for hearing, determines to be sub-
2 ject to a controlling influence, directly or indi-
3 rectly, by such holding company (either alone or
4 pursuant to an arrangement or understanding
5 with one or more other persons) so as to make
6 it necessary for the rate protection of utility
7 customers with respect to rates that such per-
8 son be subject to the obligations, duties, and li-
9 ability imposed by this Act upon subsidiary
10 companies of holding companies.

11 (17) VOTING SECURITY.—The term “voting se-
12 curity” means any security presently entitling the
13 owner or holder thereof to vote in the direction or
14 management of the affairs of a company.

15 **SEC. 204. FEDERAL ACCESS TO BOOKS AND RECORDS.**

16 (a) IN GENERAL.—Each holding company and each
17 associate company thereof shall maintain, and shall make
18 available to the Commission, such books, accounts, memo-
19 randa, and other records as are relevant to costs incurred
20 by a public utility or natural gas company that is an asso-
21 ciate company of such holding company and that provides
22 goods or services to, obtains goods or services from, or
23 engages in any transactions with such public utility com-
24 pany or natural gas company, and necessary or appro-
25 priate for the protection of utility customers with respect

1 to jurisdictional rates for the transmission of electric en-
2 ergy in interstate commerce, the sale of electric energy at
3 wholesale in interstate commerce, the transportation of
4 natural gas in interstate commerce, and the sale in inter-
5 state commerce of natural gas for resale for ultimate pub-
6 lic consumption for domestic, commercial, industrial, or
7 any other use.

8 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
9 ing company or of any subsidiary company of a holding
10 company shall maintain, and make available to the Com-
11 mission, such books, accounts, memoranda, and other
12 records with respect to any transaction with a public util-
13 ity or natural gas company that is an associate company
14 of such holding company as are relevant to costs incurred
15 by such public utility or natural gas company and nec-
16 essary or appropriate for the protection of utility cus-
17 tomers with respect to jurisdictional rates.

18 (c) HOLDING COMPANY SYSTEMS.—The Commission
19 may examine the books, accounts, memoranda, and other
20 records of any company in a holding company system, or
21 any affiliate thereof that provides goods or services to, ob-
22 tains goods or services from, or engages in any transaction
23 with a public utility or natural gas company that is an
24 associate company in such holding company system, as are
25 relevant to costs incurred by a public utility or natural

1 gas company within such holding company system and
2 necessary or appropriate for the protection of utility cus-
3 tomers with respect to jurisdictional rates.

4 (d) CONFIDENTIALITY.—No member, officer, or em-
5 ployee of the Commission shall divulge any fact or infor-
6 mation that may come to his or her knowledge during the
7 course of examination of books, accounts, memoranda, or
8 other records as provided in this section, except as may
9 be directed by the Commission, by a committee of Con-
10 gress, or by a court of competent jurisdiction.

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

12 (a) IN GENERAL.—Upon the written request of a
13 State commission having jurisdiction to regulate a public
14 utility company in a holding company system, the holding
15 company or any associate company or affiliate thereof,
16 other than such public utility company, wherever located,
17 that provides goods or services to, obtains goods or serv-
18 ices from, or engages in any transactions with such public
19 utility company, shall produce for inspection such books,
20 accounts, memoranda, and other records that—

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

23 (2) the State commission deems are relevant to
24 costs incurred by such public utility company; and

1 (3) are necessary for the effective discharge of
2 the responsibilities of the State commission with re-
3 spect to such proceeding.

4 (b) LIMITATION.—Subsection (a) does not apply to
5 any person that is a holding company solely by reason of
6 ownership of one or more qualifying facilities under sec-
7 tion 210 of the Public Utility Regulatory Policies Act of
8 1978.

9 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
10 duction of books, accounts, memoranda, and other records
11 under subsection (a) shall be subject to such terms and
12 conditions as may be necessary and appropriate to safe-
13 guard against unwarranted disclosure to the public of any
14 trade secrets or sensitive commercial information.

15 (d) EFFECT ON STATE LAW.—Nothing in this sec-
16 tion shall preempt applicable State law concerning the pro-
17 vision of books, records, or any other information, or in
18 any way limit the rights of any State to obtain books,
19 records, or any other information under any other Federal
20 law, contract, or otherwise.

21 (e) COURT JURISDICTION.—Any United States dis-
22 trict court located in the State in which the State commis-
23 sion referred to in subsection (a) is located shall have ju-
24 risdiction to enforce compliance with this section.

1 **SEC. 206. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the
3 date of enactment of this Act, the Commission shall pro-
4 mulgate a final rule to exempt from the requirements of
5 section 204 any person that is a holding company, solely
6 with respect to one or more of the following:

7 (1) Qualifying facilities under the Public Utility
8 Regulatory Policies Act of 1978.

9 (2) Exempt wholesale generators.

10 (3) Foreign utility companies.

11 (4) Exempt telecommunications companies.

12 (b) OTHER AUTHORITY.—If, upon application or
13 upon its own motion, the Commission finds that the books,
14 records, accounts, memoranda, and other records of any
15 person are not relevant to the jurisdictional rates of a pub-
16 lic utility or natural gas company, or if the Commission
17 finds that any class of transactions is not relevant to the
18 jurisdictional rates of a public utility or natural gas com-
19 pany, the Commission shall exempt such person or trans-
20 action from the requirements of section 204.

21 **SEC. 207. AFFILIATE TRANSACTIONS.**

22 Nothing in this title shall preclude the Commission
23 or a State commission from exercising its jurisdiction
24 under otherwise applicable law to determine whether a
25 public utility company, public utility, or natural gas com-
26 pany may recover in rates any costs of an activity per-

1 formed by an associate company, or any costs of goods
2 or services acquired by such public utility company from
3 an associate company.

4 **SEC. 208. APPLICABILITY.**

5 No provision of this title shall apply to, or be deemed
6 to include—

7 (1) the United States;

8 (2) a State or any political subdivision of a
9 State;

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

12 (4) any agency, authority, or instrumentality of
13 any entity referred to in paragraph (1), (2), or (3);
14 or

15 (5) any officer, agent, or employee of any entity
16 referred to in paragraph (1), (2), or (3) acting as
17 such in the course of official duty.

18 **SEC. 209. EFFECT ON OTHER REGULATIONS.**

19 Nothing in this title precludes the Commission or a
20 State commission from exercising its jurisdiction under
21 otherwise applicable law to protect utility customers from
22 paying too much for goods and services provided by asso-
23 ciate companies and from other cross subsidization of as-
24 sociate companies by regulated public utility companies.

1 **SEC. 210. ENFORCEMENT.**

2 The Commission shall have the same powers as set
3 forth in sections 306 through 317 of the Federal Power
4 Act (16 U.S.C. 825d-825p) to enforce the provisions of
5 this title.

6 **SEC. 211. SAVINGS PROVISIONS.**

7 (a) IN GENERAL.—Nothing in this title prohibits a
8 person from engaging in or continuing to engage in activi-
9 ties or transactions in which it is legally engaged or au-
10 thorized to engage on the effective date of this title.

11 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
12 Nothing in this title limits the authority of the Commis-
13 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
14 (including section 301 of that Act) or the Natural Gas
15 Act (15 U.S.C. 717 et seq.) (including section 8 of that
16 Act).

17 **SEC. 212. IMPLEMENTATION.**

18 Not later than 18 months after the date of enactment
19 of this title, the Commission shall—

20 (1) promulgate such regulations as may be nec-
21 essary or appropriate to implement this title (other
22 than section 205); and

23 (2) submit to the Congress detailed rec-
24 ommendations on technical and conforming amend-
25 ments to Federal law necessary to carry out this
26 title and the amendments made by this title.

1 **SEC. 213. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the
3 functions transferred to the Commission under this title
4 shall be transferred from the Securities and Exchange
5 Commission to the Commission.

6 **SEC. 214. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such funds
8 as may be necessary to carry out this title.

9 **SEC. 215. CONFORMING AMENDMENT TO THE FEDERAL**
10 **POWER ACT.**

11 Section 318 of the Federal Power Act (16 U.S.C.
12 825q) is repealed.

13 **TITLE III—PROVISIONS RE-**
14 **SPECTING THE PUBLIC UTIL-**
15 **ITY REGULATORY POLICIES**
16 **ACT OF 1978**

17 **SEC. 301. SHORT TITLE.**

18 This title may be cited as the “Ratepayer Protection
19 Act of 1999”.

20 **SEC. 302. FINDINGS.**

21 The Congress finds that—

22 (1) implementation of the mandatory power
23 purchase provisions of section 210 of the Public
24 Utility Regulatory Policies Act of 1978 (16 U.S.C.
25 824a–3) has resulted in many consumers paying ex-
26 cessive rates for electric energy;

1 (2) the Energy Policy Act of 1992 gives non-
 2 regulated producers of electricity additional access to
 3 the wholesale electric market through transmission
 4 access and exemption from the Public Utility Hold-
 5 ing Company Act of 1935; and

6 (3) in light of the competitive wholesale electric
 7 marketplace brought about by the Energy Policy Act
 8 of 1992 and Part IV of the Federal Power Act, the
 9 purchase mandate in section 210 of the Public Util-
 10 ity Regulatory Policies Act of 1978 is no longer
 11 needed.

12 **SEC. 303. PROSPECTIVE REPEAL.**

13 Section 210 of the Public Utility Regulatory Policies
 14 Act of 1978 is amended by adding the following new sub-
 15 section at the end thereof:

16 “(m) PROSPECTIVE REPEAL.—

17 “(1) NEW CONTRACTS.—After the enactment of
 18 this subsection, no electric utility shall be required
 19 to enter into a new contract or obligation to pur-
 20 chase or to sell electric energy or capacity pursuant
 21 to this section.

22 “(2) EXISTING RIGHTS AND REMEDIES NOT AF-
 23 FECTED.—Nothing in this subsection affects the
 24 rights or remedies of any party with respect to the
 25 purchase or sale of electric energy or capacity from

1 or to a facility determined to be a qualifying small
2 power production facility or a qualifying cogenera-
3 tion facility under this section 210 pursuant to any
4 contract or obligation to purchase or to sell electric
5 energy or capacity in effect on the date of enactment
6 of this subsection, including the right to recover the
7 costs of purchasing such electric energy or capac-
8 ity.”.

9 **SEC. 304. RECOVERY OF COSTS.**

10 Section 210 of the Public Utility Regulatory Policies
11 Act of 1978 is amended by adding the following new sub-
12 section at the end thereof:

13 “(n) RECOVERY OF COSTS.—The Commission shall
14 promulgate and enforce such regulations as may be re-
15 quired to assure that no electric utility shall be required
16 directly or indirectly to absorb the costs associated with
17 purchases of electric energy or capacity from a qualifying
18 facility pursuant to any legally enforceable obligation en-
19 tered into or imposed pursuant to this section prior to the
20 date of enactment of this subsection, to the extent that
21 the electric utility cannot otherwise reasonably mitigate
22 such costs. Such regulations shall be treated as a rule en-
23 forceable under the Federal Power Act (16 U.S.C. (16
24 U.S.C. 791a–825r)).”.

1 **TITLE IV—FEDERAL POWER**
2 **MARKETING ADMINISTRA-**
3 **TIONS AND TENNESSEE VAL-**
4 **LEY AUTHORITY**
5 **Subtitle A—Tennessee Valley**
6 **Authority**

7 **SEC. 401. DEFINITIONS.**

8 For purposes of this subtitle:

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

11 (2) The term “distributor” means a State,
12 county, municipality, or cooperative organization
13 which owns, controls, or operates local distribution
14 facilities and which on April 1, 1999, purchased
15 electric energy at wholesale from the Tennessee Val-
16 ley Authority under an all-requirements power con-
17 tract.

