

108TH CONGRESS  
1ST SESSION

# S. 475

To reform the nation's outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from wholesale electric competition and restore investor confidence in the electric industry.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2003

Mr. THOMAS 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To reform the nation's outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from wholesale electric competition and restore investor confidence in the electric industry.

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 Transmission  
5 and Reliability Enhancement Act of 2003."



1           “(2) does not own or operate any transmission  
2 facilities that are necessary for operating an inter-  
3 connected transmission system (or any portion  
4 thereof); or

5           “(3) meets other criteria the Commission deter-  
6 mines to be in the public interest.

7           “(c) The rate changing procedures applicable to pub-  
8 lic utilities under subsections (c) and (d) of section 205  
9 are applicable to unregulated transmitting utilities for  
10 purposes of this section.

11          “(d) In exercising its authority under paragraph (1)  
12 of subsection (a), the Commission may remand trans-  
13 mission rates to an unregulated transmitting utility for  
14 review and revision where necessary to meet the require-  
15 ments of subsection (a).

16          “(e) The provision of transmission services under  
17 subsection (a) does not preclude a request for trans-  
18 mission services under section 211.

19          “(f) The Commission may not require a State or mu-  
20 nicipality to take action under this section that constitutes  
21 a private business use for purposes of section 141 of the  
22 Internal Revenue Code of 1986 (26 U.S.C. 141).

23          “(g) For purposes of this subsection, the term ‘un-  
24 regulated transmitting utility’ means an entity that—

1           “(1) owns or operates facilities used for the  
2           transmission of electric energy in interstate com-  
3           merce, and

4           “(2) is either an entity described in section  
5           201(f) or a rural electric cooperative.”.

6   **SEC. 102. FEDERAL AGENCY COORDINATION.**

7           The Department of Energy shall be the lead agency  
8           for conducting environmental review (for purposes of the  
9           National Environmental Policy Act of 1969) of the estab-  
10          lishment and modification of electric power transmission  
11          corridors across federal lands. The Secretary of Energy  
12          shall coordinate with Federal agencies, including Federal  
13          land management agencies, to ensure the timely comple-  
14          tion of environmental reviews pertaining to such corridors  
15          and may set deadlines for the completion of such reviews.  
16          For purposes of this section, the term “Federal land man-  
17          agement agencies” means the Bureau of Land Manage-  
18          ment, the United States Forest Service, the United States  
19          Fish and Wildlife Service, and the Department of Defense.  
20          For purposes of this section, “Federal lands” means all  
21          lands owned by the United States except lands in the Na-  
22          tional Park System or the national wilderness preservation  
23          system, or such other lands as the President may des-  
24          ignate.

1 **SEC. 103. PRIORITY FOR RIGHTS-OF-WAY ACROSS FEDERAL**  
2 **LANDS.**

3 Section 501 of the Federal Land Policy and Manage-  
4 ment Act of 1976 (43 U.S.C. 1761) is amended by adding  
5 the following new subsection at the end thereof:

6 “(e) In administering the provisions of this title, the  
7 Secretary of the Interior and the Secretary of Agriculture  
8 each shall give a priority to applications for rights of way  
9 for electric power transmission corridors.”.

10 **SEC. 104. ELECTRIC RELIABILITY STANDARDS.**

11 Part II of the Federal Power Act (16 U.S.C. 824 et  
12 seq.) is amended by inserting the following new section  
13 at the end thereof:

14 **“SEC. 215. ELECTRIC RELIABILITY.**

15 “(a) DEFINITIONS.—For purposes of this section—

16 “(1) The term ‘bulk-power system’ means—

17 “(A) facilities and control systems nec-  
18 essary for operating an interconnected electric  
19 energy transmission network (or any portion  
20 thereof); and

21 “(B) electric energy from generation facili-  
22 ties needed to maintain transmission system re-  
23 liability.

24 The term does not include facilities used in the local  
25 distribution of electric energy.

1           “(2) The terms ‘Electric Reliability Organiza-  
2           tion’ and ‘ERO’ mean the organization certified by  
3           the Commission under subsection (c) the purpose of  
4           which is to establish and enforce reliability stand-  
5           ards for the bulk-power system, subject to Commis-  
6           sion review.

7           “(3) The term ‘reliability standard’ means a re-  
8           quirement, approved by the Commission under this  
9           section, to provide for reliable operation of the bulk-  
10          power system. The term includes requirements for  
11          the operation of existing bulk-power system facilities  
12          and the design of planned additions or modifications  
13          to such facilities to the extent necessary to provide  
14          for reliable operation of the bulk-power system, but  
15          the term does not include any requirement to en-  
16          large such facilities or to construct new transmission  
17          capacity or generation capacity.

