

106TH CONGRESS
1ST SESSION

H. R. 667

To remove Federal impediments to retail competition in the electric power industry, thereby providing opportunities within electricity restructuring.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1999

Mr. BURR of North Carolina introduced the following bill; which was referred to the Committee on Commerce

A BILL

To remove Federal impediments to retail competition in the electric power industry, thereby providing opportunities within electricity restructuring.

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 Power Bill”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Competitive retail electricity markets.
- Sec. 4. PURPA.
- Sec. 5. Public Utility Holding Company Act of 1935.
- Sec. 6. Stranded cost.
- Sec. 7. Disposition of property.

Sec. 8. Savings clause.

Sec. 9. Study.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (1) Many States have moved to retail electric
4 competition.

5 (2) There are Federal barriers to full retail
6 electric competition.

7 (3) The executive branch projects that retail
8 competition will save the American taxpayer
9 \$20,000,000,000.

10 (4) If Congress acts to remove Federal impedi-
11 ments to retail electric competition, States will have
12 greater ability to move to competition thereby allow-
13 ing the open market to govern electricity service,
14 quality, and price.

15 **SEC. 3. COMPETITIVE RETAIL ELECTRICITY MARKETS.**

16 (a) CLARIFICATION OF STATE AUTHORITY TO
17 ORDER RETAIL WHEELING.—Subsection (h) of section
18 212 of the Federal Power Act (16 U.S.C. 824k(h)) is
19 amended by striking the last sentence and inserting the
20 following: “Nothing in this subsection shall affect any au-
21 thority of any State or local government under State law
22 concerning the transmission or sale of electric energy di-
23 rectly to an ultimate consumer.”.

1 (b) CLARIFICATION OF STATE AUTHORITY TO IM-
2 POSE CONDITIONS REGARDING SALES OF ELEC-
3 TRICITY.—Section 201 of the Federal Power Act is
4 amended by adding the following new subsections at the
5 end thereof:

6 “(h) RECIPROCITY CONDITION.—

7 “(1) A State may permit an electric utility sub-
8 ject to its jurisdiction to deny access to its trans-
9 mission and local distribution facilities within the
10 State’s borders to any seller of electric energy for
11 the sale of electric energy directly to an ultimate
12 consumer within the State’s borders if, as deter-
13 mined by certification to the Commission in a form
14 the Commission shall prescribe within 180 days of
15 the enactment of this paragraph, the predominance
16 of the electric energy sold by that seller directly to
17 ultimate consumers is produced in a State or States
18 that maintain exclusive franchise or market areas
19 for the sale of electric energy directly to ultimate
20 consumers.

21 “(2) NONREGULATED UTILITIES.—If, as of the
22 date of the enactment of this paragraph, a State has
23 not established ratemaking authority with respect to
24 an electric utility in the State, the State may not
25 prohibit the utility from selling electric energy at re-

1 tail in interstate commerce in any other State. Any
2 such utility may sell electric energy at retail in inter-
3 state commerce in another State only if the utility
4 provides nondiscriminatory open access to the local
5 distribution facilities of the utility and to any trans-
6 mission facilities of the utility that are not subject
7 to the jurisdiction of the Federal Energy Regulatory
8 Commission under sections 205 and 206 of this Act.

9 “(i) COOPERATIVE CHOICE.—Notwithstanding any
10 other provision of law, cooperatively owned sellers or dis-
11 tributors of electricity shall have the right, as consumer-
12 owned cooperatives, to engage in any activity or provide
13 any service that is lawfully carried out by any other seller
14 or distributor of electricity in that State.

15 “(j) BYPASS PROHIBITED.—(1) Notwithstanding any
16 provision of this Act or any other law, a State or a State
17 regulatory authority (in carrying out its authority to regu-
18 late facilities used for the local distribution of electric en-
19 ergy or for the provision of local distribution service) may
20 require, as a condition for the purchase by any person or
21 municipality of retail electric energy services, the payment
22 of a charge deemed necessary by the State or State regu-
23 latory authority for any policy purpose, including follow-
24 ing:

1 “(A) To recover costs incurred by an electric
2 utility that become unrecoverable due to the avail-
3 ability of retail electric service choice.

4 “(B) To ensure that adequate electric service is
5 available to all customers served by the retail dis-
6 tribution system concerned.