18 (3) The term “distributor service area” means
19 that geographic area which is either assigned to or
20 statutorily defined under State law as the area with-
21 in which a distributor has the right or privilege to
22 provide electric energy at retail to the ultimate con-
23 sumer and ratepayer.

24 (4) The term “electric supplier” means any per-
25 son who provides any electric supply.

1 (5) The term “excess electric energy” means
2 electric energy that has become surplus to the firm
3 contractual obligations of the Tennessee Valley Au-
4 thority under section 10 of the Tennessee Valley Au-
5 thority Act of 1933 (16 U.S.C. 831i) due to any re-
6 duction in the quantity of electric energy that the
7 Tennessee Valley Authority was contractually re-
8 quired to supply on the date of enactment of this
9 Act where such reduction results from the election
10 by customers of the Tennessee Valley Authority not
11 to purchase from Tennessee Valley Authority electric
12 energy that the Tennessee Valley Authority was con-
13 tractually required to supply on the date of enact-
14 ment of this Act.

15 (6) The term “generating resource” means elec-
16 tric energy, including the actual or planned electric
17 energy capability of generating facilities.

18 (7) The term “major generating resource”
19 means any generating resource that—

20 (A) has a planned capability greater than
21 50 average megawatts, and

22 (B) if acquired by the Tennessee Valley
23 Authority, is acquired for a period of more than
24 five years.

1 (8) The term “person” means a person as de-
2 fined in section 3(4) of the Federal Power Act.

3 (9) The term “public utility” means a public
4 utility as defined in section 201(e)(1) of the Federal
5 Power Act.

6 (10) The term “Tennessee Valley Region”
7 means the geographic area in which the Tennessee
8 Valley Authority or its distributors were the primary
9 source of power supply on the date of enactment of
10 this Act.

11 **SEC. 402. WHOLESALE COMPETITION IN THE TENNESSEE**
12 **VALLEY REGION.**

13 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

14 (1) Section 212(f) of the Federal Power Act (16 U.S.C.
15 824k(f)), relating to interconnection or wheeling orders
16 that result in the sale or delivery of electric energy outside
17 the Tennessee Valley Region, is repealed.

18 (2) Section 212(j) of the Federal Power Act (16
19 U.S.C. 824k(j)), relating to equitability within territory
20 restricted electric systems, is repealed.

21 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
22 THORITY ACT.—(1) The third sentence of the first para-
23 graph of section 15d(a) of the Tennessee Valley Authority
24 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
25 delivery of electric energy outside the area for which the

1 Tennessee Valley Authority or its distributors were the
 2 primary source of power supply on July 1, 1957, is re-
 3 pealed.

4 (2) The second and third paragraphs of section
 5 15d(a) of the Tennessee Valley Authority Act of 1933 (16
 6 U.S.C. 831n-4(a)), which clarify the limitations imposed
 7 by the third sentence of the first paragraph of the sub-
 8 section, are repealed.

9 **SEC. 403. TENNESSEE VALLEY AUTHORITY POWER SALES.**

10 (a) BAR ON TENNESSEE VALLEY AUTHORITY RE-
 11 TAIL SALES.—Notwithstanding section 10 of the Ten-
 12 nessee Valley Authority Act of 1933 (16 U.S.C. 831i), the
 13 Tennessee Valley Authority shall not sell or deliver electric
 14 energy to any end use or retail customers that did not
 15 have a contract for the purchase of electric energy with
 16 the Tennessee Valley Authority for services to specific fa-
 17 cilities on the date of enactment of this Act.

18 (b) REGIONAL PREFERENCE FOR WHOLESALE
 19 POWER SALES.—

20 (1) REGIONAL PREFERENCE.—Notwithstanding
 21 section 10, 11, and 12, or any other provision of the
 22 Tennessee Valley Authority Act of 1933 (16 U.S.C.
 23 831 and following), the sale and delivery of electric
 24 energy at wholesale by the Tennessee Valley Author-

1 ity for use outside the Tennessee Valley Region shall
2 be limited to excess electric energy.

3 (2) FIRM POWER SALES OF EXCESS ELECTRIC
4 ENERGY.—Any sale or delivery of excess electric en-
5 ergy by Tennessee Valley Authority pursuant to
6 paragraph (1) may be made only if each of the fol-
7 lowing requirements are met:

8 (A) NOTICE.—At least 30 days prior to
9 the execution of any contract for the sale or de-
10 livery of such electric energy the Tennessee Val-
11 ley Authority shall give the distributors written
12 notice that negotiations for such contract are
13 pending, and thereafter, at any distributor's re-
14 quest, make available for its inspection current
15 drafts of the proposed contract.

16 (B) TERM.—The contract term for the sale
17 of such energy may not exceed 7 years.

18 (C) OFFER TO EXISTING CUSTOMERS.—
19 The excess electric energy to be sold pursuant
20 to paragraph (1) shall first be offered for a rea-
21 sonable period of time and under the same es-
22 sential rates, terms, and conditions to distribu-
23 tors.

24 (3) ECONOMY EXCHANGES.—Nothing in this
25 subsection shall prevent the Tennessee Valley Au-

1 thority from making exchange power arrangements
2 with other electric suppliers when economically fea-
3 sible.

4 (c) APPLICATION OF FEDERAL POWER ACT TO EX-
5 CESS POWER SALES OF ELECTRIC ENERGY AT WHOLE-
6 SALE BY THE TENNESSEE VALLEY AUTHORITY.—Sales of
7 electric energy at wholesale by the Tennessee Valley Au-
8 thority for use outside the Tennessee Valley Region shall
9 be subject to the provisions of Parts II and III of the Fed-
10 eral Power Act (16 U.S.C. 791a) (except sections 204,
11 207, 209, 214, and 305), and the Commission shall have
12 jurisdiction under such Parts II and III over the rates,
13 terms, and conditions of such sales. Such provisions of the
14 Federal Power Act and the rules, regulations and policies
15 of the Commission thereunder, shall apply to such sales
16 by the Tennessee Valley Authority to the same extent and
17 in the same manner as such provisions apply to wholesale
18 sales of electric energy in interstate commerce by a public
19 utility otherwise subject to the jurisdiction of the Commis-
20 sion under Part II of such Act.

21 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
22 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
23 GION.—The third proviso of section 10 of the Tennessee
24 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
25 second and third provisos of section 12 of the Tennessee

1 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
2 apply to any sale of excess electric energy by the Ten-
3 nessee Valley Authority for use outside the Tennessee Val-
4 ley Region.

5 **SEC. 404. PROHIBITION ON ACQUISITION OF NEW GENER-**
6 **ATING RESOURCES.**

7 Notwithstanding any other provision of law, the Ten-
8 nessee Valley Authority shall not acquire any new major
9 generating resource after the date of enactment of this
10 Act unless contractual or other financial arrangements
11 have been made to ensure that the customer or customers
12 on whose behalf the resource is acquired commit to pay
13 the full costs of the resource, and the Tennessee Valley
14 Authority shall not acquire any new generating resource
15 that it reasonably expects will necessitate the use of its
16 authority to recover otherwise nonrecoverable costs pro-
17 vided in section 408.

18 **SEC. 405. RENEGOTIATION OF LONG-TERM CONTRACTS.**

19 The Tennessee Valley Authority and its distributors
20 shall, within one year following the date of enactment of
21 this Act, renegotiate their existing long-term contracts
22 with respect to the remaining term, the length of the ter-
23 mination notice, the amount of electric energy that dis-
24 tributors may purchase from electric suppliers other than
25 the Tennessee Valley Authority, including access to the

1 Tennessee Valley Authority transmission system, and pro-
2 visions for stranded cost recovery. Such renegotiated con-
3 tracts shall not grant any undue preference or advantage
4 to any person or subject any person to any undue preju-
5 dice or disadvantage. If the parties are unable to reach
6 agreement with regard to any of the issues under this sec-
7 tion within the 1-year period set forth above, they shall
8 submit the issue in dispute to the Federal Energy Regu-
9 latory Commission for final resolution.

10 **SEC. 406. REGULATION OF TENNESSEE VALLEY AUTHORITY**
11 **TRANSMISSION SYSTEM.**

12 (a) FEDERAL POWER ACT JURISDICTION.—The
13 transmission and local distribution of electric energy by
14 the Tennessee Valley Authority shall be subject to the pro-
15 visions of parts II and III of the Federal Power Act (ex-
16 cept sections 204, 207, 209, 214, and 305), the Commis-
17 sion shall have jurisdiction under such Parts II and III
18 over the rates, terms, and conditions of such transmission
19 and local distribution. Such provisions of the Federal
20 Power Act and the rules, regulations and policies of the
21 Commission thereunder, shall apply to such transmission
22 and local distribution by the Tennessee Valley Authority
23 to the same extent and in the same manner as such provi-
24 sions apply to the transmission of electric energy by a pub-

1 lic utility otherwise subject to the jurisdiction of the Com-
 2 mission under Part II of such Act.

3 (b) TRANSMISSION PLANT INVESTMENT.—Except as
 4 otherwise provided by the Commission, the Tennessee Val-
 5 ley Authority shall not make any transmission plant in-
 6 vestment that is significant (as defined by regulations
 7 issued by the Commission) without the Commission’s prior
 8 approval as to the need for such investment, taking into
 9 account possible alternate investments, project partici-
 10 pants or transmission providers, the reasonableness of the
 11 cost estimate and the prudence of the investment.

12 (c) RATE PHASE-IN.—If the Commission determines
 13 that the initial application of this subtitle in the develop-
 14 ment of any Tennessee Valley Authority rates for trans-
 15 mission services would result in an excessive increase in
 16 any rate, as determined by the Commission, the Commis-
 17 sion may phase in the effect of the application of this sub-
 18 title to such rate over a reasonable period of time to the
 19 same extent it would ordinarily do so for public utility
 20 rates.

21 **SEC. 407. REGULATION OF TENNESSEE VALLEY AUTHORITY**
 22 **DISTRIBUTORS.**

23 (a) REPEAL OF TENNESSEE VALLEY AUTHORITY
 24 REGULATION OF DISTRIBUTORS.—Upon the election of a
 25 municipality or cooperative organization to which the Ten-

1 Tennessee Valley Authority sells electric energy, the third pro-
2 viso of section 10 of the Tennessee Valley Authority Act
3 of 1933 (16 U.S.C. 831i) and the second and third pro-
4 visos of section 12 of the Tennessee Valley Authority Act
5 of 1933 (16 U.S.C. 831k) shall not apply to future whole-
6 sale sales by the Tennessee Valley Authority in the Ten-
7 nessee Valley Region, and the Tennessee Valley Authority
8 shall not be authorized to regulate, by means of rules, con-
9 tract provisions, resale rate schedules, contract termi-
10 nation rights, or any other method, any rates, terms, or
11 conditions imposed on the resale of such electric energy
12 by such municipality or cooperative organization.

13 (b) REMOVAL OF PURPA RATEMAKING AUTHOR-
14 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
15 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
16 striking “, and in the case of an electric utility with re-
17 spect to which the Tennessee Valley Authority has rate-
18 making authority, such term means the Tennessee Valley
19 Authority”.

20 (c) AUTHORITY OF GOVERNING BODIES OF MUNICI-
21 PALITIES AND COOPERATIVE ORGANIZATIONS.—Upon the
22 election by any municipality or cooperative organization
23 pursuant to subsection (a) of this section, any regulatory
24 authority currently exercised by the Tennessee Valley Au-
25 thority over any municipality or cooperative organization

1 shall henceforth be exercised by the governing body of
2 such municipality or cooperative organization, in accord-
3 ance with the laws of the State in which it is organized.

