

109TH CONGRESS
1ST SESSION

S. 498

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2005

Mr. BURR (for himself, Ms. LANDRIEU, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for expansion of electricity transmission networks in order to support competitive electricity markets, to ensure reliability of electric service, to modernize regulation and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Interstate Transmission Act of 2005”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—RELIABLE AND ECONOMIC TRANSMISSION
INFRASTRUCTURE

Sec. 101. Transmission infrastructure investment.

Sec. 102. Open nondiscriminatory access.

Sec. 103. Electric transmission property treated as 15-year property.

Sec. 104. Disposition of property.

Sec. 105. Electric reliability standards.

TITLE II—PROTECTING RETAIL CONSUMERS

Sec. 201. Native load service obligation.

Sec. 202. Voluntary transmission pricing plans.

TITLE III—VOLUNTARY PARTICIPATION IN REGIONAL
TRANSMISSION ORGANIZATIONS

Sec. 301. Promotion of voluntary development of regional transmission organizations, independent transmission providers, and similar organizations.

1 SEC. 2. FINDINGS.

2 Congress finds that—

3 (1) transmission networks are the backbone of
4 reliable delivery of electric energy and competitive
5 wholesale power markets;

6 (2) the expansion, enhancement, and improve-
7 ment of transmission facilities, and rules of the road
8 for using the facilities, are necessary to maintain
9 and improve the reliability of electric service and to
10 enhance competitive wholesale markets across the
11 United States and competitive retail markets that
12 have been adopted by nearly the States;

13 (3) to ensure reliable and efficient expansion,
14 enhancement, and improvement of transmission fa-
15 cilities, the economics of the business of electric

1 transmission and the Federal regulatory structures
2 applicable to the facilities must be improved;

3 (4) Federal electricity regulatory policy should
4 benefit consumers by providing incentives for infra-
5 structure improvement and by removing barriers to
6 efficient competition, and not be dictated by the im-
7 position of market structures or costly mandates;

8 (5) slow, burdensome, or duplicative reviews of
9 utility mergers are a disincentive to the efficient dis-
10 position of utility assets needed to ensure a reliable
11 and efficient infrastructure;

12 (6) since efficient competition requires accurate
13 price signals that reflect cost causation, parties that
14 benefit from transmission upgrades should be re-
15 quired to pay for the upgrades;

16 (7) Federal regulation should not override the
17 interests of local consumers or State laws that en-
18 sure reliable service and adequate transmission ca-
19 pacity to serve consumers;

20 (8) in regions where the formation of regional
21 transmission organizations or similar entities have
22 been formed voluntarily with oversight or approval
23 by States, the Federal Energy Regulatory Commis-
24 sion should have clear authority to approve applica-

1 tions for the organizations that are consistent with
 2 the Federal Power Act (16 U.S.C. 791a et seq.);

3 (9) the States and electricity consumers in each
 4 region of the United States, and not the Federal
 5 Government, are in the best position to determine
 6 how the electric power systems serving their regions
 7 should be structured, including whether Regional
 8 Transmission Organization formation, traditional
 9 vertical integration, or other structures are cost ef-
 10 fective for their region; and

11 (10) mandatory reliability rules, developed and
 12 enforced by a self-regulating electric reliability orga-
 13 nization, are a vital component of a comprehensive
 14 policy to ensure a robust and reliable electricity grid.

15 **TITLE I—RELIABLE AND ECO-**
 16 **NOMIC TRANSMISSION INFRA-**
 17 **STRUCTURE**

18 **SEC. 101. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

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

21 **“SEC. 215. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

22 “(a) **RULEMAKING REQUIREMENT.**—Within 1 year
 23 after the enactment of this section, the Commission shall
 24 establish, by rule, incentive-based (including, but not lim-
 25 ited to performance-based) rate treatments for the trans-

1 mission of electric energy in interstate commerce by any
2 public utility for the purpose of benefitting consumers by
3 ensuring reliability and reducing the cost of delivered
4 power by reducing transmission congestion. Such rule
5 shall—

6 “(1) promote reliable and economically efficient
7 transmission and generation of electricity by pro-
8 moting capital investment in the enlargement, im-
9 provement, maintenance and operation of facilities
10 for the transmission of electric energy in interstate
11 commerce;

12 “(2) provide a return on equity, determined
13 using a variety of reasonable valuation methodolo-
14 gies, that attracts new investment in transmission
15 facilities (including related transmission tech-
16 nologies);