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

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

11 “(E) To encourage environmental, renewable
12 energy, energy efficiency, conservation programs, or
13 any combination of such programs.

14 “(F) To provide for retraining of electric em-
15 ployees.

16 “(G) To provide payment of all reasonable costs
17 associated with Federal and State requirements re-
18 garding the decommissioning of nuclear generating
19 units.

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

22 “(2) For purposes of this subsection, the term ‘local
23 distribution service’ includes the receipt of electric energy
24 by an end user whether or not such receipt requires the
25 use of local distribution facilities.”.

1 **SEC. 4. PURPA.**

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

3 (1) implementation of section 210 of the Public
4 Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 824a–3) resulted in many consumers paying exces-
6 sive rates for electricity;

7 (2) the Energy Policy Act of 1992 gives non-
8 regulated producers of electricity additional access to
9 the wholesale electric market through transmission
10 access and exemption from the Public Utility Hold-
11 ing Company Act of 1935; and

12 (3) in light of the competitive wholesale electric
13 marketplace brought about by the Energy Policy Act
14 of 1992, section 210 of the Public Utility Regulatory
15 Policies Act of 1978 need no longer exist.

16 (b) PROSPECTIVE REPEAL.—

17 (1) NEW CONTRACTS.—After the date of the
18 enactment of this Act no electric utility shall be re-
19 quired to enter into a new contract or obligation to
20 purchase or to sell electric energy or capacity pursu-
21 ant to section 210 of the Public Utility Regulatory
22 Policies Act of 1978.

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

1 to a facility determined to be a qualifying small
2 power production facility or a qualifying cogenera-
3 tion facility under section 210 of the Public Utility
4 Regulatory Policies Act of 1978 pursuant to any
5 contract or obligation to purchase or to sell electric
6 energy or capacity in effect on the date of the enact-
7 ment of this Act including the right to recover the
8 costs of purchasing such electric energy or capacity.

9 (3) INTERPRETATIONS AND ACTIONS TAKEN.—

10 Nothing in this Act may be deemed or construed as
11 implying congressional ratification of any interpreta-
12 tion of, or any action taken pursuant to, the Public
13 Utility Regulatory Policies Act of 1978.

14 (c) RECOVERY OF COSTS.—In order to assure recov-
15 ery by electric utilities purchasing electric energy or capac-
16 ity from a qualifying facility pursuant to any legally en-
17 forceable obligation entered into or imposed pursuant to
18 section 210 of the Public Utility Regulatory Policies Act
19 of 1978 prior to the date of the enactment of this Act
20 of all costs associated with such purchases, the Commis-
21 sion shall promulgate and enforce such regulations as may
22 be required to assure that no utility shall be required di-
23 rectly or indirectly to absorb the costs associated with such
24 purchases from a qualifying facility. Such regulations shall

1 be treated as a rule enforceable under the Federal Power
2 Act (16 U.S.C. 791a–825r).

3 (d) DEFINITIONS.—For purposes of this section:

4 (1) The term “Commission” means the Federal
5 Energy Regulatory Commission.

6 (2) The term “electric utility” means any per-
7 son (including a corporation), State agency, or Fed-
8 eral agency, which sells electric energy.

9 (3) The term “qualifying small power produc-
10 tion facility” has the same meaning as provided in
11 section 3(17)(C) of the Federal Power Act.

12 (4) The term “qualifying cogeneration facility”
13 has the same meaning as provided in section
14 3(18)(A) of the Federal Power Act.

15 (5) The term “qualifying facility” means either
16 a small power production facility or a qualifying co-
17 generation facility.

18 **SEC. 5. PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

19 (a) FINDINGS.—The Congress finds that—

20 (1) the Public Utility Holding Company Act of
21 1935 was intended to facilitate the work of Federal
22 and State regulators by placing certain constraints
23 on the activities of holding company systems;

24 (2) developments since 1935, including changes
25 in other regulation and in the electric and gas indus-

1 tries, have called into question the continued rel-
2 evance of the model of regulation established by that
3 Act;

4 (3) there is a continuing need for limited Fed-
5 eral and State regulation in order to ensure the rate
6 protection of utility customers; and

7 (4) limited Federal regulation is necessary to
8 supplement the work of State commissions for the
9 continued rate protection of electric and gas utility
10 customers.