4 **SEC. 408. STRANDED COST RECOVERY.**

5 Within one year of the date of enactment of this Act,
6 the Commission shall promulgate regulations with respect
7 to recovery of stranded costs (as determined by the Com-
8 mission) imposed on the Tennessee Valley Authority by
9 any departing power customer and providing for recovery
10 of the costs of any stranded transmission facilities (as de-
11 termined by the Commission) imposed upon the Tennessee
12 Valley Authority by any departing transmission customer.
13 These regulations shall provide that customers that did
14 not impose stranded costs upon the Tennessee Valley Au-
15 thority are not obligated to pay such costs on behalf of
16 other customers. The Commission's methodology for de-
17 termining recovery of the Tennessee Valley Authority's
18 stranded costs shall be consistent with the methodology
19 used by the Commission in determining stranded cost re-
20 covery for public utilities. The Tennessee Valley Authority
21 is authorized to recover such of its stranded costs as are
22 approved by the Commission. The Commission may not
23 impose a stranded cost recovery charge after September
24 30, 2007, unless the person against whom such charges
25 are assessed agrees otherwise. Any stranded cost recovery

1 charge assessed by the Tennessee Valley Authority on ex-
2 isting retail or wholesale customers shall be unbundled
3 from the otherwise applicable retail or wholesale rate ap-
4 plicable to that customer and stated on the customer's bill
5 as a separate charge.

6 **SEC. 409. REGIONAL TRANSMISSION PLANNING AGENCIES.**

7 The Tennessee Valley Authority is authorized to par-
8 ticipate, under such terms and conditions as it deems ap-
9 propriate, after conducting a public process to receive
10 comment on the Tennessee Valley Authority's participa-
11 tion, in a Commission approved and regulated regional
12 transmission planning agency that operates in the Ten-
13 nessee Valley Region. The Tennessee Valley Authority
14 shall not join any regional transmission planning agency
15 which would require it, or the combined users of the Ten-
16 nessee Valley Authority's transmission system, to pay a
17 disproportionate share of the regional transmission plan-
18 ning agency's costs. The Tennessee Valley Authority shall
19 not participate in any regional transmission planning
20 agency that would result in undue cost shifts among cus-
21 tomers, as determined by the Commission. This section
22 shall not be construed to require the Tennessee Valley
23 Authority's participation in any regional transmission
24 planning agency.

1 **SEC. 410. APPLICATION OF ANTITRUST LAW.**

2 (a) IN GENERAL.—The Tennessee Valley Authority
3 shall be subject to the antitrust laws of the United States.
4 For purposes of this section, the term “antitrust laws”
5 has the meaning given it in subsection (a) of the first sec-
6 tion of the Clayton Act (15 U.S.C. 12(a)), except that
7 such term includes the Act of June 19, 1936 (15 U.S.C.
8 13 and following), commonly known as the Robinson-Pat-
9 man Act, and section 5 of the Federal Trade Commission
10 Act (15 U.S.C. 45) to the extent that such section 5 ap-
11 plies to unfair methods of competition.

12 (b) JUDICIAL REVIEW.—Any person injured by viola-
13 tion of the antitrust laws by the Tennessee Valley Author-
14 ity may bring a civil action against the Tennessee Valley
15 Authority in Federal district court for injunctive relief or
16 civil damages. No action under the antitrust laws may be
17 maintained against the Tennessee Valley Authority, its of-
18 ficers, attorneys, employees, agents or representatives
19 arising out of any activity that is obligated or directed to
20 be performed under any Federal statute.

21 **SEC. 411. DISPOSITION OF SURPLUS LOCAL DISTRIBUTION**
22 **FACILITIES.**

23 The Tennessee Valley Authority shall offer for sale,
24 under such terms and conditions as established by the
25 Commission through regulation or order, all the following

1 local distribution facilities owned by the Tennessee Valley
2 Authority:

3 (1) Facilities used solely for delivery to a single
4 customer.

5 (2) Facilities used solely for delivery to a group
6 of customers all of whom are willing to purchase
7 such facilities jointly.

8 Such customers may in any event elect that the Tennessee
9 Valley Authority shall retain such existing local distribu-
10 tion facilities, in which event the cost of such facilities
11 shall not be included in the Tennessee Valley Authority's
12 transmission rates. In the case of any Tennessee Valley
13 Authority facility used in local distribution used solely to
14 serve any customer entitled to purchase electric energy di-
15 rectly from the Tennessee Valley Authority, such customer
16 shall have priority in the purchase of such facility. The
17 Tennessee Valley Authority shall not construct after the
18 date of enactment of this Act facilities designed to operate
19 at electric voltages below 35 kilovolts.

20 **SEC. 412. COMMISSION REGULATIONS.**

21 In addition to the regulations which the Commission
22 is required to adopt pursuant to this subtitle, the Commis-
23 sion may adopt other regulations and issue such orders
24 as it deems appropriate to implement the provisions of this
25 subtitle.

1 **SEC. 413. SAVINGS PROVISION.**

2 (a) IN GENERAL.—This subtitle shall be interpreted
3 and implemented in a manner that does not adversely af-
4 fect the obligation of the Tennessee Valley Authority to
5 repay bonds issued by the Authority.

6 (b) TENNESSEE VALLEY AUTHORITY BONDS NOT
7 OBLIGATIONS OF THE UNITED STATES.—Nothing in this
8 subtitle shall affect section 15d(b) of the Tennessee Valley
9 Authority Act of 1933 (16 U.S.C. 831n–4(b)), providing
10 that bonds issued by the Tennessee Valley Authority shall
11 not be obligations of, nor shall payment of the principal
12 thereof or interest thereon be guaranteed by, the United
13 States.

14 **Subtitle B—Bonneville Power**
15 **Administration**

16 **SEC. 421. DEFINITIONS.**

17 Section 3 of the Federal Power Act is amended by
18 adding the following new paragraphs after paragraph
19 (27):

20 “(27) BONNEVILLE ADMINISTRATOR.—The
21 term ‘Bonneville Administrator’ means the Adminis-
22 trator of the Bonneville Power Administration;

23 “(28) PACIFIC NORTHWEST.—The term ‘Pacific
24 Northwest’ has the meaning given that term in sec-
25 tion 3(14) of the Pacific Northwest Electric Power

1 Planning and Conservation Act (16 U.S.C.
2 839a(14));

3 “(29) BONNEVILLE TRANSMISSION SYSTEM.—

4 The term ‘Bonneville Transmission System’ means
5 transmission facilities owned or leased by the United
6 States, acting through the Bonneville Administrator,
7 and operated by the Bonneville Administrator or an-
8 other entity under section 202(h) or (i) of this Act;”.

9 **SEC. 422. APPLICATION OF FEDERAL POWER ACT.**

10 After September 30, 2001, sections 202(h) and (i),
11 203 (with respect to dispositions of transmission facili-
12 ties), 205, 206, 208, and 210 through 213 of the Federal
13 Power Act and sections 301 through 304, 306, 307 (ex-
14 cept the last sentence of paragraph (c)), 308, 309, 313,
15 and 317 of the Federal Power Act apply to transmission
16 facilities and transmission of electric energy and the provi-
17 sion of necessary associated services over the Bonneville
18 Transmission System, provided that—

19 (1) any determination made under those sec-
20 tions as to whether an action or matter is just, rea-
21 sonable, not unduly discriminatory or preferential
22 shall be subject to—

23 (A) phasing in Commission-ordered
24 changes in transmission rates or charges that
25 would cause unreasonable cost shifts among

1 users of the Bonneville Transmission System if
2 implemented at once;

3 (B) mitigating unreasonable adverse im-
4 pacts on remote transmission customers in the
5 Pacific Northwest that would otherwise result
6 from Commission-ordered changes in the his-
7 toric treatment of costs to acquire transmission
8 to serve customers historically served by Gen-
9 eral Transfer Agreements entered into between
10 the Bonneville Administrator and other trans-
11 mission providers;

12 (C) complying with requirements of other
13 laws applicable to the Bonneville Administrator;

14 (D) assuring the Bonneville Administra-
15 tor's transmission rates and charges are estab-
16 lished sufficient to—

17 (i) recover existing and future Federal
18 investment in the Bonneville Transmission
19 System over a reasonable number of years
20 after first meeting all the Bonneville Ad-
21 ministrator's other transmission costs and
22 expenses; and

23 (ii) produce the revenues necessary to
24 assure timely payment of all transmission

1 related costs and expenses, including reve-
2 nues to establish reserves;

3 (E) rules established by the Commission
4 to—

5 (i) assure transmission access is pro-
6 vided over the Bonneville Transmission
7 System for hydroelectric power that must
8 be generated and transmitted at a par-
9 ticular time in order to reduce spill and
10 levels of dissolved nitrogen gas harmful to
11 fish; and

12 (ii) govern compensation to adversely
13 affected transmission users when capacity
14 is made available for transmission of hy-
15 droelectric power in those circumstances;
16 and

17 (F) subsection 205(g) of the Federal
18 Power Act; and

19 (2) these sections shall not apply to—

20 (A) the Bonneville Administrator's activi-
21 ties other than transmission of electric energy
22 and provision of necessary associated services
23 over the facilities of the Bonneville Trans-
24 mission System; or

(B) a contract in effect on the date of enactment of this section, except for rates which are adjustable by the Administrator under the contract; a Treaty of the United States; or a contract concerning the physical delivery of energy and capacity entered into by entities designated pursuant to such a Treaty.

SEC. 423. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NONRECOVERABLE COSTS.

Section 205 of the Federal Power Act is amended by adding the following after subsection (f):

“(g)(1) Subject to the requirements of paragraph (2), the Bonneville Administrator shall propose and the Commission shall establish a mechanism pursuant to this section that enables the Administrator to place a surcharge on rates or charges for transmission services over the Bonneville Transmission System when necessary in order to recover power costs unable to be recovered through power revenues in time to meet the cost recovery requirements of section 7(a) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(a)(1)).

“(2) The transmission surcharge mechanism set forth in paragraph (1) shall—

1 “(A) recover not more than \$600,000,000 in
2 total and no more than \$100,000,000 in any fiscal
3 year;

4 “(B) be available only between October 1, 2001,
5 and October 1, 2016;

6 “(C) be implemented by the Bonneville Admin-
7 istrator of only when the Bonneville Administrator
8 projects that available financial reserves attributable
9 to the power function will be less than
10 \$150,000,000; and

11 “(D) to the fullest extent possible, be designed
12 and established to recover the costs from trans-
13 mission users in a manner that—

14 “(i) minimizes any effect on transmission
15 users’ choices among competing suppliers or
16 products;

17 “(ii) does not apply to use of the Bonne-
18 ville Transmission System for power sales out-
19 side the Pacific Northwest; and

20 “(iii) minimizes bypass of the Bonneville
21 Transmission System by transmission users
22 seeking to avoid the surcharge.

23 “(3) The Bonneville Administrator shall have sole
24 discretion to determine whether to implement the cost re-
25 covery mechanism established by the Commission under

1 paragraph (1). Before imposing the surcharge, the Bonne-
2 ville Administrator shall conduct a public process in the
3 Pacific Northwest to receive comment on implementation
4 of the surcharge. As a part of that public process, the
5 Bonneville Administrator shall make available information
6 concerning the need for and amount of the surcharge. If
7 the Bonneville Administrator decides to implement a sur-
8 charge, it shall take effect on the Bonneville Administra-
9 tor's proposed effective date, but no earlier than 60 days
10 following the Administrator's filing of the proposed sur-
11 charge to the Commission for approval.

