

106TH CONGRESS  
1ST SESSION

# S. 161

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Power Marketing Ad-  
5       ministration Reform Act of 1999”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

1           (1) the use of fixed allocations of joint multi-  
2           purpose project costs and the failure to provide for  
3           the recovery of actual interest costs and depreciation  
4           have resulted in—

5                   (A) substantial failures to recover costs  
6                   properly recoverable through power rates by the  
7                   Federal Power Marketing Administrations and  
8                   the Tennessee Valley Authority; and

9                   (B) the imposition of unreasonable burdens  
10                  on the taxpaying public;

11           (2) existing underallocations and underrecovery  
12           of costs have led to inefficiencies in the marketing  
13           of Federally generated electric power and to environ-  
14           mental damage; and

15           (3) with the emergence of open access to power  
16           transmission and competitive bulk power markets,  
17           market prices will provide the lowest reasonable  
18           rates consistent with—

19                   (A) sound business principles;

20                   (B) maximum recovery of costs properly  
21                   allocated to power production; and

22                   (C) encouraging the most widespread use  
23                   of power marketed by the Federal Power Mar-  
24                   keting Administrations and the Tennessee Val-  
25                   ley Authority.

1 (b) PURPOSES.—The purposes of this Act are to pro-  
 2 vide for—

3 (1) full cost recovery rates for power sold by  
 4 the Federal Power Marketing Administrations and  
 5 the Tennessee Valley Authority; and

6 (2) a transition to market-based rates for the  
 7 power.

8 **SEC. 3. SALE OR DISPOSITION OF FEDERAL POWER BY FED-**  
 9 **ERAL POWER MARKETING ADMINISTRATIONS**  
 10 **AND THE TENNESSEE VALLEY AUTHORITY.**

11 (a) ACCOUNTING.—Notwithstanding any other provi-  
 12 sion of law, as soon as practicable after the date of enact-  
 13 ment of this Act, the Secretary of Energy, in consultation  
 14 with the Federal Energy Regulatory Commission, shall de-  
 15 velop and implement procedures to ensure that the Fed-  
 16 eral Power Marketing Administrations and the Tennessee  
 17 Valley Authority use the same accounting principles and  
 18 requirements (including the accounting principles and re-  
 19 quirements with respect to the accrual of actual interest  
 20 costs during construction and pending repayment for any  
 21 project and recognition of depreciation expenses) as are  
 22 applied by the Commission to the electric operations of  
 23 public utilities.

24 (b) DEVELOPMENT AND SUBMISSION OF RATES TO  
 25 THE COMMISSION.—

1           (1) IN GENERAL.—Notwithstanding any other  
 2           provision of law, not later than 1 year after the date  
 3           of enactment of this Act and periodically thereafter  
 4           but not less frequently than once every 5 years, each  
 5           Federal Power Marketing Administration and the  
 6           Tennessee Valley Authority shall submit to the Fed-  
 7           eral Energy Regulatory Commission a description of  
 8           proposed rates for the sale or disposition of Federal  
 9           power that will ensure the recovery of all costs in-  
 10          curred by the Federal Power Marketing Administra-  
 11          tion or the Tennessee Valley Authority, respectively,  
 12          for the generation and marketing of the Federal  
 13          power.

14          (2) COSTS TO BE RECOVERED.—The costs to be  
 15          recovered under paragraph (1)—

16                (A) shall include all fish and wildlife ex-  
 17                penditures required under treaty and legal obli-  
 18                gations associated with the construction and op-  
 19                eration of the facilities from which the Federal  
 20                power is generated and sold; and

21                (B) shall not include any cost of transmit-  
 22                ting the Federal power.

23          (c) COMMISSION REVIEW, APPROVAL, OR MODIFICA-  
 24          TION.—

1           (1) IN GENERAL.—The Federal Energy Regu-  
2       latory Commission shall review and either approve or  
3       modify rates for the sale or disposition of Federal  
4       power submitted to the Commission by each Federal  
5       Power Marketing Administration and the Tennessee  
6       Valley Authority under this section, in a manner  
7       that ensures that the rates will recover all costs de-  
8       scribed in subsection (b)(2).