11 (b) PURPOSES.—The purposes of this section are—

12 (1) to eliminate unnecessary regulation, yet
13 continue to provide for consumer protection by facili-
14 tating existing rate regulatory authority through im-
15 proved Federal and State commission access to
16 books and records of all companies in a holding com-
17 pany system, to the extent that such information is
18 relevant to rates paid by utility customers, while af-
19 fording companies the flexibility required to compete
20 in the energy markets; and

21 (2) to address protection of electric and gas
22 utility customers by providing for Federal and State
23 access to books and records of all companies in a
24 holding company system that are relevant to utility
25 rates.

1 (c) DEFINITIONS.—For purposes of this section:

2 (1) The term “affiliate” of a company means
3 any company 5 percent or more of the outstanding
4 voting securities of which are owned, controlled, or
5 held with power to vote, directly or indirectly, by
6 such company.

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

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

12 (4) The term “company” means a corporation,
13 partnership, association, joint stock company, busi-
14 ness trust, or any organized group of persons,
15 whether incorporated or not, or a receiver, trustee,
16 or other liquidating agent of any of the foregoing.

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

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

1 those sections existed on the day before the effective
2 date of this Act.

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

11 (8) The term “holding company” means—

12 (A) any company that directly or indirectly
13 owns, controls, or holds, with power to vote, 10
14 percent or more of the outstanding voting secu-
15 rities of a public utility company or of a holding
16 company of any public utility company; and

17 (B) any person, determined by the Com-
18 mission, after notice and opportunity for hear-
19 ing, to exercise directly or indirectly (either
20 alone or pursuant to an arrangement or under-
21 standing with one or more persons) such a con-
22 trolling influence over the management or poli-
23 cies of any public utility company or holding
24 company as to make it necessary or appropriate
25 for the rate protection of utility customers with

1 respect to rates that such person be subject to
2 the obligations, duties, and liabilities imposed
3 by this Act upon holding companies.

4 (9) The term “holding company system” means
5 a holding company, together with its subsidiary com-
6 panies.

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

16 (11) The term “natural gas company” means a
17 person engaged in the transportation of natural gas
18 in interstate commerce or the sale of such gas in
19 interstate commerce for resale.

20 (12) The term “person” means an individual or
21 company.

22 (13) The term “public utility” means any per-
23 son who owns or operates facilities used for trans-
24 mission of electric energy in interstate commerce or

1 sales of electric energy at wholesale in interstate
2 commerce.

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

5 (15) The term “State commission” means any
6 commission, board, agency, or officer, by whatever
7 name designated, of a State, municipality, or other
8 political subdivision of a State that, under the laws
9 of such State, has jurisdiction to regulate public util-
10 ity companies.

11 (16) The term “subsidiary company” of a hold-
12 ing company means—

13 (A) any company, 10 percent or more of
14 the outstanding voting securities of which are
15 directly or indirectly owned, controlled, or held
16 with power to vote, by such holding company;
17 and

18 (B) any person, the management or poli-
19 cies of which the Commission, after notice and
20 opportunity for hearing, determines to be sub-
21 ject to a controlling influence, directly or indi-
22 rectly, by such holding company (either alone or
23 pursuant to an arrangement or understanding
24 with 1 or more other persons) so as to make it
25 necessary for the rate protection of utility cus-

1 tomers with respect to rates that such person
2 be subject to the obligations, duties, and liabil-
3 ities imposed by this Act upon subsidiary com-
4 panies of holding companies.

5 (17) The term “voting security” means any se-
6 curity presently entitling the owner or holder thereof
7 to vote in the direction or management of the affairs
8 of a company.

9 (d) REPEAL OF THE PUBLIC UTILITY HOLDING
10 COMPANY ACT OF 1935.—The Public Utility Holding
11 Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed,
12 effective 12 months after the date of enactment of this
13 Act.