12 “(4)(A) Within 120 days after the effective date of
13 the surcharge, the Commission shall approve, reject, or
14 modify the surcharge and communicate its decision to the
15 Bonneville Administrator. In conducting its review, the
16 Commission shall not consider the appropriateness of the
17 cost recovery mechanism established by the Commission
18 under paragraph (1).

19 “(B) If the Commission rejects or modifies the sur-
20 charge, the Commission may order the Bonneville Admin-
21 istrator to refund, with interest, the portion of the sur-
22 charge the Commission found not justified or the Commis-
23 sion may authorize the Administrator to recover amounts
24 from customers who underpaid or did not pay the sur-
25 charge. If the Commission orders modification of the Bon-

1 neville Administrator’s surcharge, such modified charge
2 shall be effective on the date and for the time period speci-
3 fied by the Commission.

4 “(5) Any payment of power costs through application
5 of transmission revenues collected by surcharge or other-
6 wise shall be treated as a loan to the Bonneville Adminis-
7 trator’s power function. The Bonneville Administrator
8 shall repay the loan as soon as possible from power func-
9 tion revenues once the Bonneville Administrator is able
10 to meet other power cost recovery and Treasury repay-
11 ment obligations on an annual basis using power revenues
12 and, to the extent practicable, refund such revenues to all
13 transmission customers charged the surcharge. The bor-
14 rowed revenues shall bear interest at a rate determined
15 appropriate by the Commission.

16 “(6) For the recovery of costs relating to any genera-
17 tion or conservation resources financed by debt issued by
18 a non-Federal party before October 1, 1998, and secured
19 by an obligation of the Bonneville Administrator to make
20 payments or net bill power and transmission service that
21 cannot be recovered through power rates and charges and
22 paid in accordance with the application of revenues and
23 the priority of payments specified by section 13(b) of the
24 Federal Columbia River Transmission System Act of 1974
25 (16 U.S.C. 838k(b)), the provisions of this section apply,

1 except for the recovery limitations under paragraph (2)(A)
2 and the time limits under paragraph (2)(B), but only to
3 the extent such recovery would have been allowed under
4 laws applicable to the Bonneville Administrator as of Oc-
5 tober 1, 1998. In reviewing this surcharge request, the
6 Commission shall apply the standard of review applicable
7 as of October 1, 1998.”.

8 **SEC. 424. COMPLAINTS.**

9 Section 306 of the Federal Power Act is amended by
10 inserting “agency or instrumentality of the United
11 States,” after “person,” in the first sentence.

12 **SEC. 425. REVIEW OF COMMISSION ORDERS.**

13 Section 313 of the Federal Power Act is amended by
14 inserting “agency or instrumentality of the United
15 States,” after “person,” in the first sentence in subsection
16 (a).

17 **SEC. 426. ANTITRUST LAWS APPLICATION TO BPA.**

18 (a) IN GENERAL.—Subject to subsection (b), effec-
19 tive January 1, 2003, the Bonneville Power Authority is
20 subject to the antitrust laws of the United States with re-
21 spect to the operation of its electric power system. For
22 purposes of this section, the term ‘antitrust laws’ has the
23 meaning given it in subsection (a) of the first section of
24 the Clayton Act (15 U.S.C. 12(a)), except that it includes
25 the Act of June 19, 1936 (15 U.S.C. 13 et. seq.), com-

1 monly known as the Robinson-Patman Act, and section
2 5 of the Federal Trade Commission Act (15 U.S.C. 45),
3 to the extent that section 5 applies to unfair methods of
4 competition.

5 (b) EXCEPTION.—No damages, interest on damages,
6 costs, or attorney’s fees may be recovered under section
7 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
8 15c) from the Bonneville Power Authority.

9 **SEC. 427. CONFORMING AMENDMENTS.**

10 (a) Section 201(f) of the Federal Power Act is
11 amended by striking “No” and inserting “(1) Except as
12 provided in section 202(h)–(i), no”.

13 (b) Section 212(i) of the Federal Power Act (16
14 U.S.C. 824(i)) is repealed.

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

17 (d) Section 9 of the Federal Columbia River Trans-
18 mission System Act (16 U.S.C. 838g) is amended to read
19 as follows:

20 **“SEC. 9. RATES AND CHARGES.**

21 “Schedules of rates and charges for the sale, includ-
22 ing dispositions to a Federal agency, of all electric power
23 made available to the Administrator pursuant to section
24 8 of this Act or otherwise acquired shall be established—

1 “(1) with a view to encouraging the widest pos-
2 sible diversified use of electric power at the lowest
3 possible rates to consumers consistent with sound
4 business principles;

5 “(2) having regard to the recovery (upon the
6 basis of the application of such rate schedules to the
7 capacity of the electric facilities of the projects) of
8 the cost of producing such electric power, including
9 the amortization of the capital investment allocated
10 to power over a reasonable period of years and pay-
11 ments provided for in section 11(b)(9) of this Act;
12 and

13 “(3) at levels to produce such additional power
14 revenues as may be required, in the aggregate with
15 all other power revenues of the Administrator, to
16 pay when due the principal of, premiums, discounts,
17 and expenses in connection with the issuance of and
18 interest on all bonds issued and outstanding pursu-
19 ant to this Act for other than the construction, ac-
20 quisition, and replacement of the Federal trans-
21 mission system, and amounts required to establish
22 and maintain reserve and other funds and accounts
23 established in connection therewith.

24 Electric power rates under this section shall be established
25 by the Administrator in accordance with section 7 of the

1 Pacific Northwest Electric Power Planning and Conserva-
2 tion Act.”.

3 (e) Section 10 of the Federal Columbia River Trans-
4 mission Act (16 U.S.C 838h) is repealed.

5 (f) Section 6 of the Pacific Northwest Regional Pref-
6 erence Act (16 U.S.C. 837e) is amended by striking “Fed-
7 eral energy or” in the first sentence and by striking the
8 second sentence.

9 (g) Section 7(a)(1) of the Pacific Northwest Electric
10 Power Planning and Conservation Act (16 U.S.C.
11 839e(a)(1)) is amended to read as follows:

12 “(1) The Administrator shall establish, and periodi-
13 cally review and revise, rates for the sale and disposition
14 of electric power and shall periodically review and, if nec-
15 essary, propose revisions to rates for the transmission of
16 electric power. Rates for the sale and disposition of electric
17 power shall be established and, as appropriate, revised to
18 recover, in accordance with sound business principles, the
19 costs associated with the acquisition and conservation of
20 electric power, including the amortization of the Federal
21 investment allocable to electric power rates in the Federal
22 Columbia River Power system (including irrigation elec-
23 tric-power-related costs required to be repaid out of elec-
24 tric power revenues) over a reasonable period of years and
25 the other costs and expenses incurred by the Adminis-

1 trator pursuant to this Act and other provisions of law.
2 Rates for the sale and disposition of electric power shall
3 be established in accordance with section 9 of the Federal
4 Columbia River Transmission System Act (16 U.S.C.
5 838g), section 5 of the Flood Control Act of 1944 (16
6 U.S.C. 825s), and this Act.”.

7 (h) Section 7(a)(2) of the Pacific Northwest Electric
8 Power Planning and Conservation Act (16 U.S.C.
9 839e(a)(2)) is amended by—

10 (1) striking “Rates” and inserting “Power
11 rates”;

12 (2) inserting “and” after the comma in sub-
13 paragraph (A);

14 (3) striking “, and” and inserting a period at
15 the end of subparagraph B; and

16 (4) striking subparagraph (C).

17 (i) Section 7(i) of the Pacific Northwest Electric
18 Power Planning and Conservation Act (16 U.S.C. 839(i))
19 is amended by inserting “power” immediately after “es-
20 tablishing” in the first sentence.

21 (j) Section 9(d) of the Pacific Northwest Electric
22 Power Planning and Conservation Act (16 U.S.C.
23 839f(d)) is amended by striking “transmission access,”
24 and inserting “power” immediately before “services” in
25 the second sentence.

1 (k) Section 9(i)(3) of the Pacific Northwest Electric
 2 Power Planning and Conservation Act (16 U.S.C.
 3 839f(i)(3)) is amended in the first sentence—

4 (1) by inserting “power” before “services” each
 5 place such term appears; and

6 (2) by striking “transmission, storage, and”
 7 and inserting “storage and”.

8 (l) Section 2(e) of the Act of August 20, 1937 (chap-
 9 ter 720; 50 Stat. 731) (commonly known as the Bonneville
 10 Project Act of 1937) is amended by striking the colon and
 11 and all that follows and inserting a period.

12 **Subtitle C—Other Power** 13 **Marketing Administrations**

14 **SEC. 431. DEFINITIONS.**

15 For purposes of this subtitle:

16 (1) The term “Administrator” means the ad-
 17 ministrator of a Federal power marketing adminis-
 18 tration.

19 (2) The term “Commission” means the Federal
 20 Energy Regulatory Commission.

21 (3) The term “Federal power marketing admin-
 22 istrations” means the Western Area Power Adminis-
 23 tration, Southwestern Power Administration, and
 24 Southeastern Power Administration.

1 (4) The term “power generating agencies”
2 means the Bureau of Reclamation, the Army Corps
3 of Engineers, and the International Boundary and
4 Water Commission.

5 (5) The term “public utility” means a public
6 utility as defined in section 201(e)(1) the Federal
7 Power Act.

8 (6) The term “Secretary” means the Secretary
9 of Energy.

10 **SEC. 432. ACCOUNTING.**

11 Not later than 6 months after the date of enactment
12 of this Act, the Secretary of Energy shall promulgate rules
13 containing each of the following:

14 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
15 MENTS.—Procedures to ensure that the Federal
16 power marketing administrations utilize the same
17 accounting principles and requirements as are appli-
18 cable to public utilities pursuant to Parts II and III
19 of the Federal Power Act (16 U.S.C. 792 and fol-
20 lowing) with respect to accounting for revenue, ex-
21 penses, investments, and depreciation.

22 (2) COMPLIANCE.—Procedures for the filing of
23 complaints with the Secretary of Energy by inter-
24 ested persons seeking to ensure compliance with the
25 procedures of this section.

1 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
2 dures to insure that the Bureau of Reclamation, the
3 United States Army Corps of Engineers, and the
4 Administrators of the Federal power marketing ad-
5 ministrations maintain a consistent set of books and
6 records for purposes of repayment obligations.

7 **SEC. 433. REGIONAL TRANSMISSION PLANNING AGENCIES.**

8 Each Federal power marketing administration is au-
9 thorized to participate, under such terms and conditions
10 as it deems appropriate, after conducting a public process
11 to receive comment on each Federal power marketing ad-
12 ministration's participation, in a Commission approved
13 and regulated regional transmission planning agency, ex-
14 cept that—

15 (1) a Federal power marketing administration
16 shall not join any regional transmission planning
17 agency which would require it, or the combined
18 users of its transmission system, to pay a dispropor-
19 tionate share of the regional transmission planning
20 agency's costs, and

21 (2) a Federal power marketing administration
22 shall not participate in any regional transmission
23 planning agency that would result in undue cost
24 shifts among its customers, as determined by the
25 Commission.

1 This section shall not be construed to require the partici-
2 pation of the Federal power marketing administrations in
3 regional transmission planning agencies.

4 **SEC. 434. APPLICATION OF ANTITRUST LAW.**

5 (a) IN GENERAL.—The Federal power marketing ad-
6 ministrations shall be subject to the antitrust laws of the
7 United States. For purposes of this section, the term
8 “antitrust laws” has the meaning given it in subsection
9 (a) of the first section of the Clayton Act (15 U.S.C.
10 12(a)), except that such term includes the Act of June
11 19, 1936 (15 U.S.C. 13 and following), commonly known
12 as the Robinson-Patman Act, and section 5 of the Federal
13 Trade Commission Act (15 U.S.C. 45) to the extent that
14 such section 5 applies to unfair methods of competition.

