

108TH CONGRESS
1ST SESSION

S. 716

To amend the Federal Power Act to improve the electricity transmission system of the United States.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2003

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

A BILL

To amend the Federal Power Act to improve the electricity transmission system of the United States.

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 “Federal Power Act
5 Amendments Act of 2003”.

**6 SEC. 2. CLARIFICATION OF FEDERAL AND STATE JURISDIC-
7 TION.**

8 (a) Section 201(a) of the Federal Power Act (16
9 U.S.C. 824(a)) is amended by striking all after the word
10 “however” and inserting the following: “shall not extend

1 to those matters which are subject to regulation by the
2 States, including the retail sale of electric energy and any
3 component service thereof.”.

4 (b) Section 201(b)(1) of the Federal Power Act (16
5 U.S.C. 824(b)(1)) is amended by inserting in the last sen-
6 tence, before the period the following: “, nor shall the
7 Commission have jurisdiction over bundled retail sales of
8 electric energy, including the transmission component of
9 sales of electric energy to retail customers”.

10 (c) Section 201 of the Federal Power Act (16 U.S.C.
11 824) is amended by inserting a new subsection (h) as fol-
12 lows:

13 “(h) BUNDLED RETAIL SALES OF ELECTRIC EN-
14 ERGY.—The term ‘bundled retail sales of electric energy’
15 when used in this subpart means sales of electric energy
16 to retail customers where generation, transmission, dis-
17 tribution and other services necessary to supply electric
18 energy to such customers are sold as a single delivered
19 service by a single seller.”.

20 **SEC. 3. VOLUNTARY PARTICIPANT FUNDING.**

21 (a) Section 205 of the Federal Power Act (16 U.S.C.
22 824d) is amended by inserting after subsection (f) the fol-
23 lowing:

24 “(g) TRANSMISSION EXPANSION COSTS.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) PARTICIPANT-FUNDING.—The term
2 ‘participant-funding’ means an investment in
3 the transmission system of any transmitting
4 utility that—

5 “(i) increases the transfer capability
6 of the transmission system; and

7 “(ii) is paid for by an entity that, in
8 return for payment, receives the tradable
9 transmission rights created by the invest-
10 ment.

11 “(B) TRADABLE TRANSMISSION RIGHT.—
12 The term ‘tradable transmission right’ means
13 the right of the holder of such right to avoid
14 payment of, or have rebated, transmission con-
15 gestion charges on the transmission system of
16 a regional transmission organization, or the
17 right to use a specified capacity of such trans-
18 mission system without payment of trans-
19 mission congestion charges.

20 “(2) RATES FOR TRANSMISSION EXPANSION.—
21 Upon the request of a Regional Transmission Orga-
22 nization (‘RTO’), or any transmission entity that is
23 authorized by the Commission, the Commission shall
24 authorize the recovery of costs on a participant-

1 funding basis of transmission facilities that increase
2 the transfer capability of the transmission system.

3 “(3) PARTICIPANT FUNDED INVESTMENT.—

4 “(A) Any RTO that is approved by the
5 Commission, or any transmission entity that is
6 authorized by the Commission, that adopts par-
7 ticipant funding pursuant to paragraph (2)
8 shall monitor market conditions, including the
9 magnitude and frequency of transmission con-
10 gestion, requests for transmission service, and
11 secondary market prices for Tradable Trans-
12 mission Rights. Based on this information, the
13 RTO shall identify, and publicize projects for
14 potential participant funding that have not been
15 otherwise committed to by a market participant
16 which increase the capacity or transfer capa-
17 bility of the transmission system, as well as the
18 projected Tradable Transmission Rights associ-
19 ated with those projects.

20 “(B) If more than one market participant
21 is interested in developing a project publicized
22 in accordance with these provisions, the RTO
23 may auction participation in the funding of
24 such project to the bidders providing the high-
25 est overall value.”.

1 (b) Section 3 of the Federal Power Act (16 U.S.C.
2 796) is amended by adding the following definition at the
3 end:

4 “(26) REGIONAL TRANSMISSION ORGANIZA-
5 TION.—The term ‘regional transmission organiza-
6 tion’ means an entity that controls and/or operates
7 facilities for the transmission of electric energy in
8 interstate commerce and is not a market participant.
9 The term shall encompass independent system oper-
10 ators, independent system administrators, inde-
11 pendent transmission providers, and similar organi-
12 zations.”.