17 “(3) encourage deployment of transmission
18 technologies and other measures to increase the ca-
19 pacity and efficiency of existing transmission facili-
20 ties and improve the operation of such facilities;

21 “(4) allow recovery of all prudently incurred
22 costs necessary to comply with mandatory reliability
23 standards issued pursuant to section 216 of this
24 Act;

1 “(5) allow a current return in rates for con-
2 struction work in progress for transmission facilities
3 and full recovery of prudently incurred costs for con-
4 structing transmission facilities;

5 “(6) allow the use of formula transmission
6 rates;

7 “(7) allow rates of return that do not vary with
8 capital structure; and

9 “(8) allow a maximum 15-year accelerated de-
10 preciation on new transmission facilities for rate
11 treatment purposes.

12 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
13 TION.—In the rule issued under this section, the Commis-
14 sion shall, to the extent within its jurisdiction, provide for
15 incentives to each transmitting utility or electric utility
16 that joins a Regional Transmission Organization or Inde-
17 pendent System Operator. Incentives provided by the
18 Commission pursuant to such rule shall include—

19 “(1) recovery of all prudently incurred costs to
20 develop and participate in any proposed or approved
21 RTO, ISO, or independent transmission company;

22 “(2) recovery of all costs previously approved by
23 a State commission which exercised jurisdiction over
24 the transmission facilities prior to the utility’s par-
25 ticipation in the RTO or ISO, including costs nec-

1 essary to honor preexisting transmission service con-
2 tracts, in a manner which does not reduce the reve-
3 nues the utility receives for transmission services for
4 a reasonable transition period after the utility joins
5 the RTO or ISO; and

6 “(3) recovery as an expense in rates of the
7 costs prudently incurred to conduct transmission
8 planning and reliability activities, including the costs
9 of participating in RTO, ISO and other regional
10 planning activities and design, study and other
11 precertification costs involved in seeking permits and
12 approvals for proposed transmission facilities.

13 The Commission shall ensure that any costs recoverable
14 pursuant to this subsection may be recovered by such util-
15 ity through the transmission rates charged by such utility
16 or through the transmission rates charged by the RTO
17 or ISO that provides transmission service to such utility.

18 “(c) JUST AND REASONABLE RATES.—All rates ap-
19 proved under the rules adopted pursuant to this section,
20 including any revisions to such rules, are subject to the
21 requirement of sections 205 and 206 that all rates,
22 charges, terms, and conditions be just and reasonable and
23 not unduly discriminatory or preferential.”.

1 **SEC. 102. OPEN NONDISCRIMINATORY ACCESS.**

2 Part II of the Federal Power Act (16 U.S.C. 824 et
3 seq.) is amended by inserting after section 211 the fol-
4 lowing new section:

5 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-
6 TING UTILITIES.**

7 “(a) TRANSMISSION SERVICES.—Subject to section
8 212(h), the Commission may, by rule or order, require an
9 unregulated transmitting utility to provide transmission
10 services—

11 “(1) at rates that are comparable to those that
12 the unregulated transmitting utility charges itself;
13 and

14 “(2) on terms and conditions (not relating to
15 rates) that are comparable to those under which
16 such unregulated transmitting utility provides trans-
17 mission services to itself and that are not unduly
18 discriminatory or preferential.

19 “(b) EXEMPTION.—The Commission shall exempt
20 from any rule or order under this section any unregulated
21 transmitting utility that—

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

24 “(2) does not own or operate any transmission
25 facilities that are necessary for operating an inter-

1 connected transmission system (or any portion
2 thereof); or

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

5 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
6 quirements of subsection (a) shall not apply to facilities
7 used in local distribution.

8 “(d) EXEMPTION TERMINATION.—Whenever the
9 Commission, after an evidentiary hearing held upon a
10 complaint and after giving consideration to reliability
11 standards established under section 216, finds on the
12 basis of a preponderance of the evidence that any exemp-
13 tion granted pursuant to subsection (b) unreasonably im-
14 pairs the continued reliability of an interconnected trans-
15 mission system, it shall revoke the exemption granted to
16 that transmitting utility.

17 “(e) APPLICATION TO UNREGULATED TRANSMIT-
18 TING UTILITIES.—The rate changing procedures applica-
19 ble to public utilities under subsections (c) and (d) of sec-
20 tion 205 are applicable to unregulated transmitting utili-
21 ties for purposes of this section.

