

106TH CONGRESS  
1ST SESSION

# S. 1323

To amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 1, 1999

Mr. McCONNELL (for himself and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

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

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “TVA Customer Protec-  
5 tion Act of 1999”.

### 6 **SEC. 2. INCLUSION IN DEFINITION OF PUBLIC UTILITY.**

7 (a) IN GENERAL.—Section 201(e) of the Federal  
8 Power Act (16 U.S.C. 824(e)) is amended by inserting be-

1 fore the period at the end the following: “, and includes  
2 the Tennessee Valley Authority”.

3 (b) CONFORMING AMENDMENT.—Section 201(f) of  
4 the Federal Power Act (16 U.S.C. 824(f)) is amended by  
5 striking “foregoing, or any corporation” and inserting  
6 “foregoing (other than the Tennessee Valley Authority) or  
7 any corporation”.

8 **SEC. 3. DISPOSITION OF PROPERTY.**

9 Section 203 of the Federal Power Act (16 U.S.C.  
10 824b) is amended by adding at the end the following:

11 “(c) TVA EXCEPTION.—This section does not apply  
12 to a disposition of the whole or any part of the facilities  
13 of the Tennessee Valley Authority if—

14 “(1) the Tennessee Valley Authority discloses to  
15 the Commission (on a form, and to the extent, that  
16 the Commission shall prescribe by regulation) the  
17 sale, lease, or other disposition of any part of its fa-  
18 cilities that—

19 “(A) is subject to the jurisdiction of the  
20 Commission under this Part; and

21 “(B) has a value of more than \$50,000;  
22 and

23 “(2) all proceeds of the sale, lease, or other dis-  
24 position under paragraph (1) are applied by the

1 Tennessee Valley Authority to the reduction of debt  
2 of the Tennessee Valley Authority.”.

3 **SEC. 4. FOREIGN OPERATIONS; PROTECTIONS.**

4 Section 208 of the Federal Power Act (16 U.S.C.  
5 824g) is amended by adding at the end the following:

6 “(c) TENNESSEE VALLEY AUTHORITY.—

7 “(1) LIMIT ON CHARGES.—

8 “(A) NO AUTHORIZATION OR PERMIT.—

9 The Commission shall issue no order under this  
10 Act that has the effect of authorizing or permit-  
11 ting the Tennessee Valley Authority to make,  
12 demand, or receive any rate or charge, or im-  
13 pose any rule or regulation pertaining to a rate  
14 or charge, that includes any costs incurred by  
15 or for the Tennessee Valley Authority in the  
16 conduct of any activities or operations outside  
17 the United States.

18 “(B) UNLAWFUL RATE.—

19 “(i) IN GENERAL.—Any rate, charge,  
20 rule, or regulation described in subpara-  
21 graph (A) shall be deemed for the purposes  
22 of this Act to be unjust, unreasonable, and  
23 unlawful.

24 “(ii) NO LIMITATION ON AUTHOR-  
25 ITY.—Clause (i) does not limit the author-

ity of the Commission under any other provision of law to regulate and establish just and reasonable rates and charges for the Tennessee Valley Authority.

“(2) ANNUAL REPORT.—The Tennessee Valley Authority shall annually—

“(A) prepare and file with the Commission, in a form that the Commission shall prescribe by regulation, a report setting forth in detail any activities or operations engaged in outside the United States by or on behalf of the Tennessee Valley Authority; and

“(B) certify to the Commission that the Tennessee Valley Authority has neither recovered nor sought to recover the costs of activities or operations engaged in outside the United States by or on behalf of the Tennessee Valley Authority in any rate, charge, rule, or regulation on file with the Commission.”.