18          “(4) The term ‘reliable operation’ means oper-  
19          ating the elements of the bulk-power system within  
20          equipment and electric system thermal, voltage, and  
21          stability limits so that instability, uncontrolled sepa-  
22          ration, or cascading failures of such system will not  
23          occur as a result of a sudden disturbance or unan-  
24          ticipated failure of system elements.

1           “(5) The term ‘Interconnection’ means a geo-  
2           graphic area in which the operation of bulk-power  
3           system components is synchronized such that the  
4           failure of one or more of such components may ad-  
5           versely affect the ability of the operators of other  
6           components within the system to maintain reliable  
7           operation of the facilities within their control.

8           “(6) The term ‘transmission organization’  
9           means a regional transmission organization, inde-  
10          pendent system operator, independent transmission  
11          provider, or other transmission organization finally  
12          approved by the Commission for the operation of  
13          transmission facilities.

14          “(7) The term ‘regional entity’ means an entity  
15          having enforcement authority pursuant to subsection  
16          (e)(4).

17          “(b) JURISDICTION AND APPLICABILITY.—

18          “(1) The Commission shall have jurisdiction  
19          within the United States, over the ERO certified by  
20          the Commission under subsection (c), any regional  
21          entities, and all users, owners and operators of the  
22          bulk-power system, including but not limited to the  
23          entities described in section 201(f), for purposes of  
24          approving reliability standards established under this  
25          section and enforcing compliance with this section.

1 All users, owners and operators of the bulk-power  
2 system shall comply with reliability standards that  
3 take effect under this section.

4 “(2) The Commission shall issue a final rule to  
5 implement the requirements of this section not later  
6 than 180 days after the date of enactment of this  
7 section.

8 “(c) CERTIFICATION.—Following the issuance of a  
9 Commission rule under subsection (b)(2), any person may  
10 submit an application to the Commission for certification  
11 as the Electric Reliability Organization (ERO). The Com-  
12 mission may certify one such ERO if the Commission de-  
13 termines that such ERO—

14 “(1) has the ability to develop and enforce, sub-  
15 ject to subsection (e)(2), reliability standards that  
16 provided for an adequate level of reliability of the  
17 bulk-power system;

18 “(2) has established rules that—

19 “(A) assure its independence of the users  
20 and owners and operators of the bulk-power  
21 system, while assuring fair stakeholder rep-  
22 resentation in the selection of its directors and  
23 balanced decisionmaking in any ERO com-  
24 mittee or subordinate organizational structure;

1           “(B) allocate equitably reasonable dues,  
2 fees, and other charges among end users for all  
3 activities under this section;

4           “(C) provide fair and impartial procedures  
5 for enforcement of reliability standards through  
6 the imposition of penalties in accordance with  
7 subsection (e) (including limitations on activi-  
8 ties, functions, or operations, or other appro-  
9 priate sanctions);

10           “(D) provide for reasonable notice and op-  
11 portunity for public comment, due process,  
12 openness, and balance of interests in developing  
13 reliability standards and otherwise exercising its  
14 duties; and

15           “(E) provide for taking, after certification,  
16 appropriate steps to gain recognition in Canada  
17 and Mexico.

18           “(d) RELIABILITY STANDARDS.—

19           “(1) The Electric Reliability Organization shall  
20 file each reliability standard or modification to a re-  
21 liability standard that it proposes to be made effec-  
22 tive under this section with the Commission.

23           “(2) The Commission may approve by rule or  
24 order a proposed reliability standard or modification  
25 to a reliability standard if it determines that the

1 standard is just, reasonable, not unduly discrimina-  
2 tory or preferential, and in the public interest. The  
3 Commission shall give due weight to the technical  
4 expertise of the Electric Reliability Organization  
5 with respect to the content of a proposed standard  
6 or modification to a reliability standard and to the  
7 technical expertise of a regional entity organized on  
8 a Interconnection-wide basis with respect to a reli-  
9 ability standard to be applicable within that Inter-  
10 connection, but shall not defer with respect to the ef-  
11 fect of a standard on competition. A proposed stand-  
12 ard or modification shall take effect upon approval  
13 by the Commission.

14 “(3) The Electric Reliability Organization shall  
15 rebuttably presume that a proposal from a regional  
16 entity organized on an Interconnection-wide basis for  
17 a reliability standard or modification to a reliability  
18 standard to be applicable on an Interconnection-wide  
19 basis is just, reasonable, and not unduly discrimina-  
20 tory or preferential, and in the public interest.

21 “(4) The Commission shall remand to the Elec-  
22 tric Reliability Organization for further consider-  
23 ation a proposed reliability standard or a modifica-  
24 tion to a reliability standard that the Commission  
25 disapproves in whole or in part.