15 (b) JUDICIAL REVIEW.—Any person injured by viola-
16 tion of the antitrust laws by any of the Federal power
17 marketing administrations may bring a civil action against
18 the agency in Federal district court for injunctive relief,
19 but neither the Federal power marketing administrations
20 nor their officers, attorneys, employees, agents or rep-
21 resentatives shall be held liable for civil damages or attor-
22 ney’s fees. No action under the antitrust laws may be
23 maintained against any of the Federal power marketing
24 administrations, their officers, attorneys, employees,
25 agents or representatives arising out of any activity that

1 is obligated or directed to be performed under any Federal
2 statute.

3 **TITLE V—RENEWABLE ENERGY**

4 **SEC. 501. RENEWABLE PORTFOLIO STANDARD.**

5 (a) STANDARD.—Title II of the Public Utility Regu-
6 latory Policies Act of 1978 is amended by adding after sec-
7 tion 214 the following new section:

8 **“SEC. 215. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

9 “(a) EFFECTIVE DATE.—The Administrator of the
10 Energy Information Administration in the Department of
11 Energy shall publish a notice on or before January 1,
12 2005, specifying the percentage of total electric energy
13 generation in the United States that the Administrator es-
14 timates to be supplied by renewable energy during the cal-
15 endar year 2004. If such percentage is less than 3 percent,
16 this section shall take effect on January 1, 2005.

17 “(b) MINIMUM RENEWABLE GENERATION REQUIRE-
18 MENT.—(1) For each calendar year beginning after the
19 effective date of this section, a retail electric supplier shall
20 submit to the Secretary of Energy (referred to in this sec-
21 tion as the ‘Secretary’) Renewable Energy Credits in an
22 amount equal to 3 percent of the total electric energy sold
23 by the retail electric supplier to electric consumers in the
24 calendar year. The retail electric supplier shall make this
25 submission before April 1 of the following calendar year.

1 “(2) For purposes of this section, a ‘renewable en-
2 ergy’ resource means solar energy, wind, geothermal, or
3 biomass.

4 “(3) This section does not preclude a State from re-
5 quiring additional renewable energy generation in that
6 State.

7 “(c) SUBMISSION OF CREDITS.—A retail electric sup-
8 plier may satisfy the requirements of subsection (a)
9 through the submission of—

10 “(1) Renewable Energy Credits issued under
11 subsection (d) for renewable energy generated by the
12 retail electric supplier in the calendar year for which
13 Credits are being submitted or any previous calendar
14 year;

15 “(2) Renewable Energy Credits issued under
16 subsection (d) to any renewable energy generator for
17 renewable energy generated in the calendar year for
18 which Credits are being submitted or a previous cal-
19 endar year and acquired by the retail electric sup-
20 plier; or

21 “(3) any combination of Credits under para-
22 graphs (1) and (2).

23 “(d) ISSUANCE OF CREDITS.—(1) The Secretary
24 shall establish a program to issue, monitor the sale or ex-
25 change of, and track Renewable Energy Credits.

1 “(2) Under the program, an entity that generates
2 electric energy through the use of a renewable energy re-
3 source may apply to the Secretary for the issuance of Re-
4 newable Energy Credits. The application shall indicate—

5 “(A) the type of renewable energy resource used
6 to produce the electricity;

7 “(B) the State in which the electric energy was
8 produced; and

9 “(C) any other information the Secretary deter-
10 mines appropriate.

11 “(3)(A) Except as provided in subparagraph (B), the
12 Secretary shall issue to an entity 1 Renewable Energy
13 Credit for each kilowatt-hour of electric energy the entity
14 generates through the use of a renewable energy resource
15 in any State in 2005 and any succeeding year.

16 “(B) The Secretary shall issue 2 Renewable Energy
17 Credits for each kilowatt-hour of electric energy generated
18 through the use of a renewable energy resource in any
19 State in 2005 and any succeeding year, if the generating
20 facility is located on Indian land. For purposes of this
21 paragraph, renewable energy generated by biomass cofired
22 with other fuels is eligible for 2 credits only if the biomass
23 was grown on the land eligible under this subparagraph.

24 “(C) To be eligible for a Renewable Energy Credit,
25 the unit of electricity generated through the use of a re-

1 newable energy resource may be sold or may be used by
2 the generator. If both a renewable energy resource and
3 a nonrenewable energy resource are used to generate the
4 electric energy, the Secretary shall issue credits based on
5 the proportion of the renewable energy resource used. The
6 Secretary shall identify Renewable Energy Credits by type
7 of generation and by the State in which the generating
8 facility is located.

9 “(4) In order to receive a Renewable Energy Credit,
10 the recipient of a Renewable Energy Credit shall pay a
11 fee, calculated by the Secretary, in an amount that is
12 equal to the administrative costs of issuing, recording,
13 monitoring the sale or exchange of, and tracking the Cred-
14 it, or does not exceed 5 percent of the dollar value of the
15 Credit, whichever is lower. The Secretary shall retain the
16 fee and use it to pay these administrative costs.

17 “(5) When a generator sells electric energy generated
18 through the use of a renewable energy resource to a retail
19 electric supplier under a contract subject to section 210
20 of this Act, the retail electric supplier is treated as the
21 generator of the electric energy for the purposes of this
22 section for the duration of the contract.

23 “(6) The Secretary shall disqualify an otherwise eligi-
24 ble renewable energy generator from receiving a Renew-

1 able Energy Credit if the generator has elected to partici-
2 pate in net metering under section 216.

3 “(e) SALE OR EXCHANGE.—A Renewable Energy
4 Credit may be sold or exchanged by the entity to which
5 it was issued or by any other entity that acquires the Cred-
6 it. A Renewable Energy Credit for any year that is not
7 used to satisfy the minimum renewable generation require-
8 ment of subsection (a) for that year may be carried for-
9 ward for use in another year.

10 “(f) RENEWABLE ENERGY CREDIT COST CAP.—Be-
11 ginning on the effective date of this section, the Secretary
12 shall offer Renewable Energy Credits for sale. The Sec-
13 retary shall charge 1.5 cents for each Renewable Energy
14 Credit sold during calendar year 2005, and on January
15 1 of each following year, the Secretary shall adjust for
16 inflation, based on the Consumer Price Index, the price
17 charged per Credit for that calendar year. The Secretary
18 shall deposit in a separate account the amount received
19 from a sale under this subsection. Amounts in the separate
20 account shall be available, without further appropriation,
21 to the Secretary to be used for purposes of providing as-
22 sistance for research and development of cleaner burning
23 fuels and renewable energy.

24 “(g) ENFORCEMENT.—The Secretary may bring an
25 action in the appropriate United States district court to

1 impose a civil penalty on a retail electric supplier that does
2 not comply with subsection (b). A retail electric supplier
3 that does not submit the required number of Renewable
4 Energy Credits under subsection (b) is subject to a civil
5 penalty of not more than 3 times the value of the Renew-
6 able Energy Credits not submitted. For purposes of this
7 subsection, the value of a Renewable Energy Credit is the
8 price of a Credit determined under subsection (f) for the
9 year the Credits were not submitted.

10 “(h) INFORMATION COLLECTION.—The Secretary
11 may collect the information necessary to verify and
12 audit—

13 “(1) the annual electric energy generation and
14 renewable energy generation of any entity applying
15 for Renewable Energy Credits under this section;

16 “(2) the validity of Renewable Energy Credits
17 submitted by a retail electric supplier to the Sec-
18 retary; and

19 “(3) the quantity of electricity sales of all retail
20 electric suppliers.

21 “(i) SUNSET.—This section expires December 31,
22 2015.”.

23 (b) DEFINITIONS.—Section 3 of the Public Utility
24 Regulatory Policies Act of 1978 is amended by adding
25 after paragraph (24) the following new paragraph:

1 “(25) The term ‘retail electric supplier’ means
2 a person, State agency, or Federal agency that sells
3 electric energy to an electric consumer.

4 “(26) The term ‘Indian land’ means—

5 “(A) any land within the limits of any In-
6 dian reservation, pueblo, or rancharia;

7 “(B) any land not within the limits of any
8 Indian reservation, pueblo, or rancharia title to
9 which was on the date of passage of the Elec-
10 tric Consumers’ Power to Choose Act of 1999
11 either held in trust by the United States for the
12 benefit of any Indian tribe or individual or held
13 by any Indian tribe or individual subject to re-
14 striction by the United States against alien-
15 ation;

16 “(C) any dependent Indian community;
17 and

18 “(D) any land conveyed to any Alaska Na-
19 tive corporation under the Alaska Native
20 Claims Settlement Act.

21 “(27) The term ‘Indian tribe’ means any Indian
22 tribe, band, group, or nation, including Alaska Indi-
23 ans, Aleuts, or Eskimos, or any Alaskan Native Vil-
24 lage of the United States, which is considered an eli-
25 gible recipient under the Indian Self-Determination

1 and Education Assistance Act (Public Law 93–638)
 2 or was considered an eligible recipient under chapter
 3 67 of title 31, United States Code, prior to the re-
 4 peal of such chapter.”.

5 (c) TABLE OF CONTENTS.—The table of contents for
 6 title II of the Public Utility Regulatory Policies Act of
 7 1978 (16 U.S.C. 2601 and following) is amended by add-
 8 ing the following at the end thereof:

“Sec. 215. Federal renewable portfolio standard.”.

9 **SEC. 502. NET METERING.**

10 (a) AMENDMENT OF PURPA.—The Public Utility
 11 Regulatory Policies Act of 1978 is amended by adding the
 12 following new section after section 215, as added by sec-
 13 tion 501 of this Act:

14 **“SEC. 216. NET METERING FOR RENEWABLE ENERGY.**

15 “(a) DEFINITIONS.—For purposes of this section—

16 “(1) the term ‘eligible on-site generating facil-
 17 ity’ means a facility on the site of an electric con-
 18 sumer with a peak generating capacity of 20 kilo-
 19 watts or less that is fueled solely by a renewable en-
 20 ergy resource.

21 “(2) The term ‘renewable energy resource’
 22 means solar energy, wind, geothermal, or biomass.

23 “(3) The term ‘net metering service’ means
 24 service to an electric consumer under which elec-
 25 tricity generated by that consumer from an eligible

1 on-site generating facility and delivered to the dis-
2 tribution system through the same meter through
3 which purchased electricity is received may be used
4 to offset electricity provided by the retail electric
5 supplier to the electric consumer during the applica-
6 ble billing period so that an electric consumer is
7 billed only for the net electricity consumed during
8 the billing period, but in no event shall the net be
9 less than zero during the applicable billing period.

10 “(b) REQUIREMENT TO PROVIDE NET METERING
11 SERVICE.—Each retail electric supplier shall make avail-
12 able upon request net metering service to any retail elec-
13 tric consumer that the supplier currently serves or solicits
14 for service.

15 “(c) STATE AUTHORITY.—This section does not pre-
16 clude a State from imposing additional requirements con-
17 sistent with the requirements in this section, including the
18 imposition of a cap limiting the amount of net metering
19 available in the State. Nothing in this Act or any other
20 Federal law preempts or otherwise affects authority under
21 State law to require a retail electric supplier to make avail-
22 able net metering service to a retail electric consumer
23 which the supplier serves or offers to serve.”.

24 (c) TABLE OF CONTENTS.—The table of contents for
25 title II of the Public Utility Regulatory Policies Act of

1 1978 (16 U.S.C. 2601 and following) is amended by add-
 2 ing the following at the end thereof:

“Sec. 216. Net metering for renewable energy.”.

