

107TH CONGRESS
1ST SESSION

H. R. 1459

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. HAYWORTH (for himself, Mr. ENGLISH, Mr. MATSUI, Mr. WELLER, Mr. NEAL of Massachusetts, Mr. HOUGHTON, Ms. BALDWIN, Mr. KING, Mr. SPRATT, and Mr. GRAHAM) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

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 Power Indus-
5 try Tax Modernization Act”.

1 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**2 **TRIC FACILITIES.**

3 (a) RULES APPLICABLE TO ELECTRIC OUTPUT FA-
4 CILITIES.—Subpart A of part IV of subchapter B of chap-
5 ter 1 of the Internal Revenue Code of 1986 (relating to
6 tax exemption requirements for State and local bonds) is
7 amended by adding after section 141 the following new
8 section:

9 **“SEC. 141A. ELECTRIC OUTPUT FACILITIES.**

10 “(a) ELECTION TO TERMINATE TAX-EXEMPT BOND
11 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
12 TIES.—

13 “(1) IN GENERAL.—A governmental unit may
14 make an irrevocable election under this paragraph to
15 terminate the issuance of certain obligations de-
16 scribed in section 103(a) for electric output facilities.
17 If the governmental unit makes such election,
18 then—

19 “(A) except as provided in paragraph (2),
20 on or after the date of such election the govern-
21 mental unit may not issue with respect to any
22 electric output facility any bond the interest on
23 which is excluded from gross income under sec-
24 tion 103, and

1 “(B) notwithstanding paragraph (1) or (2)
2 of section 141(a) or paragraph (4) or (5) of
3 section 141(b), no bond—

4 “(i) which was issued by such unit
5 with respect to an electric output facility
6 before the date of enactment of this sub-
7 section, the interest on which was exempt
8 from tax on such date,

9 “(ii) which is an eligible refunding
10 bond that directly or indirectly refunds a
11 bond issued prior to the date of enactment
12 of this section, or

13 “(iii) which is described in paragraph
14 (2)(D), (E), or (F),

15 shall be treated as a private activity bond.

16 “(2) EXCEPTIONS.—If an election is made
17 under paragraph (1), paragraph (1)(A) does not
18 apply to any of the following bonds:

19 “(A) Any qualified bond (as defined in sec-
20 tion 141(e)).

21 “(B) Any eligible refunding bond (as de-
22 fined in subsection (d)(6)).

23 “(C) Any bond issued to finance a qual-
24 fying transmission facility or a qualifying dis-

1 tribution facility owned by the governmental
2 unit.

3 “(D) Any bond issued to finance equip-
4 ment or facilities necessary to meet Federal or
5 State environmental requirements applicable to
6 an existing generation facility owned by the
7 governmental unit.

8 “(E) Any bond issued to finance repair of
9 any existing generation facility owned by the
10 governmental unit. Repairs of facilities may not
11 increase the generation capacity of the facility
12 by more than 3 percent above the greater of its
13 nameplate or rated capacity as of the date of
14 enactment of this section.

15 “(F) Any bond issued to acquire or
16 construct—

17 “(i) a qualified facility (as defined in
18 section 45(c)(3)) if such facility is owned
19 by the governmental unit and is placed in
20 service during a period in which a qualified
21 facility may be placed in service under
22 such section, or

23 “(ii) any energy property (as defined
24 in section 48(a)(3)) that is owned by the
25 governmental unit.

1 This subparagraph shall not apply to any facility
2 or property that is constructed, acquired or
3 financed for the principal purpose of providing
4 the facility (or the output thereof) to non-
5 governmental persons.

6 “(3) FORM AND EFFECT OF ELECTION.—

7 “(A) IN GENERAL.—An election under
8 paragraph (1) shall be made in such a manner
9 as the Secretary prescribes and shall be binding
10 on any successor in interest to, or any related
11 party with respect to, the electing governmental
12 unit. For purposes of this paragraph, a governmental unit shall be treated as related to another governmental unit if it is a member of the same controlled group.

16 “(B) TREATMENT OF ELECTING GOVERN-
17 MENTAL UNIT.—A governmental unit which
18 makes an election under paragraph (1) shall be
19 treated for purposes of section 141 as a person
20 which is not a governmental unit and which is
21 engaged in a trade or business, with respect to
22 its purchase of electricity generated by an electric output facility placed in service after such
23 election, if such purchase is under a contract
24 executed after such election.