1           “(5) The Commission, upon its own motion or  
2 upon complaint, may order the Electric Reliability  
3 Organization to submit to the Commission a pro-  
4 posed reliability standard or a modification to a reli-  
5 ability standard that addresses a specific matter if  
6 the Commission considers such a new or modified  
7 reliability standard appropriate to carry out this sec-  
8 tion.

9           “(6) The final rule adopted under subsection  
10 (b)(2) shall include fair processes for the identifica-  
11 tion and timely resolution of any conflict between a  
12 reliability standard and any function, rule, order,  
13 tariff, rate schedule, or agreement accepted, ap-  
14 proved, or ordered by the Commission applicable to  
15 a transmission organization. Such transmission or-  
16 ganization shall continue to comply with such func-  
17 tion, rule, order, tariff, rate schedule or agreement  
18 accepted, approved, or ordered by the Commission  
19 until—

20           “(A) the Commission finds a conflict exists  
21 between a reliability standard and any such  
22 provision;

23           “(B) the Commission orders a change to  
24 such provision pursuant to section 206 of this  
25 part; and

1           “(C) the ordered change becomes effective  
2           under this part.

3           If the Commission determines that a reliability  
4           standard needs to be changed as a result of such a  
5           conflict, it shall order the ERO to develop and file  
6           with the Commission a modified reliability standard  
7           under paragraph (4) or (5) of this subsection.

8           “(e) ENFORCEMENT.—

9           “(1) The ERO may impose, subject to para-  
10          graph (2), a penalty on a user or owner or operator  
11          of the bulk-power system for a violation of a reli-  
12          ability standard approved by the Commission under  
13          subsection (d) if the ERO, after notice and an op-  
14          portunity for a hearing—

15                 “(A) finds that the user or owner or oper-  
16                 ator has violated a reliability standard approved  
17                 by the Commission under subsection (d); and

18                 “(B) files notice and the record of the pro-  
19                 ceeding with the Commission.

20           “(2) A penalty imposed under paragraph (1)  
21           may take effect not earlier than the 31st day after  
22           the Electric Reliability Organization files with the  
23           Commission notice of the penalty and the record of  
24           proceedings. Such penalty shall be subject to review  
25           by the Commission, on its own motion or upon appli-

1 cation by the user, owner or operator that is the  
2 subject of the penalty filed within 30 days after the  
3 date such notice is filed with the Commission. Appli-  
4 cation to the Commission for review, or the initiation  
5 of review by the Commission on its own motion,  
6 shall not operate as a stay of such penalty unless  
7 the Commission otherwise orders upon its own mo-  
8 tion or upon application by the user, owner or oper-  
9 ator that is the subject of such penalty. In any pro-  
10 ceeding to review a penalty imposed under para-  
11 graph (1), the Commission, after notice and oppor-  
12 tunity for hearing (which hearing may consist solely  
13 of the record before the Electric Reliability Organi-  
14 zation and opportunity for the presentation of sup-  
15 porting reasons to affirm, modify, or set aside the  
16 penalty), shall by order affirm, set aside, reinstate,  
17 or modify the penalty, and, if appropriate, remand  
18 to the Electric Reliability Organization for further  
19 proceedings. The Commission shall implement expe-  
20 dited procedures for such hearings.

21 “(3) On its own motion or upon complaint, the  
22 Commission may order compliance with a reliability  
23 standard and may impose a penalty against a user  
24 or owner or operator of the bulk-power system, if  
25 the Commission finds, after notice and opportunity

1 for a hearing, that the user or owner or operator of  
2 the bulk-power system has engaged or is about to  
3 engage in any acts or practices that constitute or  
4 will constitute a violation of a reliability standard.

5 “(4) The Commission shall establish regulations  
6 directing the ERO to enter into an agreement to del-  
7 egate authority to a regional entity for the purpose  
8 of proposing reliability standards to the ERO and  
9 enforcing reliability standards under paragraph (1)  
10 if—

11 “(A) the regional entity is governed by an  
12 independent, balanced stakeholder, or combina-  
13 tion independent and balanced stakeholder  
14 board;

15 “(B) the regional entity otherwise satisfies  
16 the provisions of subsection (c)(1) and (2); and

17 “(C) the agreement promotes effective and  
18 efficient administration of bulk-power system  
19 reliability.

20 The Commission may modify such delegation. The  
21 ERO and the Commission shall rebuttably presume  
22 that a proposal for delegation to a regional entity or-  
23 ganized on an Interconnection-wide basis promotes  
24 effective and efficient administration of bulk-power  
25 system reliability and should be approved. Such reg-

1       ulation may provide that the Commission may assign  
2       the ERO’s authority to enforce reliability standards  
3       under paragraph (1) directly to a regional entity  
4       consistent with the requirements of this paragraph.