**SEC. 5. TVA POWER SALES AND PROPERTY VALUATION.**

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

1 **“SEC. 215. TVA POWER SALES.**

2       “(a) IN GENERAL.—The Tennessee Valley Authority  
3 shall not sell electric power to a retail customer that will  
4 consume the power within the area that, on the date of  
5 enactment of this section, is assigned by law as the dis-  
6 tributor service area, unless—

7               “(1) the customer (or predecessor in interest to  
8 the customer) was purchasing electric power directly  
9 from the Tennessee Valley Authority as a retail cus-  
10 tomer on that date;

11               “(2) the distributor is purchasing firm power  
12 from the Tennessee Valley Authority in an amount  
13 that is equal to not more than 50 percent of the  
14 total retail sales of the distributor; or

15               “(3) the distributor agrees that the Tennessee  
16 Valley Authority may sell power to the customer.

17       “(b) RETAIL SALES.—Notwithstanding any other  
18 provision of law, the rates, terms, and conditions of retail  
19 sales of electric power by the Tennessee Valley Authority  
20 that are not prohibited by subsection (a) shall be subject  
21 to regulation under State law applicable to public utilities  
22 in the manner and to the extent that a State commission  
23 or other regulatory authority determines to be appro-  
24 priate.

25       “(c) ASSURANCE OF ADEQUATE ELECTRIC GENERA-  
26 TION CAPACITY.—

1           “(1) IN GENERAL.—Notwithstanding any other  
 2           provision of law, after the date of enactment of this  
 3           section, the Tennessee Valley Authority shall not  
 4           construct or acquire by any means electric genera-  
 5           tion capacity, or sell the output of electric generation  
 6           capacity constructed or acquired after that date, un-  
 7           less the Commission has issued to the Tennessee  
 8           Valley Authority a certificate of public convenience  
 9           and necessity authorizing the construction or acqui-  
 10          sition of electric generation capacity.

11           “(2) CRITERIA FOR ISSUANCE OF CERTIFI-  
 12          CATE.—The Commission shall issue a certificate of  
 13          public convenience and necessity under paragraph  
 14          (1) only if the Commission finds, after affording an  
 15          opportunity for an evidentiary hearing, that—

16                   “(A) the reserve power margin of the Ten-  
 17                   nessee Valley Authority for the area within  
 18                   which the Tennessee Valley Authority is per-  
 19                   mitted by law to be a source of supply—

20                           “(i) is less than 15 percent; and

21                           “(ii) is expected to remain less than  
 22                   15 percent for a period of at least 1 year  
 23                   unless new capacity is constructed or ac-  
 24                   quired;

1           “(B) the Energy Information Administra-  
2           tion has submitted to the Commission, with re-  
3           spect to issuance of the certificate of public con-  
4           venience and necessity, a determination that—

5                   “(i) there is no commercially reason-  
6                   able option for the purchase of power from  
7                   the wholesale power market to meet the  
8                   needs of the area within which the Ten-  
9                   nessee Valley Authority is permitted by law  
10                  to be a source of supply; and

11                  “(ii) the proposed construction or ac-  
12                  quisition is the only commercially reason-  
13                  able means to meet the firm contractual  
14                  obligations of the Tennessee Valley Au-  
15                  thority with respect to the area within  
16                  which the Tennessee Valley Authority is  
17                  permitted by law to be a source of supply;

18           “(C) the electric generation capacity or the  
19           output of the capacity proposed to be author-  
20           ized will not make the Tennessee Valley Au-  
21           thority a direct or indirect source of supply in  
22           any area with respect to which the Authority is  
23           prohibited by law from being, directly or indi-  
24           rectly, a source of supply; and

1           “(D) the electric generation capacity pro-  
 2           posed to be authorized is completely subscribed  
 3           in advance for use by customers only within the  
 4           area for which the Tennessee Valley Authority  
 5           or distributors of the Authority were the pri-  
 6           mary source of power supply on July 1, 1957.

7   **“SEC. 216. VALUATION OF CERTAIN TVA PROPERTY.**

8           “(a) EVIDENTIARY HEARING.—Not later than 120  
 9   days after the date of enactment of this section, notwith-  
 10   standing any other provision of law, the Commission shall  
 11   commence a hearing on the record for the purpose of de-  
 12   termining the value of the property owned by the Ten-  
 13   nessee Valley Authority—

14           “(1) that is used and useful; and

15           “(2) the cost of which was prudently incurred  
 16   in providing electric service, as of July 1, 1999, to—

17           “(A) the distributors of the Authority; and

18           “(B) the customers that directly purchased  
 19   power from the Authority.