14 (e) FEDERAL ACCESS TO BOOKS AND RECORDS.—

15 (1) IN GENERAL.—Each holding company and
16 each associate company thereof shall maintain, and
17 shall make available to the Commission, such books,
18 accounts, memoranda, and other records as the
19 Commission deems to be relevant to costs incurred
20 by a public utility or natural gas company that is an
21 associate company of such holding company and nec-
22 essary or appropriate for the protection of utility
23 customers with respect to jurisdictional rates for the
24 transmission of electric energy in interstate com-
25 merce, the sale of electric energy at wholesale in

1 interstate commerce, the transportation of natural
2 gas in interstate commerce, and the sale in inter-
3 state commerce of natural gas for resale for ultimate
4 public consumption for domestic, commercial, indus-
5 trial, or any other use.

6 (2) AFFILIATE COMPANIES.—Each affiliate of a
7 holding company or of any subsidiary company of a
8 holding company shall maintain, and make available
9 to the Commission, such books, accounts, memo-
10 randa, and other records with respect to any trans-
11 action with another affiliate, as the Commission
12 deems to be relevant to costs incurred by a public
13 utility or natural gas company that is an associate
14 company of such holding company and necessary or
15 appropriate for the protection of utility customers
16 with respect to jurisdictional rates.

17 (3) HOLDING COMPANY SYSTEMS.—The Com-
18 mission may examine the books, accounts, memo-
19 randa, and other records of any company in a hold-
20 ing company system, or any affiliate thereof, as the
21 Commission deems to be relevant to costs incurred
22 by a public utility or natural gas company within
23 such holding company system and necessary or ap-
24 propriate for the protection of utility customers with
25 respect to jurisdictional rates.

1 (4) CONFIDENTIALITY.—No member, officer, or
 2 employee of the Commission shall divulge any fact or
 3 information that may come to his or her knowledge
 4 during the course of examination of books, accounts,
 5 memoranda, or other records as provided in this sec-
 6 tion, except as may be directed by the commission
 7 or by a court of competent jurisdiction.

8 (f) STATE ACCESS TO BOOKS AND RECORDS.—

9 (1) IN GENERAL.—Upon the written request of
 10 a State commission having jurisdiction to regulate a
 11 public utility company in a holding company system,
 12 and subject to such terms and conditions as may be
 13 necessary and appropriate to safeguard against un-
 14 warranted disclosure to the public of any trade se-
 15 crets or sensitive commercial information, the hold-
 16 ing company or any associate company or affiliate
 17 thereof, other than such public utility company,
 18 wherever located, shall produce for inspection books,
 19 accounts, memoranda, and other records that—

20 (A) have been identified in reasonable de-
 21 tail in a proceeding before the State commis-
 22 sion;

23 (B) the State commission deems are rel-
 24 evant to costs incurred by such public utility
 25 company; and

1 (C) are necessary for the effective dis-
2 charge of the responsibilities of the State com-
3 mission with respect to such proceeding.

4 (2) LIMITATION.—Paragraph (1) shall not
5 apply to any person that is a holding company solely
6 by reason of ownership of 1 or more qualifying fa-
7 cilities under the Public Utility Regulatory Policies
8 Act.

9 (3) CONFIDENTIALITY OF INFORMATION.—The
10 production of books, accounts, memoranda, and
11 other records under paragraph (1) shall be subject
12 to such terms and conditions as may be necessary
13 and appropriate to safeguard against unwarranted
14 disclosure to the public of any trade secrets or sen-
15 sitive commercial information.

16 (4) EFFECT ON STATE LAW.—Nothing in this
17 section shall preempt applicable State law concern-
18 ing the provision of books, records, or any other in-
19 formation, or in any way limit the rights of any
20 State to obtain books, records, or any other informa-
21 tion under any other Federal law, contract, or other-
22 wise.

23 (5) COURT JURISDICTION.—Any United States
24 district court located in the State in which the State
25 commission referred to in paragraph (1) is located

1 shall have jurisdiction to enforce compliance with
2 this section.

3 (g) EXEMPTION AUTHORITY.—

4 (1) RULEMAKING.—Not later than 90 days
5 after the date of enactment of this Act, the Commis-
6 sion shall promulgate a final rule to exempt from the
7 requirements of subsection (e) any person that is a
8 holding company, solely with respect to 1 or more—

9 (A) qualifying facilities under the Public
10 Utility Regulatory Policies Act of 1978;

11 (B) exempt wholesale generators; or

12 (C) foreign utility companies.