5               “(5) The Commission may take such action as  
6       is necessary or appropriate against the ERO or a re-  
7       gional entity to ensure compliance with a reliability  
8       standard or any Commission order affecting the  
9       ERO or a regional entity.

10              “(6) Any penalty imposed under this section  
11       shall bear a reasonable relation to the seriousness of  
12       the violation and shall take into consideration the ef-  
13       forts of such user, owner, or operator to remedy the  
14       violation in a timely manner.

15              “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-  
16       NIZATION RULES.—The Electric Reliability Organization  
17       shall file with the Commission for approval any proposed  
18       rule or proposed rule change, accompanied by an expla-  
19       nation of its basis and purpose. The Commission, upon  
20       its own motion or complaint, may propose a change to the  
21       rules of the Electric Reliability Organization. A proposed  
22       rule or proposed rule change shall take effect upon a find-  
23       ing by the Commission, after notice and opportunity for  
24       comment, that the change is just, reasonable, not unduly

1 discriminatory or preferential, is in the public interest, and  
2 satisfies the requirements of subsection (c).

3 “(g) RELIABILITY REPORTS.—The Electric Reli-  
4 ability Organization shall conduct periodic assessments of  
5 the reliability and adequacy of the bulk-power system in  
6 North America.

7 “(h) COORDINATION WITH CANADA AND MEXICO.—  
8 The President is urged to negotiate international agree-  
9 ments with the governments of Canada and Mexico to pro-  
10 vide for effective compliance with reliability standards and  
11 the effectiveness of the Electric Reliability Organization  
12 in the United States and Canada or Mexico.

13 “(i) SAVINGS PROVISIONS.—

14 “(1) The Electric Reliability Organization shall  
15 have authority to develop and enforce compliance  
16 with reliability standards for only the bulk-power  
17 system.

18 “(2) This section does not authorize the Elec-  
19 tric Reliability Organization or the Commission to  
20 order the construction of additional generation or  
21 transmission capacity or to set and enforce compli-  
22 ance with standards for adequacy or safety of elec-  
23 tric facilities or services.

24 “(3) Nothing in this section shall be construed  
25 to preempt any authority of any State to take action

1 to ensure the safety, adequacy, and reliability of  
2 electric service within that State, as long as such  
3 action is not inconsistent with any reliability stand-  
4 ard.

5 “(4) Within 90 days of the application of the  
6 Electric Reliability Organization or other affected  
7 party, and after notice and opportunity for com-  
8 ment, the Commission shall issue a final order deter-  
9 mining whether a State action is inconsistent with a  
10 reliability standard, taking into consideration any  
11 recommendation of the Electric Reliability Organiza-  
12 tion.

13 “(5) The Commission, after consultation with  
14 the Electric Reliability Organization, may stay the  
15 effectiveness of any State action, pending the Com-  
16 mission’s issuance of a final order.

17 “(j) REGIONAL ADVISORY BODIES.—The Commis-  
18 sion shall establish a regional advisory body on the petition  
19 of at least two-thirds of the States within a region that  
20 have more than one-half of the electric load served within  
21 the region. A regional advisory body shall be composed of  
22 one member from each participating State in the region,  
23 appointed by the Governor of each State, and may include  
24 representatives of agencies, States, and provinces outside  
25 the United States. A regional advisory body may provide

1 advice to the Electric Reliability Organization, a regional  
 2 entity, or the Commission regarding the governance of an  
 3 existing or proposed regional entity within the same re-  
 4 gion, whether a standard proposed to apply within the re-  
 5 gion is just, reasonable, not unduly discriminatory or pref-  
 6 erential, and in the public interest, whether fees proposed  
 7 to be assessed within the region are just, reasonable, not  
 8 unduly discriminatory or preferential, and in the public  
 9 interest and any other responsibilities requested by the  
 10 Commission. The Commission may give deference to the  
 11 advise of any such regional advisory body if that body is  
 12 organized on an Interconnection-wide basis.

13 “(k) APPLICATION TO ALASKA AND HAWAII.—The  
 14 provisions of this section do not apply to Alaska or Ha-  
 15 waii.”

16 **TITLE II—ELIMINATION OF**  
 17 **COMPETITIVE BARRIERS**  
 18 **Subtitle A—Provisions Regarding**  
 19 **the Public Utility Holding Com-**  
 20 **pany Act of 1935**

21 **SEC. 201. DEFINITIONS.**

22 For the purposes of this subtitle:

23 (1) The term “affiliate” of a company means  
 24 any company 5 percent or more of the outstanding  
 25 voting securities of which are owned, controlled, or

1 held with power to vote, directly or indirectly, by  
2 such company.

3 (2) The term “associated company” of a com-  
4 pany means any company in the same holding com-  
5 pany system with such company.