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) EXISTING GENERATION FACILITY.—

4 The term ‘existing generation facility’ means an
5 electric generation facility owned by the govern-
6 mental unit on the date of enactment of this
7 subsection and either in service on such date or
8 the construction of which commenced prior to
9 June 1, 2000.

10 “(B) QUALIFYING DISTRIBUTION FACIL-
11 ITY.—The term ‘qualifying distribution facility’
12 means a distribution facility over which open
13 access distribution services described in sub-
14 section (b)(2)(C) are available.

15 “(C) QUALIFYING TRANSMISSION FACIL-
16 ITY.—The term ‘qualifying transmission facil-
17 ity’ means a local transmission facility (as de-
18 scribed in subsection (c)(3)(A)) over which open
19 access transmission services described in sub-
20 paragraph (A) or (B) of subsection (b)(2) are
21 available.

22 “(b) PERMITTED OPEN ACCESS ACTIVITIES AND
23 SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE
24 FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE
25 RULES.—

1 “(1) GENERAL RULE.—For purposes of this
2 section and section 141, the term ‘private business
3 use’ shall not include a permitted open access activ-
4 ity or a permitted sales transaction.

5 “(2) PERMITTED OPEN ACCESS ACTIVITIES.—
6 For purposes of this section, the term ‘permitted
7 open access activity’ means any of the following
8 transactions or activities with respect to an electric
9 output facility owned by a governmental unit:

10 “(A) Providing nondiscriminatory open ac-
11 cess transmission service and ancillary
12 services—

13 “(i) pursuant to an open access trans-
14 mission tariff filed with and approved by
15 FERC, including an acceptable reciprocity
16 tariff but, in the case of a voluntarily filed
17 tariff, only if the governmental unit volun-
18 tarily files a report with the FERC within
19 90 days of the date of enactment of this
20 section relating to whether or not the
21 issuer will join a regional transmission or-
22 ganization,

23 “(ii) under an independent system op-
24 erator or regional transmission organiza-
25 tion agreement approved by FERC, or

1 “(iii) in the case of an ERCOT utility
2 (as defined in section 212(k)(2)(B) of the
3 Federal Power Act (16 U.S.C.
4 824k(k)(2)(B))), pursuant to a tariff ap-
5 proved by the Public Utility Commission of
6 Texas.

7 “(B) Participation in—
8 “(i) an independent system operator
9 agreement, or

10 “(ii) a regional transmission organiza-
11 tion agreement,

12 which has been approved by FERC, or by the
13 Public Utility Commission of Texas in the case
14 of an ERCOT utility (as so defined). Such par-
15 ticipation may include transfer of control of
16 transmission facilities to an organization de-
17 scribed in clause (i) or (ii).

18 “(C) Delivery on a nondiscriminatory open
19 access basis of electric energy sold to end-users
20 served by distribution facilities owned by such
21 governmental unit.

22 “(D) Delivery on a nondiscriminatory open
23 access basis of electric energy generated by gen-
24 eration facilities connected to distribution facili-
25 ties owned by such governmental unit.

1 “(3) PERMITTED SALES TRANSACTION.—For
2 purposes of this subsection, the term ‘permitted
3 sales transaction’ means any of the following sales of
4 electric energy from existing generation facilities (as
5 defined in subsection (a)(4)(A)):

6 “(A) The sale of electricity to an on-system
7 purchaser, if the seller makes available open ac-
8 cess distribution service under paragraph (2)(C)
9 and, in the case of a seller that owns or oper-
10 ates transmission facilities, if such seller makes
11 available open access transmission under sub-
12 paragraph (A) or (B) of paragraph (2).

13 “(B) The sale of electricity to a wholesale
14 native load purchaser or in a wholesale strand-
15 ed cost mitigation sale—

16 “(i) if the seller makes available open
17 access transmission service described in
18 subparagraph (A) or (B) of paragraph (2),
19 or

20 “(ii) if the seller owns or operates no
21 transmission facilities and transmission
22 providers to the seller’s wholesale native
23 load purchasers make available open access
24 transmission service described in subpara-
25 graph (A) or (B) of paragraph (2).