20           “(b) PROCEDURES AND STANDARDS.—In making the  
 21   determination under subsection (a), the Commission shall  
 22   use, to the maximum extent practicable, the procedures  
 23   and standards that the Commission uses in making simi-  
 24   lar determinations with respect to public utilities.



1       “(c) TIMING OF FINAL ORDER.—The Commission  
 2 shall issue a final order with respect to the determination  
 3 under subsection (a)—

4               “(1) not later than 1 year after the date of  
 5 commencement of the hearing under subsection (a);  
 6 or

7               “(2) not later than a date determined by the  
 8 Commission by an order supported by the record.

9       “(d) TIMING OF ORDER AWARDING RECOVERY OF  
 10 STRANDED COSTS.—The Commission may issue an order  
 11 awarding recovery to the Tennessee Valley Authority of  
 12 costs rendered uneconomic by competition not earlier than  
 13 the date on which the Commission issues a final order with  
 14 respect to the determination under subsection (a).”.

15       (b) TRANSITION.—Not later than 180 days after the  
 16 date of enactment of this Act, the Tennessee Valley Au-  
 17 thority shall file all rates and charges for the transmission  
 18 or sale of electric energy and the classifications, practices,  
 19 and regulations affecting those rates and charges, together  
 20 with all contracts that in any manner affect or relate to  
 21 contracts that are required to be filed under Part II of  
 22 the Federal Power Act (16 U.S.C. 824 et seq.) (as amend-  
 23 ed by subsection (a)) and that are in effect as of the date  
 24 of enactment of this Act.

1 **SEC. 6. FILING AND FULL DISCLOSURE OF TVA DOCU-**  
 2 **MENTS.**

3 Part III of the Federal Power Act (16 U.S.C. 825  
 4 et seq.) is amended—

5 (1) by redesignating sections 319 through 321  
 6 as sections 320 through 322, respectively; and

7 (2) by inserting after section 318 the following:

8 **“SEC. 319. FILING AND FULL DISCLOSURE OF TVA DOCU-**  
 9 **MENTS.**

10 “(a) IN GENERAL.—The Tennessee Valley Authority  
 11 shall file and disclose the same documents and other infor-  
 12 mation that other public utilities are required to file under  
 13 this Act, as the Commission shall require by regulation.

14 “(b) REGULATION.—

15 “(1) TIMING.—The regulation under subsection  
 16 (a) shall be promulgated not later than 1 year after  
 17 the date of enactment of this section.

18 “(2) CONSIDERATIONS.—In promulgating the  
 19 regulation under subsection (a), the Commission  
 20 shall take into consideration the practices of the  
 21 Commission with respect to public utilities other  
 22 than the Tennessee Valley Authority.”.

23 **SEC. 7. APPLICABILITY OF THE ANTITRUST LAWS.**

24 The Tennessee Valley Authority Act of 1933 (16  
 25 U.S.C. 831 et seq.) is amended by inserting after section  
 26 16 the following:

1 **“SEC. 17. APPLICABILITY OF THE ANTITRUST LAWS.**

2 “(a) DEFINITION OF ANTITRUST LAWS.—In this sec-  
3 tion, the term ‘antitrust laws’ means—

4 “(1) an antitrust law (within the meaning of  
5 section (1) of the Clayton Act (15 U.S.C. 12));

6 “(2) the Act of June 19, 1936 (commonly  
7 known as the ‘Robinson Patman Act’) (49 Stat.  
8 1526, chapter 323; 15 U.S.C. 13 et seq.); and

9 “(3) section 5 of the Federal Trade Commis-  
10 sion Act (15 U.S.C. 45), to the extent that the sec-  
11 tion relates to unfair methods of competition.

12 “(b) APPLICABILITY.—Nothing in this Act modifies,  
13 impairs, or supersedes the antitrust laws.