6 (3) The term “Commission” means the Federal  
7 Energy Regulatory Commission.

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

13 (5) The term “electric utility company” means  
14 any company that owns or operates facilities use for  
15 the generation, transmission, or distribution of elec-  
16 tric energy for sale.

17 (6) The terms “exempt wholesale generator”  
18 and “foreign utility company” have the same mean-  
19 ings as in sections 32 and 33, respectively, of the  
20 Public Utility Holding Company Act of 1935 (15  
21 U.S.C. 79z-5, 79z-5b), as those sections existed on  
22 the day before the effective date of this subtitle.

23 (7) The term “gas utility company” means any  
24 company that owns or operates facilities used for  
25 distribution at retail (other than the distribution

1 only in enclosed portable containers or distribution  
2 to tenants or employees of the company operating  
3 such facilities for their own use and not for resale)  
4 of natural or manufactured gas for heat, light, or  
5 power.

6 (8) the term “holding company” means—

7 (A) any company that directly or indirectly  
8 owns, controls, or holds, with power to vote, 10  
9 percent or more of the outstanding voting secu-  
10 rities of a public utility company or of a holding  
11 company of any public utility company; and

12 (B) any person, determined by the Com-  
13 mission, after notice and opportunity for hear-  
14 ing, to exercise directly or indirectly (either  
15 alone or pursuant to an arrangement or under-  
16 standing with one or more persons) such a con-  
17 trolling influence over the management or poli-  
18 cies of any public utility company or holding  
19 company as to make it necessary or appropriate  
20 for the rate protection of utility customers with  
21 respect to rates that such person be subject to  
22 the obligations, duties, and liabilities imposed  
23 by this subtitle upon holding companies.

1           (9) The term “holding company system” means  
2 a holding company, together with its subsidiary com-  
3 panies.

4           (10) The term “jurisdictional rates” established  
5 by the Commission for the transmission of electric  
6 energy in interstate commerce, the sale of electric  
7 energy at wholesale in interstate commerce, the  
8 transportation of natural gas in interstate com-  
9 merce, and the sale in interstate commerce of nat-  
10 ural gas for resale for ultimate public consumption  
11 for domestic, commercial, industrial, or any other  
12 use.

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

17           (12) The term “person” means an individual or  
18 company.

19           (13) The term “public utility” means any per-  
20 son who owns or operates facilities used for trans-  
21 mission of electric energy in interstate commerce or  
22 sales of electric energy at wholesale in interstate  
23 commerce.

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

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

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

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

14                  (B) any person, the management or poli-  
15                  cies of which the Commission, after notice and  
16                  opportunity for hearing, determines to be sub-  
17                  ject to a controlling influence, directly or indi-  
18                  rectly, by such holding company (either alone or  
19                  pursuant to an arrangement or understanding  
20                  with one or more other persons) so as to make  
21                  it necessary for the rate protection of utility  
22                  customers with respect to rates that such per-  
23                  son be subject to the obligations, duties, and li-  
24                  abilities imposed by this subtitle upon sub-  
25                  sidiary companies of holding companies.

1           (17) The term “voting security” means any se-  
2           curity presently entitling the owner or holder thereof  
3           to vote in the direction or management of the affairs  
4           of a company.

5   **SEC. 202. 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 and following) is repealed, effective 12 months  
9   after the date of enactment of this Act.

10 **SEC. 203. FEDERAL ACCESS TO BOOKS AND RECORDS.**

11           (a) IN GENERAL.—Each holding company and each  
12           associate company thereof shall maintain, and shall make  
13           available to the Commission, such books, accounts, memo-  
14           randa, and other records as the Commission determines  
15           are relevant to costs incurred by a public utility or natural  
16           gas company that is an associate company of such holding  
17           company and necessary or appropriate for the protection  
18           of utility customers with respect to jurisdictional rates.

19           (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
20           ing company or of any subsidiary company of a holding  
21           company shall maintain, and make available to the Com-  
22           mission, such books, accounts, memoranda, and other  
23           records with respect to any transaction with another affil-  
24           iate, as the Commission determines are relevant to costs  
25           incurred by a public utility or natural gas company that

1 is an associate company of such holding company and nec-  
2 essary or appropriate for the protection of utility cus-  
3 tomers with respect to jurisdictional rates.

4 (c) HOLDING COMPANY SYSTEMS.—The Commission  
5 may examine the books, accounts, memoranda, and other  
6 records of any company in a holding company system, or  
7 any affiliate thereof, as the Commission determines are  
8 relevant to costs incurred by a public utility or natural  
9 gas company within such holding company system and  
10 necessary or appropriate for the protection of utility cus-  
11 tomers with respect to jurisdictional rates.