1 “(4) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection:

3 “(A) ON-SYSTEM PURCHASER.—The term
4 ‘on-system purchaser’ means a person whose
5 electric facilities or equipment are directly con-
6 nected with transmission or distribution facili-
7 ties which are owned by such governmental
8 unit, and such person—

9 “(i) purchases electric energy from
10 such governmental unit at retail and either
11 was within such unit’s distribution area in
12 the base year or is a person as to whom
13 the governmental unit has a service obliga-
14 tion, or

15 “(ii) is a wholesale native load pur-
16 chaser from such governmental unit.

17 “(B) WHOLESALE NATIVE LOAD PUR-
18 CHASER.—The term ‘wholesale native load pur-
19 chaser’ means a wholesale purchaser as to
20 whom the governmental unit had—

21 “(i) a service obligation at wholesale
22 in the base year, or

23 “(ii) an obligation in the base year
24 under a requirements contract, or under a
25 firm sales contract that has been in effect

1 for (or has an initial term of) at least 10
2 years,

3 but only to the extent that in either case such
4 purchaser resells the electricity (I) directly at
5 retail to persons within the purchaser's dis-
6 tribution area or (II) indirectly through one or
7 more intermediate wholesale purchasers (each
8 of whom as of June 30, 2000, was a party to
9 a requirements contract or a firm power con-
10 tract described in clause (ii)) to retail pur-
11 chasers in the ultimate wholesale purchaser's
12 distribution area.

13 “(C) WHOLESALE STRANDED COST MITI-
14 GATION SALE.—The term ‘wholesale stranded
15 cost mitigation sale’ means one or more whole-
16 sale sales made in accordance with the following
17 requirements:

18 “(i) A governmental unit’s allowable
19 sales under this subparagraph during the
20 recovery period may not exceed the sum of
21 its annual load losses for each year of the
22 recovery period.

23 “(ii) The governmental unit’s annual
24 load loss for each year of the recovery pe-
25 riod is the amount (if any) by which—

1 “(I) sales in the base year to
2 wholesale native load purchasers
3 which do not constitute a private busi-
4 ness use, exceed

5 “(II) sales during that year of
6 the recovery period to wholesale native
7 load purchasers which do not con-
8 stitute a private business use.

9 “(iii) If actual sales under this sub-
10 paragraph during the recovery period are
11 less than allowable sales under clause (i),
12 the amount not sold (but not more than 10
13 percent of the aggregate allowable sales
14 under clause (i)) may be carried over and
15 sold as wholesale stranded cost mitigation
16 sales in the calendar year following the re-
17 covery period.

18 “(D) RECOVERY PERIOD.—The recovery
19 period is the 7-year period beginning with the
20 start-up year.

21 “(E) START-UP YEAR.—The start-up year
22 is whichever of the following calendar years the
23 governmental unit elects:

24 “(i) The year the governmental unit
25 first offers open transmission access.

1 “(ii) The first year in which at least
2 10 percent of the governmental unit's
3 wholesale customers' aggregate retail na-
4 tive load is open to retail competition.

5 “(iii) The calendar year which in-
6 cludes the date of the enactment of this
7 section, if later than the year described in
8 clause (i) or (ii).

9 “(F) PERMITTED SALES TRANSACTIONS
10 UNDER EXISTING CONTRACTS.—A sale to a
11 wholesale native load purchaser (other than a
12 person to whom the governmental unit had a
13 service obligation) under a contract which re-
14 sulted in private business use in the base year
15 shall be treated as a permitted sales transaction
16 only to the extent that sales under the contract
17 exceed the lesser of—

18 “(i) in any year the private business
19 use that resulted from the contract during
20 the base year, or

21 “(ii) the maximum amount of private
22 business use which could occur (absent the
23 enactment of this section) without causing
24 the bonds to be private activity bonds.

1 This subparagraph shall only apply to the ex-
2 tent that the sale is allocable to bonds issued
3 prior to the date of enactment of this section
4 (or bonds issued to refund such bonds).

5 “(G) TIME OF SALE RULE.—For purposes
6 of paragraphs (C)(ii) and (F), private business
7 use shall be determined under the law in effect
8 in the year of the sale.

9 “(H) JOINT ACTION AGENCIES.—A joint
10 action agency, or a member of (or a wholesale
11 native load purchaser from) a joint action agen-
12 cy, which is entitled to make a sale described in
13 subparagraph (A) or (B) in a year, may trans-
14 fer the entitlement to make that sale to the
15 member (or purchaser), or the joint action
16 agency, respectively.