13 (2) OTHER AUTHORITY.—If, upon application
14 or upon its own motion, the Commission finds that
15 the books, records, accounts, memoranda, and other
16 records of any person are not relevant to the juris-
17 dictional rates of a public utility or natural gas com-
18 pany, or if the Commission finds that any class of
19 transaction is not relevant to the jurisdictional rates
20 of a public utility or natural gas company, the Com-
21 mission shall exempt such person or transaction
22 from the requirements of subsection (e).

23 (h) AFFILIATE TRANSACTIONS.—Nothing in this sec-
24 tion shall preclude the Commission or a State commission
25 from exercising its jurisdiction under otherwise applicable

1 law to determine whether a public utility company, public
2 utility, or natural gas company may recover in rates any
3 costs of an activity performed by an associate company,
4 or any costs of goods or services acquired by such public
5 utility company from an associate company.

6 (i) APPLICABILITY.—No provision of this section
7 shall apply to, or be deemed to include—

8 (1) the United States;

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

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

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

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

19 (j) EFFECT ON OTHER REGULATIONS.—Nothing in
20 this section precludes the Commission or a State commis-
21 sion from exercising its jurisdiction under otherwise appli-
22 cable law to protect utility customers.

23 (k) ENFORCEMENT.—The Commission shall have the
24 same powers as set forth in sections 306 through 317 of

1 the Federal Power Act (16 U.S.C. 825d–825p) to enforce
2 the provisions of this section.

3 (l) SAVINGS PROVISIONS.—

4 (1) IN GENERAL.—Nothing in this section pro-
5 hibits a person from engaging in or continuing to
6 engage in activities or transactions in which it is le-
7 gally engaged or authorized to engage on the effec-
8 tive date of this Act, if that person continues to
9 comply with the terms of any such authorization,
10 whether by rule or by order.

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

17 (m) IMPLEMENTATION.—Not later than 18 months
18 after the date of enactment of this Act, the Commission
19 shall—

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

23 (2) submit to the Congress detailed rec-
24 ommendations on technical and conforming amend-

1 ments to Federal law necessary to carry out this sec-
2 tion and the amendments made by this section.

3 (n) TRANSFER OF RESOURCES.—All books and
4 records that relate primarily to the functions transferred
5 to the Commission under this section shall be transferred
6 from the Securities and Exchange Commission to the
7 Commission.

8 (o) EFFECTIVE DATE.—This section shall take effect
9 18 months after the date of enactment of this Act.

10 (p) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such funds as may be
12 necessary to carry out this section.

13 (q) CONFORMING AMENDMENT TO THE FEDERAL
14 POWER ACT.—Section 318 of the Federal Power Act (16
15 U.S.C. 825q) is repealed.

16 **SEC. 6. STRANDED COST.**

17 As a condition of receiving Federal energy assistance,
18 each State that has by law or regulation adopted provi-
19 sions to provide for the recovery of stranded costs as de-
20 fined by State law or regulation shall provide, for informa-
21 tional purposes, all such provisions with the Federal En-
22 ergy Regulatory Commission and shall not change, amend,
23 modify or repeal such provisions for 7 years after the date
24 on which the provisions are provided to the Commission.
25 The Commission shall determine by rule the scope of Fed-

1 eral energy assistance covered by this section, taking care
2 to encourage to the fullest extent stability concerning the
3 recovery of stranded costs. The Commission also shall
4 compile and make available to the public all such provi-
5 sions and may require any State, as a further condition
6 of receiving energy assistance, to prepare and file an ex-
7 planation of the provision that it has placed on file.

8 **SEC. 7. DISPOSITION OF PROPERTY.**

9 Section 203 of the Federal Power Act is repealed.

10 **SEC. 8. SAVINGS CLAUSE.**

11 Nothing in this Act shall be construed to prohibit any
12 State from dealing with public welfare issues.

13 **SEC. 9. STUDY.**

14 The Secretary of Energy shall report to Congress
15 within 2 years after the enactment of this Act on the ex-
16 tent to which actions taken by the States have removed
17 regulatory and statutory barriers to interstate commerce
18 in electricity. The report shall describe any remaining bar-
19 riers to interstate commerce and shall make recommenda-
20 tions to the Congress for additional action that may be
21 necessary to lower and/or eliminate barriers to interstate
22 commerce in electricity consistent with the development of
23 a fully competitive marketplace.

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