13 **SEC. 4. INTERCONNECTION.**

14 Section 210 of the Federal Power Act (16 U.S.C.
15 824i) is amended to read as follows:

16 “TRANSMISSION INTERCONNECTION AUTHORITY
17 “SEC. 210. (a)(1) The Commission shall, by rule, es-
18 tablish technical standards and procedures for the inter-
19 connection of facilities used for the transmission of electric
20 energy in interstate commerce with facilities used for the
21 generation of electric energy. The rule shall provide cri-
22 teria to ensure that an interconnection will not unreason-
23 ably impair the reliability of the transmission system.

24 “(2) The rule promulgated pursuant to paragraph (1)
25 shall provide that the person seeking the interconnection
26 shall—

1 “(A) pay the necessary and reasonable costs of
2 the interconnection;

3 “(B) pay, in accordance with section 205, the
4 necessary and reasonable costs to upgrade system
5 facilities made necessary by the interconnection and
6 that would not have been made absent the inter-
7 connection; and

8 “(C) not be entitled to transmission service
9 credits as a result of payments under subparagraphs
10 (A) and (B) of this section, except for tradable
11 transmission rights for facilities that are participant
12 funded pursuant to section 205(g); and

13 “(D) either—

14 “(i) make the payments required under
15 this section in advance of the costs being in-
16 curred by the transmitting utility; or

17 “(ii) provide and maintain in effect an ir-
18 revocable letter of credit or other form of secu-
19 rity acceptable to the transmitting utility until
20 all payments contemplated under this section
21 are made in full.

22 “(3) The rule required by this section shall apply to
23 all interconnection agreements made pursuant to any tar-
24 iff ever approved by the Commission that provided that
25 the person seeking the interconnection pay for the nec-

1 essary and reasonable costs to upgrade system facilities
2 made necessary by the interconnection and that would not
3 have been made absent the interconnection and to all cases
4 in which a final, nonappealable order has not been issued
5 by the Commission or a court.

6 “(4) Notwithstanding section 201(f), a transmitting
7 utility shall interconnect its transmission facilities with the
8 generation facilities of a power producer upon the applica-
9 tion of the power producer if the power producer complies
10 with the requirements of the rule.

11 “(b) Upon the application of a power producer the
12 Commission may, after giving notice and an opportunity
13 for a hearing to any entity whose interest may be affected,
14 and subject to the requirements of sections 205(g) and
15 212, issue an order requiring—

16 “(1) the physical connection of facilities used
17 for the generation of electric energy with facilities
18 used for the transmission of electric energy in inter-
19 state commerce;

20 “(2) such action as may be necessary to make
21 effective any such physical connection; or

22 “(3) such increase in transmission capacity as
23 may be necessary to carry out the purposes of such
24 order.

1 “(c) As used in this section, the term ‘power pro-
2 ducer’ means an entity that owns or operates a facility
3 used for the generation of electric energy.”.

4 **SEC. 5. ENCOURAGING TRANSMISSION INFRASTRUCTURE**

5 **EXPANSION.**

6 (a) Section 205 of the Federal Power Act (16 U.S.C.
7 824d) is amended as follows:

8 (1) by adding “(1)” after “(a)”.

9 (2) by adding the following at the end of sub-
10 section (a)(1):

11 “(2) In setting rates for transmission services, the
12 Commission shall ensure that all jurisdictional uses of
13 transmission facilities bear an allocation of the embedded
14 costs of the facilities, as well as the costs of any other
15 services that are ancillary to the transmission of electric
16 energy.

17 “(3) In addition to the charges required by paragraph
18 (2), the Commission shall ensure that when new facilities
19 are required to provide jurisdictional transmission service
20 and would not have been required absent such service, the
21 requestor of such transmission service pay for any such
22 facilities.

23 “(4) The requestor of transmission service shall not
24 be entitled to transmission service credits as a result of
25 payments made under paragraphs (2) and (3), but will

1 receive tradable transmission rights for facilities that are
2 participant funded pursuant to subsection (g).

3 “(5) The requestor of transmission service shall ei-
4 ther—

5 “(A) make the payments contemplated
6 under subsection (3) of this section in advance
7 of the costs being incurred by the transmitting
8 utility or;

9 “(B) provide and maintain in effect an ir-
10 revocable letter of credit or other form of secu-
11 rity acceptable to the transmitting utility until
12 all payments contemplated under paragraph (3)
13 are made in full.