12 (d) CONFIDENTIALITY.—No member, officer, or em-  
13 ployee of the Commission shall divulge any fact or infor-  
14 mation that may come to his or her knowledge during the  
15 course of examination of books, accounts, memoranda, or  
16 other records as provided in this section, except as may  
17 be directed by the Commission or by a court of competent  
18 jurisdiction.

19 **SEC. 204. STATE ACCESS TO BOOKS AND RECORDS**

20 (a) IN GENERAL.—Upon the written request of a  
21 State commission having jurisdiction to regulate a public  
22 utility company in a holding company system, and subject  
23 to such terms and conditions as may be necessary and ap-  
24 propriate to safeguard against unwarranted disclosure to  
25 the public of any trade secrets or sensitive commercial in-

1 formation, a holding company or any associate company  
2 or affiliate thereof, wherever located, shall produce for in-  
3 spection books, accounts, memoranda, and other records  
4 that—

5 (1) have been identified in reasonable detail in  
6 a proceeding before the State commission;

7 (2) the State commission determines are rel-  
8 evant to costs incurred by such public utility com-  
9 pany; and

10 (3) are necessary for the effective discharge of  
11 the responsibilities of the State commission with re-  
12 spect to such proceeding.

13 (b) EFFECT ON STATE LAW.—Nothing in this section  
14 shall preempt applicable State law concerning the provi-  
15 sion of books, accounts, memoranda, or other records, or  
16 in any way limit the rights of any State to obtain books,  
17 accounts, memoranda, or other records, under Federal  
18 law, contract, or otherwise.

19 (c) COURT JURISDICTION.—Any United States dis-  
20 trict court located in the State in which the State commis-  
21 sion referred to in subsection (a) is located shall have ju-  
22 risdiction to enforce compliance with this section.

23 **SEC. 205. EXEMPTION AUTHORITY.**

24 (a) RULEMAKING.—Not later than 90 days after the  
25 date of enactment of this Act, the Commission shall pro-

1 mulgate a final rule to exempt from the requirements of  
2 section 203 any person that is a holding company, solely  
3 with respect to one or more—

4           (1) qualifying facilities under the Public Utility  
5       Regulatory Policies Act of 1978;

6           (2) exempt wholesale generators; or

7           (3) foreign utility companies.

8       (b) OTHER AUTHORITY.—If, upon application or  
9 upon its own motion, the Commission finds that the books,  
10 accounts, memoranda, and other records of any person are  
11 not relevant to the jurisdictional rates of a public utility  
12 company or natural gas company, or if the Commission  
13 finds that any class of transactions is not relevant to the  
14 jurisdictional rates of a public utility company, the Com-  
15 mission shall exempt such person or transaction from the  
16 requirements of section 203.

17 **SEC. 206. AFFILIATE TRANSACTIONS.**

18       Nothing in this subtitle shall preclude the Commis-  
19 sion or a State commission from exercising its jurisdiction  
20 under otherwise applicable law to determine whether a  
21 public utility company, public utility, or natural gas com-  
22 pany may recover in rates any costs of an activity per-  
23 formed by an associate company, or any costs of goods  
24 or services acquired by such public utility company, public

1 utility, or natural gas company form an associate com-  
2 pany.

3 **SEC. 207. APPLICABILITY.**

4 No provision of this subtitle shall apply to, or be  
5 deemed to include—

6 (1) the United States;

7 (2) a State or any political subdivision of a  
8 State;

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

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

14 (5) any officer, agent, or employee of any entity  
15 referred to in paragraph (1), (2), or (3) acting as  
16 such in the course of such officer, agent, or employ-  
17 ee's official duty.

18 **SEC. 208. EFFECT ON OTHER REGULATIONS.**

19 Nothing in this subtitle precludes the Commission or  
20 a State commission from exercising its jurisdiction under  
21 otherwise applicable law to protect utility customers.

22 **SEC. 209. ENFORCEMENT.**

23 The Commission shall have the same powers as set  
24 forth in sections 306 through 317 of the Federal Power

1 Act (16 U.S.C. 825e–825p) to enforce the provisions of  
2 this subtitle.

3 **SEC. 210. SAVINGS PROVISIONS.**

4 (a) IN GENERAL.—Nothing in this subtitle prohibits  
5 a person from engaging in or continuing to engage in ac-  
6 tivities or transactions in which it is legally engaged or  
7 authorized to engage on the date of enactment of this Act,  
8 if that person continues to comply with the terms of any  
9 such authorization, whether by rule or by order.

10 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—  
11 Nothing in this subtitle limits the authority of the Com-  
12 mission under the Federal Power Act (16 U.S.C. 791a and  
13 following) (including section 301 of that Act) or the Nat-  
14 ural Gas Act (15 U.S.C. 717 and following) (including sec-  
15 tion 8 of that Act).