17 “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-
18 TRIBUTION FACILITIES NOT TAX EXEMPT.—

19 “(1) GENERAL RULE.—For purposes of this
20 title, no bond the interest on which is exempt from
21 taxation under section 103 may be issued on or after
22 the date of enactment of this subsection if any of the
23 proceeds of such issue are used to finance—

24 “(A) any transmission facility which is not
25 a local transmission facility, or

1 “(B) a start-up utility distribution facility.

2 “(2) EXCEPTIONS.—Paragraph (1) shall not
3 apply to—

4 “(A) any qualified bond (as defined in sec-
5 tion 141(e)),

6 “(B) any eligible refunding bond (as de-
7 fined in subsection (d)(6)), or

8 “(C) any bond issued to finance—

9 “(i) any repair of a transmission facil-
10 ity in service on the date of the enactment
11 of this section, so long as the repair does
12 not increase the voltage level over its level
13 in the base year or increase the thermal
14 load limit of the transmission facility by
15 more than 3 percent over such limit in the
16 base year,

17 “(ii) any qualifying upgrade of a
18 transmission facility in service on the date
19 of the enactment of this section, or

20 “(iii) a transmission facility necessary
21 to comply with an obligation under a
22 shared or reciprocal transmission agree-
23 ment in effect on the date of enactment of
24 this section.

1 “(3) LOCAL TRANSMISSION FACILITY DEFINI-
2 TIONS.—For purposes of this subsection—

3 “(A) LOCAL TRANSMISSION FACILITY.—

4 The term ‘local transmission facility’ means a
5 transmission facility which is located within the
6 governmental unit’s distribution area or which
7 is, or will be, necessary to supply electricity to
8 serve retail native load or wholesale native load
9 of 1 or more governmental units. For purposes
10 of this subparagraph, the distribution area of a
11 public power authority which was created in
12 1931 by a State statute and which, as of Janu-
13 ary 1, 1999, owned at least one-third of the
14 transmission circuit miles rated at 230 kV or
15 higher in the State, shall be determined under
16 regulations of the Secretary.

17 “(B) RETAIL NATIVE LOAD.—The term
18 ‘retail native load’ with respect to a govern-
19 mental unit (or an entity other than a govern-
20 mental unit that operates an electric utility) is
21 the electric load of end-users in the distribution
22 area of the governmental unit or entity.

23 “(C) WHOLESALE NATIVE LOAD.—The
24 term ‘wholesale native load’ is—

1 “(i) the retail native load of such
2 unit’s wholesale native load purchasers (or
3 of an ultimate wholesale purchaser de-
4 scribed in subsection (b)(4)(B)(ii)), and

5 “(ii) the electric load of purchasers
6 (not described in clause (i)) under whole-
7 sale requirements contracts which—

8 “(I) do not constitute private
9 business use under the rules in effect
10 absent this subsection, and

11 “(II) were in effect in the base
12 year.

13 “(D) NECESSARY TO SERVE LOAD.—For
14 purposes of determining whether a transmission
15 or distribution facility is, or will be, necessary
16 to supply electricity to retail native load or
17 wholesale native load—

18 “(i) the governmental unit’s available
19 transmission rights shall be taken into ac-
20 count,

21 “(ii) electric reliability standards or
22 requirements of national or regional reli-
23 ability organizations, regional transmission
24 organizations and the Electric Reliability

1 Council of Texas shall be taken into ac-
2 count, and

3 “(iii) transmission, siting and con-
4 struction decisions of regional transmission
5 organizations or independent system opera-
6 tors and State and Federal regulatory and
7 siting agencies, after a proceeding that
8 provides for public input, shall be pre-
9 sumptive evidence regarding whether
10 transmission facilities are necessary to
11 serve native load.

12 “(E) QUALIFYING UPGRADE.—The term
13 ‘qualifying upgrade’ means an improvement or
14 addition to transmission facilities of the govern-
15 mental unit in service on the date of enactment
16 of this section which is ordered or approved by
17 a regional transmission organization, by an
18 independent system operator, or by a State reg-
19 ulatory or siting agency, after a proceeding that
20 provides for public input.

21 “(4) START-UP UTILITY DISTRIBUTION FACIL-
22 ITY DEFINED.—For purposes of this subsection, the
23 term ‘start-up utility distribution facility’ means any
24 distribution facility to provide electric service to the
25 public that is placed in service—

1 “(A) by a governmental unit that did not
2 operate an electric utility on the date of the en-
3 actment of this section, and

4 “(B) during the first ten years after the
5 date such governmental unit begins operating
6 an electric utility.