14 “(6) Nothing in this section shall preclude the Com-
15 mission from authorizing rolled-in pricing of new jurisdic-
16 tional transmission facilities upon request of a Regional
17 Transmission Organization or any transmission entity
18 that is authorized by the Commission, provided that the
19 Commission complies with otherwise applicable laws in
20 making such a determination.”.

21 (b) Part II of the Federal Power Act is amended by
22 adding the following after section 214:

1 **“SEC. 215. SUSTAINABLE TRANSMISSION NETWORKS RULE-**2 **MAKING.**

3 “(a) Within 6 months of the date of enactment of
4 this section, the Commission shall establish, by rule, trans-
5 mission pricing policies and standards for promoting the
6 expansion and improvement of interstate transmission
7 networks through incentive-based, performance-based,
8 participant-funded and cost of service-based rate treat-
9 ments to ensure reliability of the electric system, to sup-
10 port interstate wholesale markets for electric power, and
11 expand transmission transfer capacity needed to sustain
12 wholesale competition. Policies and standards established
13 under this section shall—

14 “(1) be applicable to all public utilities;

15 “(2) be consistent with section 205; and

16 “(3) shall specifically—

17 “(A) promote capital investment in the
18 economically efficient enlargement of trans-
19 mission networks to reduce congestion on trans-
20 mission networks and provide assurance that
21 new generation and transmission is built where
22 it provides the lowest overall cost to consumers;

23 “(B) encourage improved operation of
24 transmission facilities and deployment of trans-
25 mission technologies to increase capacity and
26 efficiency of existing networks and reduce line

1 losses, including but not limited to high-capac-
2 ity wires (including high-temperature super-
3 conducting cables), power electronics and infor-
4 mation technologies (including flexible alter-
5 nating current transmission system tech-
6 nologies), and high-voltage, direct current lines;

7 “(C) provide a return on equity that at-
8 tracts investment in new transmission facilities
9 and reasonably reflects the financial, oper-
10 ational, and other risks taken by public utilities
11 in restructuring transmission assets; and

12 “(D) reward improved quality of trans-
13 mission service.

14 “(b) **LIMITATION ON AUTHORITY.**—In the case of
15 any transmission rate approved by the Commission on or
16 after the effective date of the rule established under this
17 section, the rate shall comply with—

18 “(1) the policies and standards adopted pursu-
19 ant to this section as necessary or appropriate to im-
20 plement the requirements of section 205(a) of this
21 Act; and

22 “(2) the procedural and other requirements of
23 this part, including the requirement of sections 205
24 and 206, that all rates, charges, terms, and condi-

1 tions be just and reasonable and not unduly dis-
2 criminatory.”.

3 **SEC. 6. REGIONAL CONSIDERATION OF COMPETITIVE**
4 **WHOLESALE MARKETS.**

5 (a) Within 3 months of enactment of this Act, the
6 Commission shall convene regional discussions with State
7 and other retail regulatory commissions for the purpose
8 of addressing whether wholesale electric markets in each
9 region are working effectively to provide reliable service
10 to electric consumers in the region at the lowest reason-
11 able cost. Priority should be given to discussions in regions
12 that do not have, as of the date of enactment of this Act,
13 a regional transmission organization or organizations in
14 place and approved by the Commission. The regional dis-
15 cussions shall address the following issues:

16 (1) the need for an independent regional trans-
17 mission organization or organizations in the region
18 to provide nondiscriminatory transmission access
19 and generation interconnection;

20 (2) a process for regional planning of trans-
21 mission facilities with State and other retail regu-
22 latory commission participation and for consider-
23 ation of multistate projects;

24 (3) a means for ensuring that native load cus-
25 tomers within the region maintain their ability to

1 use the existing transmission system without incurring
2 additional costs;

3 (4) a means to provide transparent price signals
4 to ensure efficient expansion of the electric system
5 and efficiently manage congestion;

6 (5) eliminating in a reasonable manner, con-
7 sistent with applicable State and Federal law, mul-
8 tiple transmission system rates for transactions
9 within the region;

10 (6) resolution of seams issues with neighboring
11 regions and interregional coordination;

12 (7) a means of providing information electroni-
13 cally to potential users of the transmission system;

14 (8) implementation of a market monitor for the
15 region with State and other retail regulatory com-
16 mission and Commission oversight and establish-
17 ment of rules and procedures that ensure that State
18 and other retail regulatory commissions are provided
19 access to market information and that provides for
20 expedited consideration by the Commission of any
21 complaints concerning exercise of market power and
22 the operation of wholesale markets; and

23 (9) a timetable to meet the objectives of this
24 section.