9           (2) BASIS FOR REVIEW.—The review by the  
10      Commission under paragraph (1) shall be based on  
11      the record of proceedings before the Federal Power  
12      Marketing Administration or the Tennessee Valley  
13      Authority, except that the Commission shall afford  
14      all affected persons an opportunity for an additional  
15      hearing in accordance with the procedures estab-  
16      lished for ratemaking by the Commission under the  
17      Federal Power Act (16 U.S.C. 791a et seq.).

18      (d) APPLICATION OF RATES.—

19           (1) IN GENERAL.—Beginning on the date of ap-  
20      proval or modification by the Commission of rates  
21      under this section, each Federal Power Marketing  
22      Administration and the Tennessee Valley Authority  
23      shall apply the rates, as approved or modified by the  
24      Commission, to each existing contract for the sale or  
25      disposition of Federal power by the Federal Power

1 Marketing Administration or the Tennessee Valley  
2 Authority to the maximum extent permitted by the  
3 contract.

4 (2) APPLICABILITY.—This section shall cease to  
5 apply to a Federal Power Marketing Administration  
6 or the Tennessee Valley Authority as of the date of  
7 termination of all commitments under any contract  
8 for the sale or disposition of Federal power that  
9 were in existence as of the date of enactment of this  
10 Act.

11 (e) ACCOUNTING PRINCIPLES AND REQUIRE-  
12 MENTS.—In developing or reviewing the rates required by  
13 this section, the Federal Power Marketing Administra-  
14 tions, the Tennessee Valley Authority, and the Commis-  
15 sion shall rely on the accounting principles and require-  
16 ments developed under subsection (a).

17 (f) INTERIM RATES.—Until market pricing for the  
18 sale or disposition of Federal power by a Federal Power  
19 Marketing Administration or the Tennessee Valley Au-  
20 thority is fully implemented, the full cost recovery rates  
21 required by this section shall apply to—

22 (1) a new contract entered into after the date  
23 of enactment of this Act for the sale of power by a  
24 Federal Power Marketing Administrator or the Ten-  
25 nessee Valley Authority; and

1           (2) a renewal after the date of enactment of  
 2           this Act of an existing contract for the sale of power  
 3           by a Federal Power Marketing Administration or the  
 4           Tennessee Valley Authority.

5           (g) TRANSITION TO MARKET-BASED RATES.—

6           (1) IN GENERAL.—If the transition to full cost  
 7           recovery rates would result in rates that exceed mar-  
 8           ket rates, the Secretary of Energy may approve  
 9           rates for power sold by Federal Power Marketing  
 10          Administrations at market rates, and the Tennessee  
 11          Valley Authority may approve rates for power sold  
 12          by the Tennessee Valley Authority at market rates,  
 13          if—

14                 (A) operation and maintenance costs are  
 15                 recovered, including all fish and wildlife costs  
 16                 required under existing treaty and legal obliga-  
 17                 tions;

18                 (B) the contribution toward recovery of in-  
 19                 vestment pertaining to power production is  
 20                 maximized; and

21                 (C) purchasers of power under existing  
 22                 contracts consent to the remarketing by the  
 23                 Federal Power Marketing Administration or the  
 24                 Tennessee Valley Authority of the power

1 through competitive bidding not later than 3  
2 years after the approval of the rates.

3 (2) COMPETITIVE BIDDING.—Competitive bid-  
4 ding shall be used to remarket power that is subject  
5 to, but not sold in accordance with, paragraph (1).

6 (h) MARKET-BASED PRICING.—

7 (1) IN GENERAL.—Not later than 2 years after  
8 the date of enactment of this Act, the Secretary of  
9 Energy shall develop and implement procedures to  
10 ensure that all power sold by Federal Power Market-  
11 ing Administrations and the Tennessee Valley Au-  
12 thority is sold at prices that reflect demand and sup-  
13 ply conditions within the relevant bulk power supply  
14 market.

15 (2) BID AND AUCTION PROCEDURES.—The Sec-  
16 retary of Energy shall establish by regulation bid  
17 and auction procedures to implement market-based  
18 pricing for power sold under any power sales con-  
19 tract entered into by a Federal Power Marketing  
20 Administration or the Tennessee Valley Authority  
21 after the date that is 2 years after the date of enact-  
22 ment of this Act, including power that is under con-  
23 tract but that is declined by the party entitled to  
24 purchase the power and remarketed after that date.