22 “(f) REMAND.—In exercising its authority under
23 paragraph (1) of subsection (a), the Commission may re-
24 mand transmission rates to an unregulated transmitting

1 utility for review and revision where necessary to meet the
2 requirements of subsection (a).

3 “(g) OTHER REQUESTS.—The provision of trans-
4 mission services under subsection (a) does not preclude a
5 request for transmission services under section 211.

6 “(h) LIMITATION.—The Commission may not require
7 a State or municipality to take action under this section
8 that would violate a private activity bond rule for purposes
9 of section 141 of the Internal Revenue Code of 1986 (26
10 U.S.C. 141).

11 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
12 CILITIES.—Nothing in this section authorizes the Commis-
13 sion to require an unregulated transmitting utility to
14 transfer control or operational control of its transmitting
15 facilities to an RTO or any other Commission-approved
16 independent transmission organization designated to pro-
17 vide nondiscriminatory transmission access.

18 “(j) DEFINITION.—For purposes of this section, the
19 term ‘unregulated transmitting utility’ means an entity
20 that—

21 “(1) owns or operates facilities used for the
22 transmission of electric energy in interstate com-
23 merce; and

24 “(2) is an entity described in section 201(f).”.

1 **SEC. 103. ELECTRIC TRANSMISSION PROPERTY TREATED**
2 **AS 15-YEAR PROPERTY.**

3 (a) IN GENERAL.—Subparagraph (E) of section
4 168(e)(3) of the Internal Revenue Code of 1986 (relating
5 to classification of certain property) is amended by strik-
6 ing “and” at the end of clause (v), by striking the period
7 at the end of clause (vi) and by inserting “, and”, and
8 by adding at the end the following new clause:

9 “(vii) any section 1245 property (as
10 defined in section 1245(a)(3)) used in the
11 transmission at 69 or more kilovolts of
12 electricity for sale the original use of which
13 commences with the taxpayer after the
14 date of the enactment of this clause.”.

15 (b) ALTERNATIVE SYSTEM.—The table contained in
16 section 168(g)(3)(B) of the Internal Revenue Code of
17 1986 (relating to special rule for certain property assigned
18 to classes) is amended by inserting after the item relating
19 to subparagraph (E)(vi) the following:

“(E)(vii) 30”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to property placed in service after
22 the date of the enactment of this Act, in taxable years
23 ending after such date.

1 **SEC. 104. DISPOSITION OF PROPERTY.**

2 Section 203 of the Federal Power Act (16 U.S.C.
3 824b) is repealed.

4 **SEC. 105. ELECTRIC RELIABILITY STANDARDS.**

5 (a) IN GENERAL.—Part II of the Federal Power Act
6 (16 U.S.C 824 et seq.) (as amended by section 101) is
7 amended by adding at the end the following:

8 **“SEC. 216. ELECTRIC RELIABILITY.**

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

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

11 “(A) facilities and control systems nec-
12 essary for operating an interconnected electric
13 energy transmission network (or any portion
14 thereof); and

15 “(B) electric energy from generation facili-
16 ties needed to maintain transmission system re-
17 liability.

18 The term does not include facilities used in the local
19 distribution of electric energy.

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

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

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

19 “(5) The term ‘Interconnection’ means a geo-
20 graphic area in which the operation of bulk-power
21 system components is synchronized such that the
22 failure of 1 or more of such components may ad-
23 versely affect the ability of the operators of other
24 components within the system to maintain reliable
25 operation of the facilities within their control.

1 “(6) The term ‘transmission organization’
2 means a Regional Transmission Organization, Inde-
3 pendent System Operator, independent transmission
4 provider, or other transmission organization finally
5 approved by the Commission for the operation of
6 transmission facilities.

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

10 “(b) JURISDICTION AND APPLICABILITY.—(1) The
11 Commission shall have jurisdiction, within the United
12 States, over the ERO certified by the Commission under
13 subsection (c), any regional entities, and all users, owners
14 and operators of the bulk-power system, including but not
15 limited to the entities described in section 201(f), for pur-
16 poses of approving reliability standards established under
17 this section and enforcing compliance with this section. All
18 users, owners and operators of the bulk-power system
19 shall comply with reliability standards that take effect
20 under this section.

21 “(2) The Commission shall issue a final rule to imple-
22 ment the requirements of this section not later than 180
23 days after the date of enactment of this section.