1 (b) Within 12 months of enactment of this Act, the
2 Commission shall report to Congress on the progress made
3 in addressing the issues in subsection (a) of this section
4 in discussions with the States.

5 (c) The following entities are authorized to partici-
6 pate in regional transmission organizations after con-
7 ducting a public process to receive comments: the Ten-
8 nessee Valley Authority, the Bonneville Power Administra-
9 tion, the Southwestern Power Administration, and the
10 Western Power Administration. Notwithstanding any
11 other law, participation may include delegation of oper-
12 ation and control of the transmission facilities to a re-
13 gional transmission organization or other method of par-
14 ticipation, under terms and conditions the entity deter-
15 mines necessary or appropriate, including being bound by
16 operational and other orders of the regional transmission
17 organization and by the results of arbitration with the or-
18 ganization or with other participants.

19 (d) Nothing in this section shall affect any discus-
20 sions between the Commission and State or other retail
21 regulatory commissions that are ongoing prior to enact-
22 ment of this Act.

23 **SEC. 7. EFFECT ON STATE LAW.**

24 Section 206 of the Federal Power Act (16 U.S.C.
25 824e) is amended by adding at the end the following:

1 “(e) A transmitting utility reserving transmission ca-
2 pacity (or reserving the equivalent amount of tradable
3 transmission rights) to meet any legal or contractual obli-
4 gation to serve customers, to deliver reserves in an emer-
5 gency, or to serve retail customers at bundled rates set
6 by a State commission or a local regulatory authority,
7 shall not be considered as engaging in undue discrimina-
8 tion or preference under this Act.”.

9 **SEC. 8. OPEN ACCESS TRANSMISSION BY CERTAIN UTILI-**

10 **TIES.**

11 Title II of the Federal Power Act is amended by in-
12 serting after section 211 (16 U.S.C. 824j) the following:

13 **“SEC. 211A. OPEN ACCESS TRANSMISSION BY CERTAIN
14 UTILITIES.**

15 “(a) Subject to section 212(h), the Commission may,
16 by rule or order, require an unregulated transmitting util-
17 ity to provide transmission services—

18 “(1) at rates that are comparable to those that
19 the unregulated transmitting utility charges itself;
20 and

21 “(2) on terms and conditions (not relating to
22 rates) that are comparable to those under which
23 such utility provides service to itself.

1 “(b) The Commission shall exempt from any rule or
2 order under this subsection any unregulated transmitting
3 utility that—

4 “(1) sells no more than 4,000,000 megawatt
5 hours of electricity per year;

6 “(2) does not own or operate any transmission
7 facilities that are necessary for operating an inter-
8 connected transmission system (or any portion
9 thereof); or

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

12 “(c) The rate changing procedures applicable to pub-
13 lic utilities under subsections (c) and (d) of section 205
14 are applicable to unregulated transmitting utilities for
15 purposes of this section.

16 “(d) In exercising its authority under paragraph (1),
17 the Commission shall remand unregulated transmitting
18 means an entity that utility transmission rates to an un-
19 regulated transmitting utility for review and revision
20 where necessary to meet the requirements of subsection
21 (a).

22 “(e) The provision of transmission services under
23 subsection (a) does not preclude a request for trans-
24 mission services under section 211.

1 “(f) The Commission may not require a State or mu-
2 nicipality to take action under this section that constitutes
3 a private business use for purposes of section 141 of the
4 Internal Revenue Code of 1986.

5 “(g) The Commission may not require any transmit-
6 ting utility to make available to third parties transmission
7 capacity necessary to fulfill its obligation to serve its
8 wholesale, retail, or transmission customers under Fed-
9 eral, State, or local law, or under contracts in effect on
10 the date of enactment of this section.

11 “(h) For purposes of this subsection, the term ‘un-
12 regulated transmitting utility’ means an entity that—

13 “(1) owns or operates facilities used for the
14 transmission of electric energy in interstate com-
15 merce; and

16 “(2) is either an entity described in section
17 201(f) or a rural electric cooperative.”.

18 **SEC. 9. SAVINGS CLAUSE.**

19 Nothing in this Act shall affect or modify otherwise
20 applicable law governing the recovery by an electric utility
21 in retail rates of costs incurred under any tariff, rate
22 schedules, or agreements subject to the Commission’s ju-
23 risdiction.