3 **TITLE VI—PROVISIONS RELAT-**
 4 **ING TO THE INTERNAL REV-**
 5 **ENUE CODE**

6 **SEC. 601. 5-YEAR EXTENSION OF CREDIT FOR PRODUCING**
 7 **ELECTRICITY FROM RENEWABLE RE-**
 8 **SOURCES.**

9 Subsection (c) of section 45 of the Internal Revenue
 10 Code of 1986 (relating to credit for electricity produced
 11 from certain renewable resources) is amended to read as
 12 follows:

13 “(c) DEFINITIONS.—For purposes of this
 14 subsection—

15 “(1) QUALIFIED ENERGY RESOURCES.—The
 16 term ‘qualified energy resources’ means—

17 “(A) wind,

18 “(B) solar power,

19 “(C) geothermal power, and

20 “(D) biomass.

21 “(2) BIOMASS.—The term ‘biomass’ means
 22 closed-loop biomass and forest and agricultural bio-
 23 mass.

24 “(3) CLOSED-LOOP BIOMASS.—The term
 25 ‘closed-loop biomass’ means any organic material

1 from a plant which is planted exclusively for pur-
2 poses of being used at a qualified facility to produce
3 electricity.

4 “(4) FOREST AND AGRICULTURAL BIOMASS.—

5 The term ‘forest and agricultural biomass’ means
6 any solid, nonhazardous, cellulosic waste material,
7 that is segregated from other waste materials, and
8 that is derived from the following forest-related re-
9 sources: mill residues, pre-commercial thinnings, and
10 slash and brush, but not including old growth tim-
11 ber, waste pallets, crates, dunnage, unsegregated
12 municipal solid waste (garbage), landscape or right-
13 of-way tree trimmings, and biomass derived from ag-
14 riculture sources, including orchard tree crops, vine-
15 yard grain, legumes, sugar, and other crop-by-prod-
16 ucts or residues.

17 “(5) QUALIFIED FACILITY.—The term ‘quali-
18 fied facility’ means any facility owned by the tax-
19 payer which is originally placed in service—

20 “(A) in the case of a facility using wind to
21 produce electricity, after December 31, 1993,
22 and before July 1, 2015,

23 “(B) in the case of a facility using solar
24 power or geothermal power to produce elec-

1 tricity, after the date of the enactment of this
2 subparagraph and before July 1, 2015, and

3 “(C) in the case of a facility using biomass
4 to produce electricity, after December 31, 1992,
5 and before July 1, 2015.”.

6 **SEC. 602. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
7 **MENTS TO EXISTING HOMES.**

8 (a) IN GENERAL.—Subpart A of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of
10 1986 (relating to nonrefundable personal credits) is
11 amended by inserting after section 25A the following new
12 section:

13 **“SEC. 25B. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
14 **ING HOMES.**

15 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
16 dividual, there shall be allowed as a credit against the tax
17 imposed by this chapter for the taxable year an amount
18 equal to 20 percent of the amount paid or incurred by
19 the taxpayer for qualified energy efficiency improvements
20 installed during such taxable year.

21 “(b) LIMITATIONS.—

22 “(1) MAXIMUM CREDIT.—The credit allowed by
23 this section with respect to a dwelling shall not ex-
24 ceed \$2,000.

1 “(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER
 2 ON SAME DWELLING TAKEN INTO ACCOUNT.—If a
 3 credit was allowed to the taxpayer under subsection
 4 (a) with respect to a dwelling in 1 or more prior tax-
 5 able years, the amount of the credit otherwise allow-
 6 able for the taxable year with respect to that dwell-
 7 ing shall not exceed the amount of \$2,000 reduced
 8 by the sum of the credits allowed under subsection
 9 (a) to the taxpayer with respect to the dwelling for
 10 all prior taxable years.

11 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
 12 credit allowable under subsection (a) exceeds the limita-
 13 tion imposed by section 26(a) for such taxable year re-
 14 duced by the sum of the credits allowable under subpart
 15 A of part IV of subchapter A (other than this section),
 16 such excess shall be carried to the succeeding taxable year
 17 and added to the credit allowable under subsection (a) for
 18 such taxable year.

19 * “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-
 20 MENTS.—For purposes of this section, the term ‘qualified
 21 energy efficiency improvements’ means any energy effi-
 22 cient building envelope component, and any energy effi-
 23 cient heating, cooling, or water heating appliance, the in-
 24 stallation of which, by itself or in combination with other
 25 such components or appliances, is certified to improve the

1 annual energy performance of the existing home by at
2 least 30 percent, if—

3 “(1) such component or appliance is installed in
4 or on a dwelling—

5 “(A) located in the United States, and

6 “(B) owned and used by the taxpayer as
7 the taxpayer’s principal residence (within the
8 meaning of section 121),

9 “(2) the original use of such component or ap-
10 pliance commences with the taxpayer, and

11 “(3) such component or appliance reasonably
12 can be expected to remain in use for at least 5
13 years.

14 Such certification shall be made by the contractor who in-
15 stalled such improvements, a local building regulatory au-
16 thority, or a qualified energy consultant (such as a utility
17 or an accredited home energy rating system provider).

18 “(e) SPECIAL RULES.—

19 “(1) TENANT-STOCKHOLDER IN COOPERATIVE
20 HOUSING CORPORATION.—In the case of an indi-
21 vidual who is a tenant-stockholder (as defined in sec-
22 tion 216) in a cooperative housing corporation (as
23 defined in such section), such individual shall be
24 treated as having paid his tenant-stockholder’s pro-
25 portionate share (as defined in section 216(b)(3)) of

1 the cost of qualified energy efficiency improvements
2 made by such corporation.

3 “(2) CONDOMINIUMS.—

4 “(A) IN GENERAL.—In the case of an indi-
5 vidual who is a member of a condominium man-
6 agement association with respect to a condo-
7 minium which he owns, such individual shall be
8 treated as having paid his proportionate share
9 of the cost of qualified energy efficiency im-
10 provements made by such association.

11 “(B) CONDOMINIUM MANAGEMENT ASSO-
12 CIATION.—For purposes of this paragraph, the
13 term ‘condominium management association’
14 means an organization which meets the require-
15 ments of paragraph (1) of section 528(c) (other
16 than subparagraph (E) thereof) with respect to
17 a condominium project substantially all of the
18 units of which are used as residences.

19 “(f) BASIS ADJUSTMENT.—For purposes of this sub-
20 title, if a credit is allowed under this section for any ex-
21 penditure with respect to any property, the increase in the
22 basis of such property which would (but for this sub-
23 section) result from such expenditure shall be reduced by
24 the amount of the credit so allowed.

1 “(g) TERMINATION.—Subsection (a) shall apply to
2 qualified energy efficiency improvements installed during
3 the period beginning on January 1, 1999, and ending on
4 December 31, 2003.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subsection (c) of section 23 of such Code
7 is amended by inserting “, section 25B, and section
8 1400C” after “other than this section”.

9 (2) Subparagraph (C) of section 25(e)(1) of
10 such Code is amended by striking “section 23” and
11 inserting “sections 23, 25B, and 1400C”.

12 (3) Subsection (d) of section 1400C of such
13 Code is amended by inserting “and section 25B”
14 after “other than this section”.

15 (4) Subsection (a) of section 1016 of such Code
16 is amended by striking “and” at the end of para-
17 graph (26), by striking the period at the end of
18 paragraph (27) and inserting “; and”, and by add-
19 ing at the end the following new paragraph:

20 “(28) to the extent provided in section 25B(f),
21 in the case of amounts with respect to which a credit
22 has been allowed under section 25B.”.

23 (5) The table of sections for subpart A of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
 2 tion 25A the following new item:

“Sec. 25B. Energy efficiency improvements to existing homes.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to taxable years ending after De-
 5 cember 31, 1998.

6 **SEC. 603. BUSINESS CREDIT FOR CONSTRUCTION OF NEW**
 7 **ENERGY EFFICIENT HOME.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
 9 chapter A of chapter 1 of the Internal Revenue Code of
 10 1986 (relating to business related credits) is amended by
 11 inserting after section 45C the following new section:

12 **“SEC. 45D. NEW ENERGY EFFICIENT HOME CREDIT.**

13 “(a) IN GENERAL.—For purposes of section 38, in
 14 the case of an eligible contractor, the credit determined
 15 under this section for the taxable year is an amount equal
 16 to the aggregate adjusted bases of all energy efficient
 17 property installed in a qualified new energy efficient home
 18 during construction of such home.

19 “(b) LIMITATIONS.—

20 “(1) MAXIMUM CREDIT.—

21 “(A) IN GENERAL.—The credit allowed by
 22 this section with respect to a dwelling shall not
 23 exceed \$2,000.

24 “(B) PRIOR CREDIT AMOUNTS ON SAME
 25 DWELLING TAKEN INTO ACCOUNT.—If a credit

1 was allowed under subsection (a) with respect
2 to a dwelling in 1 or more prior taxable years,
3 the amount of the credit otherwise allowable for
4 the taxable year with respect to that dwelling
5 shall not exceed the amount of \$2,000 reduced
6 by the sum of the credits allowed under sub-
7 section (a) with respect to the dwelling for all
8 prior taxable years.

9 “(2) COORDINATION WITH REHABILITATION
10 AND ENERGY CREDITS.—For purposes of this
11 section—

12 “(A) the basis of any property referred to
13 in subsection (a) shall be reduced by that por-
14 tion of the basis of any property which is attrib-
15 utable to qualified rehabilitation expenditures
16 (as defined in section 47(c)(2)) or to the energy
17 percentage of energy property (as determined
18 under section 48(a)), and

19 “(B) expenditures taken into account
20 under either section 47 or 48(a) shall not be
21 taken into account under this section.

22 “(c) QUALIFIED NEW ENERGY EFFICIENT HOME.—

23 “(1) IN GENERAL.—Property is a qualified new
24 energy efficient home if—

1 “(A) the original use of such property com-
2 mences with the taxpayer and is, at the time of
3 such use, the principal residence of the tax-
4 payer, and

5 “(B) such property—

6 “(i) reduces calculated environmental
7 emissions for heating and cooling by 50
8 percent compared to a reference house that
9 complies with minimum standard practice,
10 as determined according to the require-
11 ments specified under paragraph (2)(B),
12 and

13 “(ii) is certified before such use com-
14 mences as meeting the requirements of
15 clause (i).

16 “(2) CERTIFICATION.—

17 “(A) IN GENERAL.—The Secretary of En-
18 ergy shall establish requirements for the certifi-
19 cation under paragraph (1)(B)(ii) after exam-
20 ining the requirements for energy consultants
21 and home energy ratings providers specified by
22 the Mortgage Industry National Accreditation
23 Procedures for Home Energy Rating Systems.
24 Any certification under such paragraph shall be

1 conveyed to the taxpayer seeking the credit
2 under this section.

3 “(B) METHODS FOR DEMONSTRATING
4 COMPLIANCE.—(i) Compliance with the require-
5 ments of paragraph (1)(B)(i) shall be dem-
6 onstrated by either the component method de-
7 scribed in clause (ii) or the performance method
8 described in clause (iii).

9 “(ii) The component method is a method
10 in which all of the components of a home com-
11 ply with the additional requirements established
12 by the Secretary of Energy, resulting in
13 achievement of results equivalent to the results
14 of using the performance method.