16 **SEC. 211. IMPLEMENTATION.**

17 Not later than 12 months after the date of enactment  
18 of this Act, the Commission shall—

19 (1) promulgate such regulations as may be nec-  
20 essary or appropriate to implement this subtitle; and

21 (2) submit to Congress detailed recommenda-  
22 tions on technical and conforming amendments to  
23 Federal law necessary to carry out this subtitle and  
24 the amendments made by this subtitle.

1 **SEC. 212. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the  
3 functions transferred to the Commission under this sub-  
4 title shall be transferred from the Securities and Exchange  
5 Commission to the Commission.

6 **SEC. 213. EFFECTIVE DATE.**

7 This subtitle shall take effect 12 months after the  
8 date of enactment of this Act.

9 **SEC. 214. CONFORMING AMENDMENT TO THE FEDERAL**  
10 **POWER ACT.**

11 Section 318 of the Federal Power Act (16 U.S.C.  
12 825q) is repealed.

13 **Subtitle B—Provisions Regarding**  
14 **the Public Utility Regulatory**  
15 **Policies Act of 1978**

16 **SEC. 215. PROSPECTIVE REPEAL OF SECTION 210.**

17 (a) NEW CONTRACTS.—After the date of enactment  
18 of this Act, no electric utility shall be required to enter  
19 into a new contract or obligation to purchase or to sell  
20 electric energy or capacity pursuant to section 210 of the  
21 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
22 824a–3).

23 (b) EXISTING RIGHTS AND REMEDIES NOT AF-  
24 FECTED.—Nothing in this Act affects the rights or rem-  
25 edies of any party with respect to the purchase or sale  
26 of electric energy or capacity from or to a facility deter-

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

8 **SEC. 216. RECOVERY OF COSTS.**

9 In order to assure recovery by electric utilities pur-  
10 chasing electric energy or capacity from a qualifying facil-  
11 ity pursuant to any legally enforceable obligation entered  
12 into or imposed pursuant to section 210 of the Public Util-  
13 ity Regulatory Policies Act of 1978 prior to the date of  
14 enactment of this Act, of all costs associated with such  
15 purchases, the Commission shall promulgate and enforce  
16 such regulations as may be required to assure that no such  
17 electric utility shall be required directly or indirectly to  
18 absorb the costs associated with such purchases from a  
19 qualifying facility. Such regulations shall be treated as a  
20 rule enforceable under the Federal Power Act (16 U.S.C.  
21 791a–825r).

22 **SEC. 217. DEFINITIONS.**

23 For purposes of this subtitle, the terms “Commis-  
24 sion”, “electric utility”, “qualifying cogeneration facility”,  
25 and “qualifying small power production facility”, shall

1 have the same meanings as provided in the Public Utility  
 2 Regulatory Policies Act of 1978, and the term “qualifying  
 3 facility” shall mean either a qualifying small production  
 4 facility or a qualifying cogeneration facility as defined in  
 5 such Act.

6 **TITLE III—MARKET TRANSPARENCY, ANTI-MANIPULATION AND ENFORCEMENT**

7 **Subtitle A—Market Transparency, Anti-Manipulation, and Enforcement**  
 8  
 9  
 10  
 11

12 **SEC. 301. MARKET TRANSPARENCY RULES.**

13 Part II of the Federal Power Act is amended by add-  
 14 ing after section 215 as added by this Act the following:

15 **“SEC. 216. MARKET TRANSPARENCY RULES.**

16 “(a) COMMISSION RULES.—Not later than 180 days  
 17 after the date of enactment of this section, the Commis-  
 18 sion shall issue rules establishing an electronic information  
 19 system to provide the Commission and the public with ac-  
 20 cess to such information as is necessary or appropriate  
 21 to facilitate price transparency and participation in mar-  
 22 kets subject to the Commission’s jurisdiction. Such sys-  
 23 tems shall provide statistical information about the avail-  
 24 ability and market price of wholesale electric energy and  
 25 transmission services to the Commission, State commis-

1 sions, buyers and sellers of wholesale electric energy, users  
2 of transmission services, and the public on a timely basis.

3 “(b) INFORMATION REQUIRED.—The Commission  
4 shall require—

5 “(1) each regional transmission organization or,  
6 where no regional transmission organization is oper-  
7 ating, each transmitting utility to provide informa-  
8 tion about the available capacity of transmission fa-  
9 cilities operated by the organization or transmitting  
10 utility; and

11 “(2) each regional transmission organization or  
12 broker or exchange to provide aggregate information  
13 about the amount and price of physical sales of elec-  
14 tric energy at wholesale in interstate commerce it  
15 transacts.

16 “(c) DEFINITION.—For purposes of this section, the  
17 term ‘broker or exchange’ means any entity that matches  
18 offers to sell and offers to buy physical sales or wholesale  
19 electric energy in interstate commerce.