24 “(c) CERTIFICATION.—Following the issuance of a
25 Commission rule under subsection (b)(2), any person may

1 submit an application to the Commission for certification
2 as the Electric Reliability Organization. The Commission
3 may certify 1 such ERO if the Commission determines
4 that such ERO—

5 “(1) has the ability to develop and enforce, sub-
6 ject to subsection (e)(2), reliability standards that
7 provide for an adequate level of reliability of the
8 bulk-power system; and

9 “(2) has established rules that—

10 “(A) assure its independence of the users
11 and owners and operators of the bulk-power
12 system, while assuring fair stakeholder rep-
13 resentation in the selection of its directors and
14 balanced decisionmaking in any ERO com-
15 mittee or subordinate organizational structure;

16 “(B) allocate equitably reasonable dues,
17 fees, and other charges among end users for all
18 activities under this section;

19 “(C) provide fair and impartial procedures
20 for enforcement of reliability standards through
21 the imposition of penalties in accordance with
22 subsection (e) (including limitations on activi-
23 ties, functions, or operations, or other appro-
24 priate sanctions);

1 “(D) provide for reasonable notice and op-
2 portunity for public comment, due process,
3 openness, and balance of interests in developing
4 reliability standards and otherwise exercising its
5 duties; and

6 “(E) provide for taking, after certification,
7 appropriate steps to gain recognition in Canada
8 and Mexico.

9 “(d) RELIABILITY STANDARDS.—(1) The Electric
10 Reliability Organization shall file each reliability standard
11 or modification to a reliability standard that it proposes
12 to be made effective under this section with the Commis-
13 sion.

14 “(2) The Commission may approve, by rule or order,
15 a proposed reliability standard or modification to a reli-
16 ability standard if it determines that the standard is just,
17 reasonable, not unduly discriminatory or preferential, and
18 in the public interest. The Commission shall give due
19 weight to the technical expertise of the Electric Reliability
20 Organization with respect to the content of a proposed
21 standard or modification to a reliability standard and to
22 the technical expertise of a regional entity organized on
23 an Interconnection-wide basis with respect to a reliability
24 standard to be applicable within that Interconnection, but
25 shall not defer with respect to the effect of a standard

1 on competition. A proposed standard or modification shall
2 take effect upon approval by the Commission.

3 “(3) The Electric Reliability Organization shall
4 rebuttably presume that a proposal from a regional entity
5 organized on an Interconnection-wide basis for a reliability
6 standard or modification to a reliability standard to be ap-
7 plicable on an Interconnection-wide basis is just, reason-
8 able, and not unduly discriminatory or preferential, and
9 in the public interest.

10 “(4) The Commission shall remand to the Electric
11 Reliability Organization for further consideration a pro-
12 posed reliability standard or a modification to a reliability
13 standard that the Commission disapproves in whole or in
14 part.

15 “(5) The Commission, upon its own motion or upon
16 complaint, may order the Electric Reliability Organization
17 to submit to the Commission a proposed reliability stand-
18 ard or a modification to a reliability standard that ad-
19 dresses a specific matter if the Commission considers such
20 a new or modified reliability standard appropriate to carry
21 out this section.

22 “(6) The final rule adopted under subsection (b)(2)
23 shall include fair processes for the identification and time-
24 ly resolution of any conflict between a reliability standard
25 and any function, rule, order, tariff, rate schedule, or

1 agreement accepted, approved, or ordered by the Commis-
2 sion applicable to a transmission organization. Such trans-
3 mission organization shall continue to comply with such
4 function, rule, order, tariff, rate schedule or agreement ac-
5 cepted approved, or ordered by the Commission until—

6 “(A) the Commission finds a conflict exists be-
7 tween a reliability standard and any such provision;

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

10 “(C) the ordered change becomes effective
11 under this part.