7 A governmental unit is treated as having operated
8 an electric utility on the date of the enactment of
9 this section if it operates electric output facilities
10 which were operated by another governmental unit
11 to provide electric service to the public on such date.

12 “(d) DEFINITIONS; SPECIAL RULES.—For purposes
13 of this section—

14 “(1) BASE YEAR.—The term ‘base year’ means
15 the calendar year which includes the date of the en-
16 actment of this section or, at the election of the gov-
17 ernmental unit, either of the 2 immediately pre-
18 ceding calendar years.

19 “(2) DISTRIBUTION AREA.—The term ‘distribu-
20 tion area’ means the area in which a governmental
21 unit (or an entity other than a governmental unit
22 that operates an electric utility) owns distribution
23 facilities.

24 “(3) ELECTRIC OUTPUT FACILITY.—The term
25 ‘electric output facility’ means an output facility

1 that is an electric generation, transmission, or dis-
2 tribution facility.

3 “(4) DISTRIBUTION FACILITY.—The term ‘dis-
4 tribution facility’ means an electric output facility
5 that is not a generation or transmission facility.

6 “(5) TRANSMISSION FACILITY.—The term
7 ‘transmission facility’ means an electric output facil-
8 ity (other than a generation facility) that operates at
9 an electric voltage of 69 kV or greater, except that
10 the owner of the facility may elect to treat any out-
11 put facility that the FERC determines is a trans-
12 mission facility under standards applied by FERC
13 under the Federal Power Act as a transmission facil-
14 ity for purposes of this section.

15 “(6) ELIGIBLE REFUNDING BOND.—The term
16 ‘eligible refunding bond’ means any State or local
17 bond issued after an election described in subsection
18 (a) that directly or indirectly refunds any bond de-
19 scribed in section 103(a) (other than a qualified
20 bond) issued before such election, if the weighted av-
21 erage maturity of the issue of which the refunding
22 bond is a part does not exceed the remaining weight-
23 ed average maturity of the bonds issued before the
24 election. In applying such term for purposes of sub-
25 section (c)(2)(B), the date of election shall be

1 deemed to be the date of the enactment of this sec-
2 tion.

3 “(7) FERC.—The term ‘FERC’ means the
4 Federal Energy Regulatory Commission.

5 “(8) GOVERNMENT-OWNED FACILITY.—An elec-
6 tric output facility shall be treated as ‘owned by a
7 governmental unit’ if it is an electric output facility
8 that either is—

9 “(A) owned or leased by such govern-
10 mental unit, or

11 “(B) a transmission facility in which the
12 governmental unit acquired before the base year
13 long-term firm capacity for the purposes of
14 serving customers to which the unit had at that
15 time either—

16 “(i) a service obligation, or

17 “(ii) an obligation under a require-
18 ments contract.

19 “(9) REPAIR.—The term ‘repair’ shall include
20 replacement of components of an electric output fa-
21 cility, but shall not include replacement of the facil-
22 ity either at one time or incrementally.

23 “(10) SERVICE OBLIGATION.—The term ‘service
24 obligation’ means an obligation under State or Fed-
25 eral law (exclusive of an obligation arising solely

1 under a contract entered into with a person) to pro-
2 vide electric distribution services or electric sales
3 service, as provided in such law.

4 “(11) CONTRACT MODIFICATIONS.—A contract
5 is treated as a new contract if it is substantially
6 modified.

7 “(e) SAVINGS CLAUSE.—Subsection (b) does not af-
8 feet the applicability of section 141 to (or the Secretary’s
9 authority to prescribe, amend or rescind regulations re-
10 specting) (1) any transaction that is not a permitted open
11 access transaction or permitted sales transaction, or (2)
12 any facilities other than electric output facilities.”.

13 (b) REPEAL OF EXCEPTION FOR CERTAIN NON-
14 GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-
15 tion 141(d)(5) of the Internal Revenue Code of 1986 is
16 amended by inserting “(except in the case of an electric
17 output facility that is a distribution facility),” after “this
18 subsection”.