15 “(iii) The performance method is a method
16 in which compliance with the requirements of
17 paragraph (1)(B)(i) is demonstrated by the use
18 of computer software that meets specifications
19 promulgated in regulations by the Secretary of
20 Energy in consultation with the Secretary of
21 Treasury. Such regulations shall contain proce-
22 dures and methods for calculating emissions
23 and emissions reductions and for reporting the
24 results, and shall be based on the 1998 Cali-
25 fornia residential ACM manual, except that the

1 calculational procedures shall allow a home to
2 qualify for the tax credit under this section re-
3 gardless of whether the home uses a gas or oil
4 furnace or boiler, or an electric heat pump. The
5 regulations shall require that the software allow
6 for the printing of IRS forms needed for the
7 tax credit under this section, and explanations
8 for the taxpayer of the energy efficiency fea-
9 tures that were used to comply with the re-
10 quirements for the tax credit under this section.
11 The Secretary of Energy shall approve software
12 submissions that comply with the calculational
13 requirements of the regulations.

14 “(C) PERSONS MAKING CERTIFICATION.—
15 The certification under paragraph (1)(B)(ii)
16 shall be made to the Secretary of Energy by an
17 individual qualified to determine compliance
18 with such paragraph. Individuals qualified to
19 determine such compliance shall be only those
20 individuals who are recognized by an organiza-
21 tion certified by the Secretary of Energy for
22 such purposes.

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
2 ble contractor’ means the person who constructed
3 the new energy efficient home.

4 “(2) ENERGY EFFICIENT PROPERTY.—The
5 term ‘energy efficient property’ means any energy
6 efficient building envelope component, and any en-
7 ergy efficient heating, cooling, or water heating ap-
8 pliance.

9 “(3) PRINCIPAL RESIDENCE.—The term ‘prin-
10 cipal residence’ has the same meaning as when used
11 in section 121, except that the period for which a
12 building is treated as the principal residence of the
13 taxpayer shall also include the 60-day period ending
14 on the 1st day on which it would (but for this para-
15 graph) first be treated as his principal residence.

16 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
17 title, if a credit is allowed under this section for any ex-
18 penditure with respect to any property, the increase in the
19 basis of such property which would (but for this sub-
20 section) result from such expenditure shall be reduced by
21 the amount of the credit so allowed.

22 “(f) TERMINATION.—Subsection (a) shall apply to
23 dwellings purchased during the period beginning on Janu-
24 ary 1, 1999, and ending on December 31, 2003.”.

1 (b) CREDIT MADE PART OF GENERAL BUSINESS
 2 CREDIT.—Subsection (b) of section 38 of such Code (re-
 3 lating to current year business credit) is amended by strik-
 4 ing “plus” at the end of paragraph (11), by striking the
 5 period at the end of paragraph (12) and inserting “, plus”,
 6 and by adding at the end thereof the following new para-
 7 graph:

8 “(13) the new energy efficient home credit de-
 9 termined under section 45D.”.

10 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
 11 such Code (relating to certain expenses for which credits
 12 are allowable) is amended by adding at the end thereof
 13 the following new subsection:

14 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—
 15 No deduction shall be allowed for that portion of expenses
 16 for a new energy efficient home otherwise allowable as a
 17 deduction for the taxable year which is equal to the
 18 amount of the credit determined for such taxable year
 19 under section 45D.”.

20 (d) CREDIT ALLOWED AGAINST REGULAR AND MIN-
 21 IMUM TAX.—

22 (1) IN GENERAL.—Subsection (c) of section 38
 23 of such Code (relating to limitation based on amount
 24 of tax) is amended by redesignating paragraph (3)

1 as paragraph (4) and by inserting after paragraph
2 (2) the following new paragraph:

3 “(3) SPECIAL RULES FOR NEW ENERGY EFFI-
4 CIENT HOME CREDIT.—

5 “(A) IN GENERAL.—In the case of the new
6 energy efficient home credit—

7 “(i) this section and section 39 shall
8 be applied separately with respect to the
9 credit, and

10 “(ii) in applying paragraph (1) to the
11 credit—

12 “(I) subparagraph (A) thereof
13 shall not apply, and

14 “(II) the limitation under para-
15 graph (1) (as modified by subclause
16 (I)) shall be reduced by the credit al-
17 lowed under subsection (a) for the
18 taxable year (other than the new en-
19 ergy efficient home credit).

20 “(B) NEW ENERGY EFFICIENT HOME
21 CREDIT.—For purposes of this subsection, the
22 term ‘new energy efficient home credit’ means
23 the credit allowable under subsection (a) by rea-
24 son of section 45D.”.

1 (2) CONFORMING AMENDMENT.—Subclause (II)
2 of section 38(c)(2)(A)(ii) of such Code is amended
3 by inserting “or the new energy efficient home cred-
4 it” after “employment credit”.

5 (e) LIMITATION ON CARRYBACK.—Subsection (d) of
6 section 39 of such Code is amended by adding at the end
7 the following new paragraph:

8 “(9) NO CARRYBACK OF NEW ENERGY EFFI-
9 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—
10 No portion of the unused business credit for any
11 taxable year which is attributable to the credit deter-
12 mined under section 45D may be carried back to
13 any taxable year ending before the date of the enact-
14 ment of section 45D.”.

15 (f) DEDUCTION FOR CERTAIN UNUSED BUSINESS
16 CREDITS.—Subsection (c) of section 196 of such Code is
17 amended by striking “and” at the end of paragraph (7),
18 by striking the period at the end of paragraph (8) and
19 inserting “, and”, and by adding after paragraph (8) the
20 following new paragraph:

21 “(9) the new energy efficient home credit deter-
22 mined under section 45D.”.

23 (g) CLERICAL AMENDMENT.—The table of sections
24 for subpart D of part IV of subchapter A of chapter 1
25 of such Code is amended by inserting after the item relat-

ing to section 45C the following new item:

“Sec. 45D. New energy efficient home credit.”.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1998.

SEC. 604. TAX CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 48 the following new section:

“SEC. 48A. ENERGY CREDIT.

“(a) IN GENERAL.—For purposes of section 46, the energy credit for any taxable year is the amount equal to the energy percentage of the basis of each energy property placed in service during such taxable year.

“(b) ENERGY PERCENTAGE.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the energy percentage is 10 percent.

“(2) COMBINED HEAT AND POWER PROPERTY.—The energy percentage is 8 percent in the case of combined heat and power property.

“(3) PERIOD FOR WHICH CREDIT IS ALLOWED FOR COMBINED HEAT AND POWER PROPERTY.—In the case of combined heat and power property, the

1 credit under subsection (a) shall be allowed only for
2 the period beginning on January 1, 2000, and end-
3 ing on December 31, 2002.

4 “(4) TRANSITION RULES.—Rules similar to the
5 rules of section 48(m) (as in effect on the day before
6 the date of the enactment of the Revenue Reconcili-
7 ation Act of 1990) shall apply for purposes of this
8 subsection.

9 “(c) ENERGY PROPERTY DEFINED.—

10 “(1) IN GENERAL.—For purposes of this sub-
11 part, the term ‘energy property’ means any
12 property—

13 “(A) which is—

14 “(i) solar energy property,

15 “(ii) geothermal energy property, or

16 “(iii) combined heat and power system
17 property,

18 “(B)(i) the construction, reconstruction, or
19 erection of which is completed by the taxpayer,
20 or

21 “(ii) which is acquired by the taxpayer if
22 the original use of such property commences
23 with the taxpayer, or

1 “(iii) with respect to which depreciation (or
 2 amortization in lieu of depreciation) is allow-
 3 able, and

4 “(C) which meets—

5 “(i) the performance and quality
 6 standards (if any), and the certification re-
 7 quirements (if any), which have been pre-
 8 scribed by the Secretary by regulations
 9 (after consultation with the Secretary of
 10 Energy or the EPA Administrator, as ap-
 11 propriate), and

12 “(ii) are in effect at the time the
 13 property is placed in service.

14 “(2) EXCEPTION.—Such term shall not include
 15 any property which is public utility property (as de-
 16 fined in section 46(f)(5) as in effect on the day be-
 17 fore the date of the enactment of the Revenue Rec-
 18 onciliation Act of 1990). The preceding sentence
 19 shall not apply to combined heat and power system
 20 property.

21 “(d) DEFINITIONS RELATING TO TYPES OF ENERGY
 22 PROPERTY.—For purposes of this section—

23 “(1) SOLAR ENERGY PROPERTY.—The term
 24 ‘solar energy property’ means equipment which uses
 25 solar energy—

1 “(A) to generate electricity,

2 “(B) to heat or cool (or provide hot water
3 for use in) a structure, or

4 “(C) to provide solar process heat.

5 “(2) GEOTHERMAL ENERGY PROPERTY.—The
6 term ‘geothermal energy property’ means equipment
7 used to produce, distribute, or use energy derived
8 from a geothermal deposit (within the meaning of
9 section 613(e)(2)), but only, in the case of electricity
10 generated by geothermal power, up to (but not in-
11 cluding) the electrical transmission stage.

12 “(3) COMBINED HEAT AND POWER SYSTEM
13 PROPERTY.—

14 “(A) IN GENERAL.—The term ‘combined
15 heat and power system property’ means prop-
16 erty comprising a system—

17 “(i) which uses the same energy
18 source for the simultaneous or sequential
19 generation of electrical power, mechanical
20 shaft power, or both, in combination with
21 the generation of steam or other forms of
22 useful thermal energy (including heating
23 and cooling applications),

24 “(ii) which has an electrical capacity
25 of more than 50 kilowatts or a mechanical

1 energy capacity of more than 67 horse-
2 power or an equivalent combination of elec-
3 trical and mechanical energy capacities,

4 “(iii) which produces—

5 “(I) at least 20 percent of its
6 total useful energy in the form of
7 thermal energy, and

8 “(II) at least 20 percent of its
9 total useful energy in the form of elec-
10 trical or mechanical power (or a com-
11 bination thereof), and

12 “(iv) the energy efficiency percentage
13 of which exceeds 60 percent.

14 “(B) SPECIAL RULES.—

15 “(i) ACCOUNTING RULE.—If the com-
16 bined heat and power system property is
17 public utility property (as defined in sec-
18 tion 46(f)(5) as in effect on the day before
19 the date of the enactment of the Revenue
20 Reconciliation Act of 1990), the taxpayer
21 may claim the credit under subsection
22 (a)(1) only if, with respect to such prop-
23 erty, the taxpayer uses a normalization
24 method of accounting.

1 “(ii) DEPRECIATION.—No credit shall
2 be allowed for any combined heat and
3 power system property unless the taxpayer
4 elects to treat such property for purposes
5 of section 168 as having a class life of not
6 less than 22 years.

7 “(e) SPECIAL RULES.—For purposes of this
8 section—

9 “(1) SPECIAL RULE FOR PROPERTY FINANCED
10 BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL
11 DEVELOPMENT BONDS.—

12 “(A) REDUCTION OF BASIS.—For purposes
13 of applying the energy percentage to any prop-
14 erty, if such property is financed in whole or in
15 part by —

16 “(i) subsidized energy financing, or

17 “(ii) the proceeds of a private activity
18 bond (within the meaning of section 141)
19 the interest on which is exempt from tax
20 under section 103, the amount taken into
21 account as the basis of such property shall
22 not exceed the amount which (but for this
23 subparagraph) would be so taken into ac-
24 count multiplied by the fraction deter-
25 mined under subparagraph (B).

1 “(B) DETERMINATION OF FRACTION.—For
2 purposes of subparagraph (A), the fraction de-
3 termined under this subparagraph is 1 reduced
4 by a fraction—

5 “(i) the numerator of which is that
6 portion of the basis of the property which
7 is allocable to such financing or proceeds,
8 and

9 “(ii) the denominator of which is the
10 basis of the property.

11 “(C) SUBSIDIZED ENERGY FINANCING.—
12 For purposes of subparagraph (A), the term
13 ‘subsidized energy financing’ means financing
14 provided under a Federal, State, or local pro-
15 gram a principal purpose of which is to provide
16 subsidized financing for projects designed to
17 conserve or produce energy.