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

17 “(e) ENFORCEMENT.—(1) The ERO may impose,
18 subject to paragraph (2), a penalty on a user or owner
19 or operator of the bulk-power system for a violation of a
20 reliability standard approved by the Commission under
21 subsection (d) if the ERO, after notice and an opportunity
22 for a hearing—

23 “(A) finds that the user or owner or operator
24 has violated a reliability standard approved by the
25 Commission under subsection (d); and

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

3 “(2) A penalty imposed under paragraph (1) may
4 take effect not earlier than the 31st day after the ERO
5 files with the Commission notice of the penalty and the
6 record of proceedings. Such penalty shall be subject to re-
7 view by the Commission, on its own motion or upon appli-
8 cation by the user, owner or operator that is the subject
9 of the penalty filed within 30 days after the date such
10 notice is filed with the Commission. Application to the
11 Commission for review, or the initiation of review by the
12 Commission on its own motion, shall not operate as a stay
13 of such penalty unless the Commission otherwise orders
14 upon its own motion or upon application by the user,
15 owner or operator that is the subject of such penalty. In
16 any proceeding to review a penalty imposed under para-
17 graph (1), the Commission, after notice and opportunity
18 for hearing (which hearing may consist solely of the record
19 before the ERO and opportunity for the presentation of
20 supporting reasons to affirm, modify, or set aside the pen-
21 alty), shall by order affirm, set aside, reinstate, or modify
22 the penalty, and, if appropriate, remand to the ERO for
23 further proceedings. The Commission shall implement ex-
24 pedited procedures for such hearings.

1 “(3) On its own motion or upon complaint, the Com-
2 mission may order compliance with a reliability standard
3 and may impose a penalty against a user or owner or oper-
4 ator of the bulk-power system if the Commission finds,
5 after notice and opportunity for a hearing, that the user
6 or owner or operator of the bulk-power system has en-
7 gaged or is about to engage in any acts or practices that
8 constitute or will constitute a violation of a reliability
9 standard.

10 “(4) The Commission shall issue regulations author-
11 izing the ERO to enter into an agreement to delegate au-
12 thority to a regional entity for the purpose of proposing
13 reliability standards to the ERO and enforcing reliability
14 standards under paragraph (1) if—

15 “(A) the regional entity is governed by—

16 “(i) an independent board;

17 “(ii) a balanced stakeholder board; or

18 “(iii) a combination independent and bal-
19 anced stakeholder board.

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

22 “(C) the agreement promotes effective and effi-
23 cient administration of bulk-power system reliability.

24 The Commission may modify such delegation. The ERO
25 and the Commission shall rebuttably presume that a pro-

1 posal for delegation to a regional entity organized on an
2 Interconnection-wide basis promotes effective and efficient
3 administration of bulk-power system reliability and should
4 be approved. Such regulation may provide that the Com-
5 mission may assign the ERO’s authority to enforce reli-
6 ability standards under paragraph (1) directly to a re-
7 gional entity consistent with the requirements of this para-
8 graph.

9 “(5) The Commission may take such action as is nec-
10 essary or appropriate against the ERO or a regional entity
11 to ensure compliance with a reliability standard or any
12 Commission order affecting the ERO or a regional entity.

13 “(6) Any penalty imposed under this section shall
14 bear a reasonable relation to the seriousness of the viola-
15 tion and shall take into consideration the efforts of such
16 user, owner, or operator to remedy the violation in a time-
17 ly manner.

18 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
19 TION RULES.—The Electric Reliability Organization shall
20 file with the Commission for approval any proposed rule
21 or proposed rule change, accompanied by an explanation
22 of its basis and purpose. The Commission, upon its own
23 motion or complaint, may propose a change to the rules
24 of the ERO. A proposed rule or proposed rule change shall
25 take effect upon a finding by the Commission, after notice

1 and opportunity for comment, that the change is just, rea-
2 sonable, not unduly discriminatory or preferential, is in
3 the public interest, and satisfies the requirements of sub-
4 section (c).

5 “(g) RELIABILITY REPORTS.—The ERO shall con-
6 duct periodic assessments of the reliability and adequacy
7 of the bulk-power system in North America.

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

14 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
15 authority to develop and enforce compliance with reli-
16 ability standards for only the bulk-power system.

17 “(2) This section does not authorize the ERO or the
18 Commission to order the construction of additional gen-
19 eration or transmission capacity or to set and enforce com-
20 pliance with standards for adequacy or safety of electric
21 facilities or services.

22 “(3) Nothing in this section shall be construed to pre-
23 empt any authority of any State to take action to ensure
24 the safety, adequacy, and reliability of electric service

1 within that State, as long as such action is not incon-
2 sistent with any reliability standard.

3 “(4) Within 90 days of the application of the Electric
4 Reliability Organization or other affected party, and after
5 notice and opportunity for comment, the Commission shall
6 issue a final order determining whether a State action is
7 inconsistent with a reliability standard, taking into consid-
8 eration any recommendation of the ERO.