19 (c) CONFORMING AMENDMENT.—The table of sec-
20 tions for subpart A of part IV of subchapter B of chapter
21 1 of the Internal Revenue Code of 1986 is amended by
22 inserting after the item relating to section 141 the fol-
23 lowing new item:

“Sec. 141A. Electric output facilities.”

24 (d) EFFECTIVE DATE; APPLICABILITY.—

19 SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.

20 (a) SALES OR DISPOSITIONS TO IMPLEMENT FED-
21ERAL ENERGY REGULATORY COMMISSION OR STATE
22 ELECTRIC RESTRUCTURING POLICY.—

23 (1) IN GENERAL.—Section 1033 of the Internal
24 Revenue Code of 1986 (relating to involuntary con-
25 versions) is amended by redesignating subsection (k)

1 as subsection (l), and by inserting after subsection
2 (j) the following new subsection:

3 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
4 ERAL ENERGY REGULATORY COMMISSION OR STATE
5 ELECTRIC RESTRUCTURING POLICY.—

6 “(1) IN GENERAL.—For purposes of this sub-
7 title, if a taxpayer elects the application of this sub-
8 section to a qualifying electric transmission trans-
9 action and the proceeds received from such trans-
10 action are invested in exempt utility property, such
11 transaction shall be treated as an involuntary con-
12 version to which this section applies. The part of the
13 gain, if any, on a sale or exchange to which section
14 1033 is not applied by reason of section 1245 shall
15 nevertheless not be recognized, if the taxpayer so
16 elects, to the extent that it is applied to reduce the
17 basis for determining gain or loss on sale or ex-
18 change of property, of a character subject to the al-
19 lowance for depreciation under section 167, remain-
20 ing in the hands of the taxpayer immediately after
21 the sale or exchange, or acquired in the same tax-
22 able year. The manner and amount of such reduc-
23 tion shall be determined under regulations pre-
24 scribed by the Secretary. Any election made by the
25 taxpayer under this section shall be made by a state-

1 ment to that effect in his return for the taxable year
2 in which the sale or exchange takes place, and such
3 election shall be binding for the taxable year and all
4 subsequent taxable years.

5 “(2) EXTENSION OF REPLACEMENT PERIOD.—
6 In the case of any involuntary conversion described
7 in paragraph (1), subsection (a)(2)(B) shall be ap-
8 plied by substituting ‘4 years’ for ‘2 years’ in clause
9 (i) thereof.

10 “(3) QUALIFYING ELECTRIC TRANSMISSION
11 TRANSACTION.—For purposes of this subsection, the
12 term ‘qualifying electric transmission transaction’
13 means any sale or other disposition of property used
14 in the trade or business of electric transmission, or
15 an ownership interest in a person whose primary
16 trade or business consists of providing electric trans-
17 mission services, to another person that is an inde-
18 pendent transmission company.

19 “(4) INDEPENDENT TRANSMISSION COM-
20 PANY.—For purposes of this subsection, the term
21 ‘independent transmission company’ means—

22 “(A) a regional transmission organization
23 approved by the Federal Energy Regulatory
24 Commission,

25 “(B) a person—

1 “(i) who the Federal Energy Regu-
2 latory Commission determines in its au-
3 thorization of the transaction under section
4 203 of the Federal Power Act (16 U.S.C.
5 823b) is not a market participant within
6 the meaning of such Commission’s rules
7 applicable to regional transmission organi-
8 zations, and

9 “(ii) whose transmission facilities to
10 which the election under this subsection
11 applies are placed under the operational
12 control of a Federal Energy Regulatory
13 Commission-approved regional trans-
14 mission organization within the period
15 specified in such order, but not later than
16 the close of the replacement period, or

17 “(C) in the case of facilities subject to the
18 exclusive jurisdiction of the Public Utility Com-
19 mission of Texas, a person which is approved by
20 that Commission as consistent with Texas State
21 law regarding an independent transmission or-
22 ganization.

23 “(5) EXEMPT UTILITY PROPERTY.—For pur-
24 poses of this subsection, the term ‘exempt utility
25 property’ means—

1 “(A) property used in the trade or business
2 of generating, transmitting, distributing, or sell-
3 ing electricity or producing, transmitting, dis-
4 tributing, or selling natural gas, or

5 “(B) stock acquired in the acquisition of
6 control of a corporation whose primary trade or
7 business consists of generating, transmitting,
8 distributing, or selling electricity or producing,
9 transmitting, distributing, or selling natural
10 gas.