20 “(d) PROTECTION OF SENSITIVE INFORMATION.—  
21 The Commission shall exempt from disclosure information  
22 it determines would, if disclosed, be detrimental to the op-  
23 eration of an effective market.”.

1 **SEC. 302. MARKET MANIPULATION.**

2 (a) Part II of the Federal Power Act is amended by  
3 adding after section 216 as adding by this Act the fol-  
4 lowing:

5 **“SEC. 217. PROHIBITION ON FILING FALSE INFORMATION.**

6 “It shall be a violation of this Act for any person will-  
7 fully and knowingly to report any information relating to  
8 the price of electricity sold at wholesale, which information  
9 the person knew to be false at the time of the reporting,  
10 to any governmental or non-governmental entity and with  
11 the intent to manipulate the data being compiled by such  
12 entity.

13 **“SEC. 218. PROHIBITION ON ROUND TRIP TRADING.**

14 “(a) PROHIBITION.—It shall be a violation of this Act  
15 for any person willfully and knowingly to enter into any  
16 contract or other arrangement to execute a “round-trip  
17 trade” for the purchase or sale of electric energy at whole-  
18 sale.

19 “(b) DEFINITION OF ROUND-TRIP TRADE.—For the  
20 purposes of this section, the term ‘round trip trade’ means  
21 a transaction, or combination of transactions, in which a  
22 person or other entity—

23 “(1) enters into a contract or other arrange-  
24 ment to purchase from, or sell to, any other person  
25 or other entity electric energy at wholesale;

1           “(2) simultaneously with entering into the con-  
2           tract or arrangement described in paragraph (1), ar-  
3           ranges a financially offsetting trade with such other  
4           person or entity for the same such electric energy,  
5           at the same location, price, quantity and terms so  
6           that, collectively, the purchase and sale transactions  
7           in themselves result in no financial gain or loss; and

8           “(3) enters into the contract or arrangement  
9           with the intent to deceptively affect reported reve-  
10          nues, trading volumes, or prices.”.

11 **SEC. 303. ENFORCEMENT.**

12          (a) COMPLAINTS.—Section 306 of the Federal Power  
13 Act (16 U.S.C. 825e) is amended by—

14           (1) inserting “electric utility,” after “Any per-  
15          son,”; and

16           (2) inserting “transmitting utility,” after “li-  
17          censee” each place it appears.

18          (b) INVESTIGATIONS.—Section 307(a) of the Federal  
19 Power Act (16 U.S.C. 825f(a)) is amended by inserting  
20 “or transmitting utility” after “any person” in the first  
21 sentence

22          (c) REVIEW OF COMMISSION ORDERS.—Section  
23 313(a) of the Federal Power Act (16 U.S.C. 8251) is  
24 amended by inserting “electric utility,” after “Any per-  
25 son,” in the first sentence.

1 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-  
2 eral Power Act (16 U.S.C. 825o) is amended—

3 (1) in subsection (a), by striking “\$5,000” and  
4 inserting “\$1,000,000”, and by striking “two years”  
5 and inserting “five years”;

6 (2) in subsection (b), by striking “\$500” and  
7 inserting “\$25,000”; and

8 (3) by striking subsection (c).

9 (e) CIVIL PENALTIES.— Section 316A of the Federal  
10 Power Act (16 U.S.C. 825o–1) is amended—

11 (1) in subsections (a) and (b), by striking “sec-  
12 tion 211, 212, 213, or 214” each place it appears  
13 and inserting “Part II”; and

14 (2) in subsection (b), by striking “\$10,000”  
15 and inserting “\$1,000,000”.

## 16 **Subtitle B—Refund Effective Date**

### 17 **SEC. 304. REFUND EFFECTIVE DATE.**

18 Section 206(b) of the Federal Power Act (16 U.S.C.  
19 824e(b)) is amended by—

20 (1) striking “the date 60 days after the filing  
21 of such complaint nor later than 5 months after the  
22 expiration of such 60-day period” in the second sen-  
23 tence and inserting “the date of the filing of such  
24 complaint nor later than 5 months after the filing of  
25 such complaint”;

1           (2) striking “60 days after” in the third sen-  
2           tence and inserting “of”;

3           (3) striking “expiration of such 60-day period”  
4           in the third sentence and inserting “publication  
5           date”; and

6           (4) striking the fifth sentence and inserting in  
7           lieu thereof: “If no final decision is rendered by the  
8           conclusion of the 180-day period commencing upon  
9           initiation of a proceeding pursuant to this section,  
10          the Commission shall state the reasons why it has  
11          failed to do so and shall state its best estimate as  
12          to when it reasonably expects to make such deci-  
13          sion.”.

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