9 “(5) The Commission, after consultation with the
10 ERO and the State taking action, may stay the effective-
11 ness of any State action, pending the Commission’s
12 issuance of a final order.

13 “(j) REGIONAL ADVISORY BODIES.—The Commis-
14 sion shall establish a regional advisory body on the petition
15 of at least $\frac{2}{3}$ of the States within a region that have more
16 than $\frac{1}{2}$ of their electric load served within the region. A
17 regional advisory body shall be composed of 1 member
18 from each participating State in the region, appointed by
19 the Governor of each State, and may include representa-
20 tives of agencies, States, and provinces outside the United
21 States. A regional advisory body may provide advice to the
22 Electric Reliability Organization, a regional entity, or the
23 Commission regarding the governance of an existing or
24 proposed regional entity within the same region, whether
25 a standard proposed to apply within the region is just,

1 reasonable, not unduly discriminatory or preferential, and
 2 in the public interest, whether fees proposed to be assessed
 3 within the region are just, reasonable, not unduly discrimi-
 4 natory or preferential, and in the public interest and any
 5 other responsibilities requested by the Commission. The
 6 Commission may give deference to the advice of any such
 7 regional advisory body if that body is organized on an
 8 Interconnection-wide basis.

9 “(k) ALASKA AND HAWAII.—The provisions of this
 10 section do not apply to Alaska or Hawaii.”

11 (b) STATUS OF ERO.—The Electric Reliability Orga-
 12 nization certified by the Federal Energy Regulatory Com-
 13 mission under section 216(c) of the Federal Power Act
 14 and any regional entity delegated enforcement authority
 15 pursuant to section 216(e)(4) of that Act are not depart-
 16 ments, agencies, or instrumentalities of the United States
 17 Government.

18 **TITLE II—PROTECTING RETAIL** 19 **CONSUMERS**

20 **SEC. 201. NATIVE LOAD SERVICE OBLIGATION.**

21 Part II of the Federal Power Act (16 U.S.C. 824 et
 22 seq.) (as amended by section 105(a)) is amended by add-
 23 ing at the end the following:

1 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

2 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
3 load-serving entity that, as of the date of enactment of
4 this section—

5 “(A) owns generation facilities, markets the
6 output of Federal generation facilities, or holds
7 rights under 1 or more wholesale contracts to pur-
8 chase electric energy, for the purpose of meeting a
9 service obligation, and

10 “(B) by reason of ownership of transmission fa-
11 cilities, or 1 or more contracts or service agreements
12 for firm transmission service, holds firm trans-
13 mission rights for delivery of the output of such gen-
14 eration facilities or such purchased energy to meet
15 such service obligation, is entitled to use such firm
16 transmission rights, or, equivalent tradable or finan-
17 cial transmission rights, in order to deliver such out-
18 put or purchased energy, or the output of other gen-
19 erating facilities or purchased energy to the extent
20 deliverable using such rights, to the extent required
21 to meet its service obligation.

22 “(2) To the extent that all or a portion of the service
23 obligation covered by such firm transmission rights or
24 equivalent tradable or financial transmission rights is
25 transferred to another load-serving entity, the successor
26 load-serving entity shall be entitled to use the firm trans-

1 mission rights or equivalent tradable or financial trans-
2 mission rights associated with the transferred service obli-
3 gation. Subsequent transfers to another load-serving enti-
4 ty, or back to the original load-serving entity, shall be enti-
5 tled to the same rights.

6 “(3) The Commission shall exercise its authority
7 under this Act in a manner that facilitates the planning
8 and expansion of transmission facilities to meet the rea-
9 sonable needs of load-serving entities to satisfy their serv-
10 ice obligations.

11 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
12 Nothing in this section shall affect any methodology ap-
13 proved by the Commission prior to September 15, 2003,
14 for the allocation of transmission rights by an RTO or
15 ISO that has been authorized by the Commission to allo-
16 cate transmission rights.

17 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
18 mission may exercise authority under this Act to make
19 transmission rights not used to meet an obligation covered
20 by subsection (a) available to other entities in a manner
21 determined by the Commission to be just, reasonable, and
22 not unduly discriminatory or preferential.

23 “(d) OBLIGATION TO BUILD.—Nothing in this Act
24 shall relieve a load-serving entity from any obligation

1 under State or local law to build transmission or distribu-
 2 tion facilities adequate to meet its service obligations.