11 “(6) SPECIAL RULES FOR CONSOLIDATED
12 GROUPS.—

13 “(A) INVESTMENT BY QUALIFYING GROUP
14 MEMBERS.—

15 “(i) IN GENERAL.—This subsection
16 shall apply to a qualifying electric trans-
17 mission transaction engaged in by a tax-
18 payer if the proceeds are invested in ex-
19 empt utility property by a qualifying group
20 member.

21 “(ii) QUALIFYING GROUP MEMBER.—
22 For purposes of this subparagraph, the
23 term ‘qualifying group member’ means any
24 member of a consolidated group within the
25 meaning of section 1502 and the regula-

18 “(7) ELECTION.—Any election made by a tax-
19 payer under this subsection shall be made by a
20 statement to that effect in the return for the taxable
21 year in which the qualifying electric transmission
22 transaction takes place in such form and manner as
23 the Secretary shall prescribe, and such election shall
24 be binding for that taxable year and all subsequent
25 taxable years.”

11 (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
12ERAL ENERGY REGULATORY COMMISSION OR STATE
13 ELECTRIC RESTRUCTURING POLICY.—

14 (1) IN GENERAL.—Section 355(e)(4) of the In-
15 ternal Revenue Code of 1986 is amended by redesign-
16 nating subparagraphs (C), (D), and (E) as subpara-
17 graphs (D), (E), and (F), respectively, and by in-
18 serting after subparagraph (B) the following new
19 subparagraph:

20 “(C) DISTRIBUTIONS OF STOCK TO IMPLE-
21 MENT FEDERAL ENERGY REGULATORY COMMI-
22 SION OR STATE ELECTRIC RESTRUCTURING
23 POLICY.—

1 a qualifying electric transmission trans-
2 action. For purposes of this subparagraph,
3 a ‘qualifying electric transmission trans-
4 action’ means any distribution of stock in
5 a corporation whose primary trade or busi-
6 ness consists of providing electric trans-
7 mission services, where such stock is later
8 acquired (or where the assets of such cor-
9 poration are later acquired) by another
10 person that is an independent transmission
11 company.

12 “(ii) INDEPENDENT TRANSMISSION
13 COMPANY.—For purposes of this sub-
14 section, the term ‘independent trans-
15 mission company’ means—

16 “(I) a regional transmission or-
17 ganization approved by the Federal
18 Energy Regulatory Commission,

19 “(II) a person who the Federal
20 Energy Regulatory Commission deter-
21 mines in its authorization of the
22 transaction under section 203 of the
23 Federal Power Act (16 U.S.C. 824b)
24 is not a market participant within the
25 meaning of such Commission’s rules

1 applicable to regional transmission or-
2 ganizations, and whose transmission
3 facilities transferred as a part of such
4 qualifying electric transmission trans-
5 action are placed under the oper-
6 ational control of a Federal Energy
7 Regulatory Commission-approved re-
8 gional transmission organization with-
9 in the period specified in such order,
10 but not later than the close of the re-
11 placement period (as defined in sec-
12 tion 1033(k)(2)), or

1 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**2 **TIES EXCLUDED FROM GROSS INCOME AS**3 **CONTRIBUTIONS TO CAPITAL.**

4 (a) IN GENERAL.—Subsection (c) of section 118 of
5 the Internal Revenue Code of 1986 (relating to contribu-
6 tions to the capital of a corporation) is amended—

7 (1) by striking “WATER AND SEWAGE DIS-
8 POSAL” in the heading, and inserting “CERTAIN”,

9 (2) by striking “water or,” in the matter pre-
10 ceding subparagraph (A) of paragraph (1) and in-
11 serting “electric energy, water, or”,

12 (3) by striking “water or” in paragraph
13 (1)(B) and inserting “electric energy (but not includ-
14 ing assets used in the generation of electricity),
15 water, or”,

16 (4) by striking “water or” in paragraph
17 (2)(A)(ii) and inserting “electric energy (but not in-
18 cluding assets used in the generation of electricity),
19 water, or”,

20 (5) by inserting “such term shall include
21 amounts paid as customer connection fees (including
22 amounts paid to connect the customer’s line to an
23 electric line or a main water or sewer line) and”
24 after “except that” in paragraph (3)(A), and

25 (6) by striking “water or” in paragraph (3)(C)
26 and inserting “electric energy, water, or”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts received after the date
3 of the enactment of this Act.