18 “(2) CERTAIN PROGRESS EXPENDITURE RULES
19 MADE APPLICABLE.—Rules similar to the rules of
20 subsections (c)(4) and (d) of section 46 (as in effect
21 on the day before the date of the enactment of the
22 Revenue Reconciliation Act of 1990) shall apply for
23 purposes of this section.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 48 of such Code is amended to read
2 as follows:

3 **“SEC. 48. REFORESTATION CREDIT.**

4 “(a) IN GENERAL.—For purposes of section 46, the
5 reforestation credit for any taxable year is 10 percent of
6 the portion of the amortizable basis of any qualified timber
7 property which was acquired during such taxable year and
8 which is taken into account under section 194 (after the
9 application of section 194(b)(1)).

10 “(b) DEFINITIONS.—For purposes of this subpart,
11 the terms ‘amortizable basis’ and ‘qualified timber prop-
12 erty’ have the respective meanings given to such terms by
13 section 194.”.

14 (2) Subsection (d) of section 39 of such Code
15 is amended by adding at the end of the following
16 new paragraph:

17 “(9) NO CARRYBACK OF ENERGY CREDIT BE-
18 FORE EFFECTIVE DATE.—No portion of the unused
19 business credit for any taxable year which is attrib-
20 utable to the energy credit determined under section
21 48A, except for the credit determined with respect to
22 solar energy property and geothermal energy prop-
23 erty, may be carried back to a taxable year ending
24 before the date of the enactment of section 48A.”.

1 (3) Paragraph (3) of section 50(c) of such Code
2 is amended by adding at the end the following flush
3 sentence: “In the case of the energy credit, the pre-
4 ceding sentence shall apply only to so much of such
5 credit as relates to solar energy property and geo-
6 thermal property (as such terms are defined in sec-
7 tion 48A(d)).”.

8 (4) Subclause (III) of section 29(b)(3)(A)(i) of
9 such Code is amended by striking “section
10 48(a)(4)(C)” and inserting “section 48A(e)(1)(C)”.

11 (5) Subparagraph (E) of section 50(a)(2) of
12 such Code is amended by striking “section 48(a)(5)”
13 and inserting “section 48A(e)(2)”.

14 (6) Subparagraph (B) of section 168(e)(3) of
15 such Code is amended—

16 (A) in clause (vi)(I) by striking “subpara-
17 graph (A) of section 48(a)(3)” and inserting
18 “paragraphs (1) and (2) of section 48A(d)”,
19 and

20 (B) in the last sentence by striking “sec-
21 tion 48(a)(3)” and inserting “section
22 48A(c)(2)”.

23 (7) Subparagraph (E) of section 168(e)(3) of
24 such Code, as amended by section 803(a), is further
25 amended by striking “and” at the end of clause (iii),

1 by striking the period at the end of clause (iv) and
 2 inserting “, and”, and by inserting after clause (iv)
 3 the following new clause:

4 “(v) any combined heat and power
 5 system property (as defined in section
 6 48A(d)(3)) for which a credit is allowed
 7 under section 48A and which, but for this
 8 clause, would have a recovery period of less
 9 than 15 years.”.

10 (8) The table contained in subparagraph (b) of
 11 section 168(g)(3) of such Code, as amended by sec-
 12 tion 803(b)(2), is further amended by adding at the
 13 end the following: “(E)(v)..... 22”.

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 for subpart E of part IV of subchapter A of chapter 1
 16 of such Code is amended by striking the item relating to
 17 section 48 and inserting the following new items:

“Sec. 48. Reforestation credit.
 “Sec. 48A. Energy credit.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to periods after December 31,
 20 1999, under rules similar to the rules of section 48(m)
 21 of the Internal Revenue Code of 1986 (as in effect on the
 22 day before the date of the enactment of the Revenue Rec-
 23 onciliation Act of 1990).

1 **SEC. 605. TAX-EXEMPT BOND FINANCING OF CERTAIN**
2 **ELECTRIC FACILITIES.**

3 (a) PERMITTED OPEN ACCESS TRANSACTIONS NOT
4 A PRIVATE BUSINESS USE.—Section 141(b)(6) of the In-
5 ternal Revenue Code of 1986 (defining private business
6 use) is amended by adding at the end the following:

7 “(C) PERMITTED OPEN ACCESS TRANS-
8 ACTIONS NOT A PRIVATE BUSINESS USE.—

9 “(i) IN GENERAL.—For purposes of
10 this subsection, the term ‘private business
11 use’ shall not include a permitted open ac-
12 cess transaction.

13 “(ii) PERMITTED OPEN ACCESS
14 TRANSACTION DEFINED.—For purposes of
15 clause (i), the term ‘permitted open access
16 transaction’ means any of the following
17 transactions or activities with respect to an
18 electric output facility (as defined in sub-
19 section (f)(4)(A)) owned by a governmental
20 unit:

21 “(I) Providing open access trans-
22 mission services and ancillary services
23 that meet the reciprocity requirements
24 of Federal Energy Regulatory Com-
25 mission Order No. 888, or that are
26 ordered by the Federal Energy Regu-

1 latory Commission, or that are pro-
2 vided in accordance with a trans-
3 mission tariff of an independent sys-
4 tem operator approved by such Com-
5 mission, or that are consistent with
6 State-administered laws, rules, or or-
7 ders providing for open transmission
8 access.

9 “(II) Participation in an inde-
10 pendent system operator agreement
11 (which may include transferring con-
12 trol of transmission facilities to an
13 independent system operator), in a re-
14 gional transmission group, or in a
15 power exchange agreement approved
16 by such Commission.

17 “(III) Delivery on an open access
18 basis of electric energy sold by other
19 entities to end-users served by such
20 governmental unit’s distribution facili-
21 ties.

22 “(IV) If open access service is
23 provided under subclause (I) or (III),
24 the sale of electric output of electric
25 output facilities on terms other than

those available to the general public if
such sale is to an on-system purchaser
or is an existing off-system sale.

“(V) Such other transactions or
activities as may be provided in regu-
lations prescribed by the Secretary.

“(iii) DEFINITIONS; SPECIAL
RULES.—For purposes of this
subparagraph—

“(I) ON-SYSTEM PURCHASER.—

The term ‘on-system purchaser’
means a person who purchases electric
energy from a governmental unit and
whose electric facilities or equipment
are directly connected with
transmission or distribution facilities
that are owned by such governmental
unit.

“(II) OFF-SYSTEM PUR-

CHASER.—The term ‘off-system pur-
chaser’ means a purchaser of electric
energy from a governmental unit
other than an on-system purchaser.

“(III) EXISTING OFF-SYSTEM

SALE.—The term ‘existing off-system

1 sale' means a sale of electric energy to
2 a person that was an off-system pur-
3 chaser of electric energy in the base
4 year, but not in excess of the kilowatt
5 hours purchased by such person in
6 such year.

7 “(IV) BASE YEAR.—The term
8 ‘base year’ means 1998 (or, at the
9 election of such unit, 1996 or 1997).

10 “(V) JOINT ACTION AGENCIES.—
11 A member of a joint action agency
12 that is entitled to make a sale de-
13 scribed in clause (ii)(IV) in a year
14 may transfer that entitlement to the
15 joint action agency in accordance with
16 rules of the Secretary.

17 “(VI) GOVERNMENT-OWNED FA-
18 CILITY.—An electric output facility
19 (as defined in subsection (f)(4)(A))
20 shall be treated as owned by a govern-
21 mental unit if it is owned or leased by
22 such governmental unit or if such gov-
23 ernmental unit has capacity rights
24 therein acquired before July 9, 1996,
25 for the purposes of serving one or

1 more customers to which such govern-
 2 mental unit had a service obligation
 3 on such date under State law or a re-
 4 quirements contract.”.

5 (b) ELECTION TO TERMINATE TAX-EXEMPT FI-
 6 NANCING.—Section 141 of the Internal Revenue Code of
 7 1986 (relating to private activity bond; qualified bond) is
 8 amended by adding at the end the following:

9 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
 10 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
 11 TIES.—

12 “(1) IN GENERAL.—An issuer may make an ir-
 13 revocable election under this paragraph to terminate
 14 certain tax-exempt financing for electric output fa-
 15 cilities. If the issuer makes such election, then—

16 “(A) except as provided in paragraph (2),
 17 no bond the interest on which is exempt from
 18 tax under section 103 may be issued on or after
 19 the date of such election with respect to an elec-
 20 tric output facility; and

21 “(B) notwithstanding paragraph (1) or (2)
 22 of subsection (a) or paragraph (5) of subsection
 23 (b), with respect to an electric output facility no
 24 bond that was issued before the date of enact-
 25 ment of this subsection, the interest on which

1 was exempt from tax on such date, shall be
2 treated as a private activity bond, for so long
3 as such facility continues to be owned by a gov-
4 ernmental unit.

5 “(2) EXCEPTIONS.—An election under para-
6 graph (1) does not apply to—

7 “(A) any qualified bond (as defined in sub-
8 section (e)),

9 “(B) any eligible refunding bond,

10 “(C) any bond issued to finance a quali-
11 fying T&D facility, or

12 “(D) any bond issued to finance equipment
13 necessary to meet Federal or State environ-
14 mental requirements applicable to, or repair of,
15 electric output facilities in service on the date
16 of enactment of this subsection. Repairs or
17 equipment may not increase by more than a de-
18 minimis degree the capacity of the facility be-
19 yond its original design.

20 “(3) FORM AND EFFECT OF ELECTIONS.—An
21 election under paragraph (1) shall be made in such
22 a manner as the Secretary prescribes and shall be
23 binding on any successor in interest to the electing
24 issuer.

1 “(4) DEFINITIONS.—For purposes of this
2 subsection—

3 “(A) ELECTRIC OUTPUT FACILITY.—The
4 term ‘electric output facility’ means an output
5 facility that is an electric generation, trans-
6 mission, or distribution facility.

7 “(B) ELIGIBLE REFUNDING BOND.—The
8 term ‘eligible refunding bond’ means State or
9 local bonds issued after an election described in
10 paragraph (1) that directly or indirectly refund
11 State or local bonds issued before such election,
12 if the weighted averaged maturity of the re-
13 funding bonds do not exceed the remaining
14 weighted average maturity of the bonds issued
15 before the election.

16 “(C) QUALIFYING T&D FACILITY.—The
17 term ‘qualifying T&D facility’ means—

18 “(i) transmission facilities over which
19 services described in subsection
20 (b)(6)(C)(ii)(I) are provided, or

21 “(ii) distribution facilities over which
22 services described in subsection
23 (b)(6)(C)(ii)(III) are provided.”.

24 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-
25 TION RULES.—

1 (1) EFFECTIVE DATE.—The amendments made
2 by this section take effect on the date of enactment
3 of this Act, except that a governmental unit may
4 elect to apply section 141(b)(6)(C) of the Internal
5 Revenue Code of 1986, as added by subsection (a),
6 with respect to permitted open access transactions
7 on or after July 9, 1996.

8 (2) APPLICABILITY.—References in this Act to
9 sections of the Internal Revenue Code of 1986 shall
10 be deemed to include references to comparable sec-
11 tions of the Internal Revenue Code of 1954.

12 (3) TRANSITION RULES.—

13 (A) PRIVATE BUSINESS USE.—Any activity
14 that was not a private business use prior to the
15 effective date of the amendment made by sub-
16 section (a) shall not be deemed to be a private
17 business use by reason of the enactment of such
18 amendment.

19 (B) ELECTION.—An issuer making the
20 election under section 141(f) of the Internal
21 Revenue Code of 1986, as added by subsection
22 (b), shall not be liable under any contract in ef-
23 fect on the date of enactment of this Act for

1 any claim arising from having made the elec-
2 tion.

○