3 “(e) CONTRACTS.—Nothing in this section shall pro-
 4 vide a basis for abrogating any contract or service agree-
 5 ment for firm transmission service or rights in effect as
 6 of the date of the enactment of this subsection.

7 “(f) WATER PUMPING FACILITIES.—The Commis-
 8 sion shall ensure that any entity described in section
 9 201(f) that owns transmission facilities used predomi-
 10 nately to support its own water pumping facilities shall
 11 have, with respect to such facilities, protections for trans-
 12 mission service comparable to those provided to load-serv-
 13 ing entities pursuant to this section.

14 “(g) ERCOT.—This section shall not apply within
 15 the area referred to in section 212(k)(2)(A).

16 “(h) JURISDICTION.—This section does not authorize
 17 the Commission to take any action not otherwise within
 18 its jurisdiction.

19 “(i) EFFECT OF EXERCISING RIGHTS.—An entity
 20 that lawfully exercises rights granted under subsection (a)
 21 shall not be considered by such action as engaging in
 22 undue discrimination or preference under this Act.

23 “(j) DEFINITIONS.—For purposes of this section:

24 “(1) The term ‘distribution utility’ means an
 25 electric utility that has a service obligation to end-

1 users or to a State utility or electric cooperative
2 that, directly or indirectly, through 1 or more addi-
3 tional State utilities or electric cooperatives, provides
4 electric service to end-users.

5 “(2) The term ‘load-serving entity’ means a dis-
6 tribution utility or an electric utility that has a serv-
7 ice obligation.

8 “(3) The term ‘service obligation’ means a re-
9 quirement applicable to, or the exercise of authority
10 granted to, an electric utility under Federal, State
11 or local law or under long-term contracts to provide
12 electric service to end-users or to a distribution util-
13 ity.

14 “(4) The term ‘State utility’ means a State or
15 any political subdivision of a State, or any agency,
16 authority, or instrumentality of any 1 or more of the
17 foregoing, or a corporation which is wholly owned,
18 directly or indirectly, by any 1 or more of the fore-
19 going, competent to carry on the business of devel-
20 oping, transmitting, utilizing or distributing power.”.

21 **SEC. 202. VOLUNTARY TRANSMISSION PRICING PLANS.**

22 Part II of the Federal Power Act (16 U.S.C. 824 et
23 seq.) (as amended by section 201) is amended by adding
24 at the end the following:

1 **“SEC. 218. VOLUNTARY TRANSMISSION PRICING PLANS.**

2 “(a) IN GENERAL.—Any transmission provider, in-
3 cluding an RTO or ISO, may submit to the Commission
4 a plan or plans under section 205 containing the criteria
5 for determining the person or persons that will be required
6 to pay for any construction of new transmission facilities
7 or expansion, modification or upgrade of transmission fa-
8 cilities (in this section referred to as ‘transmission service
9 related expansion’) or new generator interconnection.

10 “(b) VOLUNTARY TRANSMISSION PRICING PLANS.—

11 (1) Any plan or plans submitted under subsection (a) shall
12 specify the method or methods by which costs may be allo-
13 cated or assigned. Such methods may include, but are not
14 limited to:

15 “(A) directly assigned;

16 “(B) participant funded; or

17 “(C) rolled into regional or sub-regional rates.—

18 “(2) FERC shall approve a plan or plans submitted
19 under subparagraph (B) of paragraph (1) if such plan or
20 plans—

21 “(A) result in rates that are just and reason-
22 able and not unduly discriminatory or preferential
23 consistent with section 205; and

24 “(B) ensure that the costs of any transmission
25 service related expansion or new generator inter-
26 connection not required to meet applicable reliability

1 standards established under section 216 are assigned
2 in a fair manner, meaning that those who benefit
3 from the transmission service related expansion or
4 new generator interconnection pay an appropriate
5 share of the associated costs, provided that—

6 “(i) costs may not be assigned or allocated
7 to an electric utility if the native load customers
8 of that utility would not have required such
9 transmission service related expansion or new
10 generator interconnection absent the request for
11 transmission service related expansion or new
12 generator interconnection that necessitated the
13 investment;

14 “(ii) the party requesting such trans-
15 mission service related expansion or new gener-
16 ator interconnection shall not be required to
17 pay for both—

18 “(I) the assigned cost of the upgrade;

19 and

20 “(II) the difference between—

21 “(aa) the embedded cost paid for
22 transmission services (including the
23 cost of the requested upgrade); and