4 **SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING**
5 **FUNDS.**

6 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID
7 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—
8 Subsection (b) of section 468A of the Internal Revenue
9 Code of 1986 (relating to special rules for nuclear decom-
10 missioning costs) is amended to read as follows:

11 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—
12 “(1) IN GENERAL.—The amount which a tax-
13 payer may pay into the Fund for any taxable year
14 during the funding period shall not exceed the level
15 funding amount determined pursuant to subsection
16 (d), except—

17 “(A) where the taxpayer is permitted by
18 Federal or State law or regulation (including
19 authorization by a public service commission) to
20 charge customers a greater amount for nuclear
21 decommissioning costs, in which case the tax-
22 payer may pay into the Fund such greater
23 amount, or

24 “(B) in connection with the transfer of a
25 nuclear powerplant, where the transferor or

1 transferee (or both) is required pursuant to the
2 terms of the transfer to contribute a greater
3 amount for nuclear decommissioning costs, in
4 which case the transferor or transferee (or
5 both) may pay into the Fund such greater
6 amount.

7 “(2) CONTRIBUTIONS AFTER FUNDING PE-
8 RIOD.—Notwithstanding any other provision of this
9 section, a taxpayer may make deductible payments
10 to the Fund in any taxable year between the end of
11 the funding period and the termination of the license
12 issued by the Nuclear Regulatory Commission for
13 the nuclear powerplant to which the Fund relates
14 provided such payments do not cause the assets of
15 the Fund to exceed the nuclear decommissioning
16 costs allocable to the taxpayer’s current or former
17 interest in the nuclear powerplant to which the Fund
18 relates. The foregoing limitation shall be applied by
19 taking into account a reasonable rate of inflation for
20 the nuclear decommissioning costs and a reasonable
21 after-tax rate of return on the assets of the Fund
22 until such assets are anticipated to be expended.”

23 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING
24 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)
25 of the Internal Revenue Code of 1986 (relating to income

1 and deductions of the taxpayer) is amended to read as
2 follows:

3 “(2) DEDUCTION OF NUCLEAR DECOMMIS-
4 SIONING COSTS.—In addition to any deduction under
5 subsection (a), nuclear decommissioning costs paid
6 or incurred by the taxpayer during any taxable year
7 shall constitute ordinary and necessary expenses in
8 carrying on a trade or business under section 162.”

9 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of
10 section 468A of the Internal Revenue Code of 1986 is
11 amended to read as follows:

12 “(d) LEVEL FUNDING AMOUNTS.—

13 “(1) ANNUAL AMOUNTS.—For purposes of this
14 section, the level funding amount for any taxable
15 year shall equal the annual amount required to be
16 contributed to the Fund in each year remaining in
17 the funding period in order for the Fund to accumu-
18 late the nuclear decommissioning costs allocable to
19 the taxpayer’s current or former interest in the nu-
20 clear powerplant to which the Fund relates. The an-
21 nual amount described in the foregoing sentence
22 shall be calculated by taking into account a reason-
23 able rate of inflation for the nuclear decommis-
24 sioning costs and a reasonable after-tax rate of re-

1 turn on the assets of the Fund until such assets are
2 anticipated to be expended.

3 “(2) FUNDING PERIOD.—The funding period
4 for a Fund shall end on the last day of the last tax-
5 able year of the expected operating life of the nu-
6 clear powerplant.

7 “(3) NUCLEAR DECOMMISSIONING COSTS.—For
8 purposes of this section—

9 “(A) IN GENERAL.—The term ‘nuclear de-
10 commissioning costs’ means all costs to be in-
11 curred in connection with entombing, decon-
12 taminating, dismantling, removing, and dis-
13 posing of a nuclear powerplant, and shall in-
14 clude all associated preparation, security, fuel
15 storage, and radiation monitoring costs. Such
16 term shall include all such costs which, outside
17 of the decommissioning context, might other-
18 wise be capital expenditures.

19 “(B) IDENTIFICATION OF COSTS.—The
20 taxpayer may identify nuclear decommissioning
21 costs by reference either to a site-specific engi-
22 neering study or to the financial assurance
23 amount calculated pursuant to section 50.75 of
24 title 10 of the Code of Federal Regulations.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid after June 30,
3 2000, in taxable years ending after such date.

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