1       (i) USE OF REVENUE COLLECTED THROUGH MAR-  
2   KET-BASED PRICING.—

3           (1) IN GENERAL.—Revenue collected through  
4   market-based pricing shall be disposed of as follows:

5           (A) REVENUE FOR OPERATIONS, FISH AND  
6   WILDLIFE, AND PROJECT COSTS.—Revenue  
7   shall be remitted to the Secretary of the Treas-  
8   ury to cover—

9           (i) all power-related operations and  
10   maintenance expenses;

11          (ii) all fish and wildlife costs required  
12   under existing treaty and legal obligations;  
13   and

14          (iii) the project investment cost per-  
15   taining to power production.

16          (B) REMAINING REVENUE.—Revenue that  
17   remains after remission to the Secretary of the  
18   Treasury under subparagraph (A) shall be dis-  
19   posed of as follows:

20          (i) FEDERAL BUDGET DEFICIT.—50  
21   percent of the revenue shall be remitted to  
22   the Secretary of the Treasury for the pur-  
23   pose of reducing the Federal budget defi-  
24   cit.

1 (ii) FUND FOR ENVIRONMENTAL MITI-  
 2 GATION AND RESTORATION.—35 percent of  
 3 the revenue shall be deposited in the fund  
 4 established under paragraph (2)(A).

5 (iii) FUND FOR RENEWABLE RE-  
 6 SOURCES.—15 percent of the revenue shall  
 7 be deposited in the fund established under  
 8 paragraph (3)(A).

9 (2) FUND FOR ENVIRONMENTAL MITIGATION  
 10 AND RESTORATION.—

11 (A) ESTABLISHMENT.—

12 (i) IN GENERAL.—There is established  
 13 in the Treasury of the United States a  
 14 fund to be known as the “Fund for Envi-  
 15 ronmental Mitigation and Restoration”  
 16 (referred to in this paragraph as the  
 17 “Fund”), consisting of funds allocated  
 18 under paragraph (1)(B)(ii).

19 (ii) ADMINISTRATION.—The Fund  
 20 shall be administered by a Board of Direc-  
 21 tors consisting of the Secretary of the Inte-  
 22 rior, the Secretary of Energy, and the Ad-  
 23 ministrator of the Environmental Protec-  
 24 tion Agency, or their designees.

1 (B) USE.—Amounts in the Fund shall be  
2 available for making expenditures—

3 (i) to carry out project-specific plans  
4 to mitigate damage to, and restore the  
5 health of, fish, wildlife, and other environ-  
6 mental resources that is attributable to the  
7 construction and operation of the facilities  
8 from which power is generated and sold;  
9 and

10 (ii) to cover all costs incurred in es-  
11 tablishing and administering the Fund.

12 (C) PROJECT-SPECIFIC PLANS.—

13 (i) IN GENERAL.—The Board of Di-  
14 rectors of the Fund shall develop a project-  
15 specific plan described in subparagraph  
16 (B)(i) for each project that is used to gen-  
17 erate power marketed by the Federal  
18 Power Marketing Administration or the  
19 Tennessee Valley Authority.

20 (ii) USE OF EXISTING DATA, INFOR-  
21 MATION, AND PLANS.—In developing plans  
22 under clause (i), the Board, to the maxi-  
23 mum extent practicable, shall rely on exist-  
24 ing data, information, and mitigation and  
25 restoration plans developed by—

1 (I) the Commissioner of the Bu-  
 2 reau of Reclamation;

3 (II) the Director of the United  
 4 States Fish and Wildlife Service;

5 (III) the Administrator of the  
 6 Environmental Protection Agency;  
 7 and

8 (IV) the heads of other Federal,  
 9 State, and tribal agencies.

10 (D) MAXIMUM AMOUNT.—

11 (i) IN GENERAL.—The Fund shall  
 12 maintain a balance of not more than  
 13 \$200,000,000 in excess of the amount that  
 14 the Board of Directors of the Fund deter-  
 15 mines is necessary to cover the costs of  
 16 project-specific plans required under this  
 17 paragraph.

18 (ii) SURPLUS REVENUE FOR DEFICIT  
 19 REDUCTION.—Revenue that would be de-  
 20 posited in the Fund but for the absence of  
 21 such project-specific plans shall be used by  
 22 the Secretary of the Treasury for purposes  
 23 of reducing the Federal budget deficit.