14 “(c) ANTITRUST LAWS.—

15 “(1) TVA DEEMED A PERSON.—The Tennessee  
16 Valley Authority shall be deemed to be a person, and  
17 not government, for purposes of the antitrust laws.

18 “(2) APPLICABILITY.—Notwithstanding any  
19 other provision of law, the antitrust laws (including  
20 the availability of any remedy for a violation of an  
21 antitrust law) shall apply to the Tennessee Valley  
22 Authority notwithstanding any determination that  
23 the Tennessee Valley Authority is a corporate agen-  
24 cy or instrumentality of the United States or is oth-  
25 erwise engaged in governmental functions.”.

1 **SEC. 8. SAVINGS PROVISION.**

2 (a) DEFINITION OF TVA DISTRIBUTOR.—In this sec-  
 3 tion, the term “TVA distributor” means a cooperative or-  
 4 ganization or publicly owned electric power system that,  
 5 on January 2, 1998, purchased electric power at wholesale  
 6 from the Tennessee Valley Authority under an all-require-  
 7 ments power contract.

8 (b) EFFECT OF ACT.—Nothing in this Act or any  
 9 amendment made by this Act—

10 (1) subjects any TVA distributor to regulation  
 11 by the Federal Energy Regulatory Commission; or

12 (2) abrogates or affects any law in effect on the  
 13 date of enactment of this Act that applies to a TVA  
 14 distributor.

15 **SEC. 9. PROVISION OF CONSTRUCTION EQUIPMENT, CON-**  
 16 **TRACTING, AND ENGINEERING SERVICES.**

17 Section 4 of the Tennessee Valley Authority Act of  
 18 1933 (16 U.S.C. 831c) is amended by adding at the end  
 19 the following:

20 “(m) PROVISION OF CONSTRUCTION EQUIPMENT,  
 21 CONTRACTING, AND ENGINEERING SERVICES.—

22 “(1) IN GENERAL.—Notwithstanding any other  
 23 provision of this Act, except as provided in this sub-  
 24 section, the Corporation shall not have power to—

25 “(A) rent or sell construction equipment;

1           “(B) provide a construction equipment  
2 maintenance or repair service;

3           “(C) perform contract construction work;  
4 or

5           “(D) provide a construction engineering  
6 service;

7 to any private or public entity.

8           “(2) ELECTRICAL CONTRACTORS.—The Cor-  
9 poration may provide equipment or a service de-  
10 scribed in subparagraph (1) to a private contractor  
11 that is engaged in electrical utility work on an elec-  
12 trical utility project of the Corporation.

13           “(3) CUSTOMERS, DISTRIBUTORS, AND GOVERN-  
14 MENTAL ENTITIES.—The Corporation may provide  
15 equipment or a service described in subparagraph  
16 (1) to—

17           “(A) a power customer served directly by  
18 the Corporation;

19           “(B) a distributor of Corporation power; or

20           “(C) a Federal, State, or local government  
21 entity;

22 that is engaged in work specifically related to an  
23 electrical utility project of the Corporation.

24           “(4) USED CONSTRUCTION EQUIPMENT.—

1                   “(A) DEFINITION OF USED CONSTRUCTION  
 2                   EQUIPMENT.—In this paragraph, the term  
 3                   ‘used construction equipment’ means construc-  
 4                   tion equipment that has been in service for  
 5                   more than 2,500 hours.

6                   “(B) DISPOSITION.—The Corporation may  
 7                   dispose of used construction equipment by  
 8                   means of a public auction conducted by a pri-  
 9                   vate entity that is independent of the Corpora-  
 10                  tion.

11                  “(C) DEBT REDUCTION.—The Corporation  
 12                  shall apply all proceeds of a disposition of used  
 13                  construction equipment under subparagraph  
 14                  (B) to the reduction of debt of the Corpora-  
 15                  tion.”.

16 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

17                  There are authorized to be appropriated to the Fed-  
 18                  eral Energy Regulatory Commission such sums as are nec-  
 19                  essary to carry out this Act and the amendments made  
 20                  by this Act.