1 “(bb) the embedded cost that
2 would have been paid absent the up-
3 grade; and

4 “(iii) the party or parties who pay for fa-
5 cilities necessary for the transmission service
6 related expansion or new generator interconnec-
7 tion receives full compensation for its costs for
8 the participant funded facilities in the form
9 of—

10 “(I) monetary credit equal to the cost
11 of the participant funded facilities (ac-
12 counting for the time value of money at
13 the Gross Domestic Product deflator),
14 which credit shall be pro-rated in equal in-
15 stallments over a period of not more than
16 30 years and shall not exceed in total the
17 amount of the initial investment, against
18 the transmission charges that the funding
19 entity or its assignee is otherwise assessed
20 by the transmission provider;

21 “(II) appropriate financial or physical
22 rights; or

23 “(III) any other method of cost recov-
24 ery or compensation approved by the Com-
25 mission.

1 “(3) A plan submitted under this section shall apply
2 only to—

3 “(A) a contract or interconnection agreement
4 executed or filed with the Commission after the date
5 of enactment of this section; or

6 “(B) an interconnection agreement pending re-
7 hearing as of November 1, 2003.

8 “(4) Nothing in this section diminishes or alters the
9 rights of individual members of an RTO or ISO under
10 this Act.

11 “(5) Nothing in this section shall affect the allocation
12 of costs or the cost methodology employed by an RTO or
13 ISO authorized by the Commission to allocate costs (in-
14 cluding costs for transmission service related expansion or
15 new generator interconnection) prior to the date of enact-
16 ment of this section.

17 “(6) This section shall not apply within the area re-
18 ferred to in section 212(k)(2)(A).

19 “(7) The term ‘transmission provider’ means a public
20 utility that owns or operates facilities that provide inter-
21 connection or transmission service in interstate com-
22 merce.”.

1 **TITLE III—VOLUNTARY PARTICI-**
 2 **PATION IN REGIONAL TRANS-**
 3 **MISSION ORGANIZATIONS**

4 **SEC. 301. PROMOTION OF VOLUNTARY DEVELOPMENT OF**
 5 **REGIONAL TRANSMISSION ORGANIZATIONS,**
 6 **INDEPENDENT TRANSMISSION PROVIDERS,**
 7 **AND SIMILAR ORGANIZATIONS.**

8 Part II of the Federal Power Act (16 U.S.C. 824 et
 9 seq.) (as amended by section 202) is amended by adding
 10 at the end thereof the following new section:

11 **“SEC. 219. PROMOTION OF VOLUNTARY DEVELOPMENT OF**
 12 **REGIONAL TRANSMISSION ORGANIZATIONS,**
 13 **INDEPENDENT TRANSMISSION PROVIDERS,**
 14 **AND SIMILAR ORGANIZATIONS.**

15 “(a) IN GENERAL.—The Commission may approve
 16 and may encourage the formation of regional transmission
 17 organizations, independent transmission providers, and
 18 similar organizations (referred to in this section as ‘trans-
 19 mission organizations’) for the purpose of enhancing the
 20 transmission of electric energy in interstate commerce.
 21 Among options for the formation of a transmission organi-
 22 zation, the Commission shall prefer those in which—

23 “(1) participation in the organization by trans-
 24 mitting utilities is voluntary;

1 “(2) the form, structure, and operating entity
2 of the organization are approved of by participating
3 transmitting utilities; and

4 “(3) market incentives exist to promote invest-
5 ment for expansion of transmission facilities and for
6 the introduction of new transmission technologies
7 within the territory of the organization.

8 “(b) CONDITIONS.—No order issued under this Act
9 shall be conditioned upon or require a transmitting utility
10 to transfer operational control of jurisdictional facilities
11 to an independent system operator or other transmission
12 organization.

13 “(c) COMPLAINT.—In addition to any other rights or
14 remedies it may have under this Act, any entity serving
15 electric load that is denied services by a transmission orga-
16 nization that the transmission organization makes avail-
17 able to other load serving entities shall be entitled to file
18 a complaint with the Commission concerning the denial
19 of such services. If the Commission shall find, after an
20 evidentiary hearing on the record, that the denial of serv-
21 ices complained of was unjust, unreasonable, unduly dis-
22 criminatory or preferential, or contrary to the public inter-
23 est, the Commission may order the provision of such serv-

1 ices at rates and on terms and conditions that shall be
2 in accordance with this Act.”.

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