24 (3) FUND FOR RENEWABLE RESOURCES.—

25 (A) ESTABLISHMENT.—

1 (i) IN GENERAL.—There is established  
 2 in the Treasury of the United States a  
 3 fund to be known as the “Fund for Renew-  
 4 able Resources” (referred to in this para-  
 5 graph as the “Fund”), consisting of funds  
 6 allocated under paragraph (1)(B)(iii).

7 (ii) ADMINISTRATION.—The Fund  
 8 shall be administered by the Secretary of  
 9 Energy.

10 (B) USE.—Amounts in the Fund shall be  
 11 available for making expenditures—

12 (i) to pay the incremental cost (above  
 13 the expected market cost of power) of non-  
 14 hydroelectric renewable resources in the re-  
 15 gion in which power is marketed by a Fed-  
 16 eral Power Marketing Administration; and

17 (ii) to cover all costs incurred in es-  
 18 tablishing and administering the Fund.

19 (C) ADMINISTRATION.—Amounts in the  
 20 Fund shall be expended only—

21 (i) in accordance with a plan devel-  
 22 oped by the Secretary of Energy that is de-  
 23 signed to foster the development of non-  
 24 hydroelectric renewable resources that  
 25 show substantial long-term promise but

1 that are currently too expensive to attract  
 2 private capital sufficient to develop or as-  
 3 certain their potential; and

4 (ii) on recipients chosen through com-  
 5 petitive bidding.

6 (D) MAXIMUM AMOUNT.—

7 (i) IN GENERAL.—The Fund shall  
 8 maintain a balance of not more than  
 9 \$50,000,000 in excess of the amount that  
 10 the Secretary of Energy determines is nec-  
 11 essary to carry out the plan developed  
 12 under subparagraph (C)(i).

13 (ii) SURPLUS REVENUE FOR DEFICIT  
 14 REDUCTION.—Revenue that would be de-  
 15 posited in the Fund but for the absence of  
 16 the plan shall be used by the Secretary of  
 17 the Treasury for purposes of reducing the  
 18 Federal budget deficit.

19 (j) PREFERENCE.—

20 (1) IN GENERAL.—In making allocations or re-  
 21 allocations of power under this section, a Federal  
 22 Power Marketing Administration and the Tennessee  
 23 Valley Authority shall provide a preference for public  
 24 bodies and cooperatives by providing a right of first  
 25 refusal to purchase the power at market prices.

1 (2) USE.—

2 (A) IN GENERAL.—Power purchased under  
3 paragraph (1)—

4 (i) shall be consumed by the pref-  
5 erence customer or resold for consumption  
6 by the constituent end-users of the pref-  
7 erence customer; and

8 (ii) may not be resold to other persons  
9 or entities.

10 (B) TRANSMISSION ACCESS.—In accord-  
11 ance with regulations of the Federal Energy  
12 Regulatory Commission, a preference customer  
13 shall have transmission access to power pur-  
14 chased under paragraph (1).

15 (3) COMPETITIVE BIDDING.—If a public body  
16 or cooperative does not purchase power under para-  
17 graph (1), the power shall be allocated to the next  
18 highest bidder.

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

22 (1) program management reforms that require  
23 the Federal Power Marketing Administration to as-  
24 sign personnel and incur expenses only for author-  
25 ized power marketing, reclamation, and flood control

1 activities and not for ancillary activities (including  
2 consulting or operating services for other entities);  
3 and

4 (2) annual reporting requirements that clearly  
5 disclose to the public, the activities of the Federal  
6 Power Marketing Administration (including the full  
7 cost of the power projects and power marketing pro-  
8 grams).

9 (l) CONTRACT RENEWAL.—Effective beginning on  
10 the date of enactment of this Act, a Federal Power Mar-  
11 keting Administration shall not enter into or renew any  
12 power marketing contract for a term that exceeds 5 years.

13 (m) RESTRICTIONS.—Except for the Bonneville  
14 Power Administration, each Federal Power Marketing Ad-  
15 ministration shall be subject to the restrictions on the con-  
16 struction of transmission and additional facilities that are  
17 established under section 5 of the Act entitled “An Act  
18 authorizing the construction of certain public works on  
19 rivers and harbors for flood control, and for other pur-  
20 poses”, approved December 22, 1944 (commonly known  
21 as the “Flood Control Act of 1944”) (58 Stat. 890)).



