

106TH CONGRESS
1ST SESSION

S. 1284

To amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 1999

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

A BILL

To amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Consumer
5 Choice Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the opportunity for all consumers to pur-
4 chase electric energy in interstate commerce from
5 the supplier of choice is essential to a dynamic, fully
6 integrated and competitive national market for elec-
7 tric energy;

8 (2) the establishment, maintenance or enforce-
9 ment of exclusive rights to sell electric energy and
10 other State action which unduly discriminates
11 against any consumer who seeks to purchase electric
12 energy in interstate commerce from the supplier of
13 its choice constitutes an unwarranted and unaccept-
14 able discrimination against and burden on interstate
15 commerce;

16 (3) in today's technologically driven market-
17 place there is no justification for the discrimination
18 against and burden imposed on interstate commerce
19 by exclusive rights to sell electric energy or other
20 State action which unduly discriminates against any
21 consumer who seeks to purchase electric energy in
22 interstate commerce from the supplier of its choice;
23 and

24 (4) the electric energy transmission and local
25 distribution facilities of all of the Nation's utilities
26 are essential facilities for the conduct of a competi-

1 tive interstate retail market in electric energy in
2 which all consumers have the opportunity to pur-
3 chase electric energy in interstate commerce from
4 the supplier of their choice.

5 **SEC. 3. DECLARATION OF PURPOSE.**

6 The purpose of this act is to ensure that nothing in
7 the Federal Power Act or any other Federal law exempts
8 or protects from Article I, Section 8, Clause 3 of the Con-
9 stitution of the United States exclusive rights to sell elec-
10 tric energy or any other State actions which unduly dis-
11 criminate against any consumer who seeks to purchase
12 electric energy in interstate commerce from the supplier
13 of its choice.

14 **SEC. 4. SCOPE OF STATE AUTHORITY UNDER THE FEDERAL**
15 **POWER ACT.**

16 Section 201 of the Federal Power Act (16 U.S.C.
17 824) is amended by adding at the end the following—

18 “(h) Notwithstanding any other provision of this sec-
19 tion, nothing in this Part or any other federal law shall
20 be construed to authorize a State to—

21 “(1) establish, maintain, or enforce on behalf of
22 any electric utility an exclusive right to sell electric
23 energy; or,

1 “(2) otherwise unduly discriminate against any
2 consumer who seeks to purchase electric energy in
3 interstate commerce from any supplier.”.

4 **SEC. 5. ACCESS TO TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES.**
5

6 No supplier of electric energy, who would otherwise
7 have a right of access to a transmission or local distribu-
8 tion facility because such facility is an essential facility
9 for the conduct of interstate commerce in electric energy,
10 shall be denied access to such facility or precluded from
11 engaging in the retail sale of electric energy on the
12 grounds that such denial or preclusion is authorized or
13 required by State action establishing, maintaining, or en-
14 forcing an exclusive right to sell, transmit, or locally dis-
15 tribute electric energy.

16 **SEC. 6. STATE AUTHORITY TO IMPOSE RECIPROCITY RE-**
17 **QUIREMENTS.**

18 Part II of the Federal Power Act (16 U.S.C. 824)
19 is amended by adding at the end the following:

20 **“SEC. 215. STATE AUTHORITY TO IMPOSE RECIPROCITY RE-**
21 **QUIREMENTS.**

22 “A State or state commission may prohibit an electric
23 utility from selling electric energy to an ultimate consumer
24 in such State if such electric utility or any of its affiliates
25 owns or controls transmission or local distribution facili-

1 ties and is not itself providing unbundled local distribution
 2 service in a State in which such electric utility owns or
 3 operates a facility used for the generation of electric en-
 4 ergy.”.

5 **SEC. 7. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
 6 **PANY ACT OF 1935.**

7 The Public Utility Holding Company Act of 1935 (15
 8 U.S.C. 79a et seq.) is repealed, effective on and after the
 9 enactment of this Act.

10 **SEC. 8. PROSPECTIVE REPEAL OF SECTION 210 OF THE**
 11 **PUBLIC UTILITY REGULATORY POLICIES ACT**
 12 **OF 1978.**

13 (a) NEW CONTRACTS.—No electric utility shall be re-
 14 quired to enter into a new contract or obligation to pur-
 15 chase or to sell electricity or capacity under section 210
 16 of the Public Utility Regulatory Policies Act of 1978 (16
 17 U.S.C. 824a–3).

18 (b) EXISTING RIGHTS AND REMEDIES.—Nothing in
 19 this section affects the rights or remedies of any party
 20 with respect to the purchase or sale of electricity or capac-
 21 ity from or to a facility determined to be a qualifying small
 22 power production facility or a qualifying cogeneration fa-
 23 cility under section 210 of the Public Utility Regulatory
 24 Policies Act of 1978 (16 U.S.C. 824a–3) under any con-
 25 tract or obligation to purchase or to sell electricity or ca-

1 capacity in effect on the date of enactment of this Act, in-
2 cluding the right to recover the costs of purchasing the
3 electricity or capacity.

4 **SEC. 9. SAVINGS CLAUSE.**

5 Nothing in this Act shall be construed to—

6 (1) authorize the Federal Energy Regulatory
7 Commission to regulate retail sales or local distribu-
8 tion of electric energy or otherwise expand the juris-
9 diction of the Commission, or,

10 (2) limit the authority of a State to regulate re-
11 tail sales and local distribution of electric energy in
12 a manner consistent with article I, section 8, clause
13 3 of the Constitution of the United States.

14 **SEC. 10. EFFECTIVE DATES.**

15 Section 5 and the amendment made by section 4 of
16 this Act take effect on January 1, 2002. The amendment
17 made by section 6 of this Act takes effect on the date
18 of enactment of this Act.

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