1 **SEC. 4. TRANSMISSION SERVICE PROVIDED BY FEDERAL**  
2 **POWER MARKETING ADMINISTRATIONS AND**  
3 **TENNESSEE VALLEY AUTHORITY.**

4 (a) IN GENERAL.—Subject to subsection (b), a Fed-  
5 eral Power Marketing Administration and the Tennessee  
6 Valley Authority shall provide transmission service on an  
7 open access basis, and at just and reasonable rates ap-  
8 proved or established by the Federal Energy Regulatory  
9 Commission under part II of the Federal Power Act (16  
10 U.S.C. 824 et seq.), in the same manner as the service  
11 is provided under Commission rules by any public utility  
12 subject to the jurisdiction of the Commission under that  
13 part.

14 (b) EXPANSION OF CAPABILITIES OR TRANS-  
15 MISSIONS.—Subsection (a) does not require a Federal  
16 Power Marketing Administration or the Tennessee Valley  
17 Authority to expand a transmission or interconnection ca-  
18 pability or transmission.

19 **SEC. 5. INTERIM REGULATION OF POWER RATE SCHED-**  
20 **ULES OF FEDERAL POWER MARKETING AD-**  
21 **MINISTRATIONS.**

22 (a) IN GENERAL.—During the date beginning on the  
23 date of enactment of this Act and ending on the date on  
24 which market-based pricing is implemented under section  
25 3 (as determined by the Federal Energy Regulatory Com-  
26 mission), the Commission may review and approve, reject,

1 or revise power rate schedules recommended for approval  
 2 by the Secretary of Energy, and existing rate schedules,  
 3 for power sales by a Federal Power Marketing Administra-  
 4 tion.

5 (b) BASIS FOR APPROVAL.—In evaluating rates  
 6 under subsection (a), the Federal Energy Regulatory  
 7 Commission, in accordance with section 3, shall—

8 (1) base any approval of the rates on the pro-  
 9 tection of the public interest; and

10 (2) undertake to protect the interest of the tax-  
 11 paying public and consumers.

12 (c) COMMISSION ACTIONS.—As the Federal Energy  
 13 Regulatory Commission determines is necessary to protect  
 14 the public interest in accordance with section 3 until a  
 15 full transition is made to market-based rates for power  
 16 sold by Federal Power Marketing Administrations, the  
 17 Federal Energy Regulatory Commission may—

18 (1) review the factual basis for determinations  
 19 made by the Secretary of Energy;

20 (2) revise or modify those findings as appro-  
 21 priate;

22 (3) revise proposed or effective rate schedules;  
 23 or

24 (4) remand the rate schedules to the Secretary  
 25 of Energy.

1 (d) REVIEW.—An affected party (including a tax-  
 2 payer, bidder, preference customer, or affected competitor)  
 3 may seek a rehearing and judicial review of a final decision  
 4 of the Federal Energy Regulatory Commission under this  
 5 section in accordance with section 313 of the Federal  
 6 Power Act (16 U.S.C. 825*l*).

7 (e) PROCEDURES.—The Federal Energy Regulatory  
 8 Commission shall by regulation establish procedures to  
 9 carry out this section.

#### 10 **SEC. 6. CONFORMING AMENDMENTS.**

11 (a) TRANSFERS FROM THE DEPARTMENT OF THE IN-  
 12 TERIOR.—Section 302(a)(3) of the Department of Energy  
 13 Organization Act (42 U.S.C. 7152(a)(3)) is amended by  
 14 striking the last sentence.

15 (b) USE OF FUNDS TO STUDY NONCOST-BASED  
 16 METHODS OF PRICING HYDROELECTRIC POWER.—Sec-  
 17 tion 505 of the Energy and Water Development Appro-  
 18 priations Act, 1993 (42 U.S.C. 7152 note; 106 Stat.  
 19 1343) is repealed.

#### 20 **SEC. 7. APPLICABILITY.**

21 Except as provided in section 3(l), this Act shall  
 22 apply to a power sales contract entered into by a Federal  
 23 Power Marketing Administration or the Tennessee Valley  
 24 Authority after July 23, 1997.

