

109TH CONGRESS
1ST SESSION

S. 596

To reform the Nation’s outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits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.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2005

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

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To reform the Nation’s outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits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 2005”.

TITLE I—TRANSMISSION IMPROVEMENT

SEC. 101. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

“OPEN ACCESS BY UNREGULATED TRANSMITTING
UTILITIES

“SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

“(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

“(2) on terms and conditions (not relating to rates) that are comparable to those under Commission rules that require public utilities to offer open access transmission services and that are not unduly discriminatory or preferential.

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

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

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

1 shall comply with reliability standards that take effect
2 under this section.

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

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

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

16 “(2) has established rules that—

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

23 “(B) allocate equitably reasonable dues,
24 fees, and other charges among end users for all
25 activities under this section;

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

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

12 “(E) provide for taking, after certification,
13 appropriate steps to gain recognition in Canada
14 and Mexico.

15 “(d) RELIABILITY STANDARDS.—(1) The Electric
16 Reliability Organization shall file each reliability standard
17 or modification to a reliability standard that it proposes
18 to be made effective under this section with the Commis-
19 sion.

20 “(2) The Commission may approve by rule or order
21 a proposed reliability standard or modification to a reli-
22 ability standard if it determines that the standard is just,
23 reasonable, not unduly discriminatory or preferential, and
24 in the public interest. The Commission shall give due
25 weight to the technical expertise of the Electric Reliability

1 Organization with respect to the content of a proposed
2 standard or modification to a reliability standard and to
3 the technical expertise of a regional entity organized on
4 an Interconnection-wide basis with respect to a reliability
5 standard to be applicable within that Interconnection, but
6 shall not defer with respect to the effect of a standard
7 on competition. A proposed standard or modification shall
8 take effect upon approval by the Commission.

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

16 “(4) The Commission shall remand to the Electric
17 Reliability Organization for further consideration a pro-
18 posed reliability standard or a modification to a reliability
19 standard that the Commission disapproves in whole or in
20 part.

21 “(5) The Commission, upon its own motion or upon
22 complaint, may order the Electric Reliability Organization
23 to submit to the Commission a proposed reliability stand-
24 ard or a modification to a reliability standard that ad-
25 dresses a specific matter if the Commission considers such

1 a new or modified reliability standard appropriate to carry
 2 out this section.

3 “(6) The final rule adopted under subsection (b)(2)
 4 shall include fair processes for the identification and time-
 5 ly resolution of any conflict between a reliability standard
 6 and any function, rule, order, tariff, rate schedule, or
 7 agreement accepted, approved, or ordered by the Commis-
 8 sion applicable to a transmission organization. Such trans-
 9 mission organization shall continue to comply with such
 10 function, rule, order, tariff, rate schedule or agreement ac-
 11 cepted approved, or ordered by the Commission until—

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

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

16 “(C) the ordered change becomes effective
 17 under this part.

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

23 “(e) ENFORCEMENT.—(1) The ERO may impose,
 24 subject to paragraph (2), a penalty on a user or owner
 25 or operator of the bulk-power system for a violation of a

1 reliability standard approved by the Commission under
2 subsection (d) if the ERO, after notice and an opportunity
3 for a hearing—

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

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

9 “(2) A penalty imposed under paragraph (1) may
10 take effect not earlier than the 31st day after the Electric
11 Reliability Organization files with the Commission notice
12 of the penalty and the record of proceedings. Such penalty
13 shall be subject to review by the Commission, on its own
14 motion or upon application by the user, owner or operator
15 that is the subject of the penalty filed within 30 days after
16 the date such notice is filed with the Commission. Applica-
17 tion to the Commission for review, or the initiation of re-
18 view by the Commission on its own motion, shall not oper-
19 ate as a stay of such penalty unless the Commission other-
20 wise orders upon its own motion or upon application by
21 the user, owner or operator that is the subject of such
22 penalty. In any proceeding to review a penalty imposed
23 under paragraph (1), the Commission, after notice and op-
24 portunity for hearing (which hearing may consist solely
25 of the record before the Electric Reliability Organization

1 and opportunity for the presentation of supporting reasons
2 to affirm, modify, or set aside the penalty), shall by order
3 affirm, set aside, reinstate, or modify the penalty, and,
4 if appropriate, remand to the Electric Reliability Organi-
5 zation for further proceedings. The Commission shall im-
6 plement expedited procedures for such hearings.

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

16 “(4) The Commission shall establish regulations di-
17 recting the ERO to enter into an agreement to delegate
18 authority to a regional entity for the purpose of proposing
19 reliability standards to the ERO and enforcing reliability
20 standards under paragraph (1) if—

21 “(A) the regional entity is governed by an inde-
22 pendent, balanced stakeholder, or combination inde-
23 pendent and balanced stakeholder board;

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

1 “(C) the agreement promotes effective and effi-
2 cient administration of bulk-power system reliability.
3 The Commission may modify such delegation. The ERO
4 and the Commission shall rebuttably presume that a pro-
5 posal for delegation to a regional entity organized on an
6 Interconnection-wide basis promotes effective and efficient
7 administration of bulk-power system reliability and should
8 be approved. Such regulation may provide that the Com-
9 mission may assign the ERO’s authority to enforce reli-
10 ability standards under paragraph (1) directly to a re-
11 gional entity consistent with the requirements of this para-
12 graph.

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

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

22 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
23 NIZATION RULES.—The Electric Reliability Organization
24 shall file with the Commission for approval any proposed
25 rule or proposed rule change, accompanied by an expla-

1 nation of its basis and purpose. The Commission, upon
2 its own motion or complaint, may propose a change to the
3 rules of the Electric Reliability Organization. A proposed
4 rule or proposed rule change shall take effect upon a find-
5 ing by the Commission, after notice and opportunity for
6 comment, that the change is just, reasonable, not unduly
7 discriminatory or preferential, is in the public interest, and
8 satisfies the requirements of subsection (c).

9 “(g) RELIABILITY REPORTS.—The Electric Reli-
10 ability Organization shall conduct periodic assessments of
11 the reliability and adequacy of the bulk-power system in
12 North America.

13 “(h) COORDINATION WITH CANADA AND MEXICO.—
14 The President is urged to negotiate international agree-
15 ments with the governments of Canada and Mexico to pro-
16 vide for effective compliance with reliability standards and
17 the effectiveness of the Electric Reliability Organization
18 in the United States and Canada or Mexico.

19 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-
20 ability Organization shall have authority to develop and
21 enforce compliance with reliability standards for only the
22 bulk-power system.

23 “(2) This section does not authorize the Electric Reli-
24 ability Organization or the Commission to order the con-
25 struction of additional generation or transmission capacity

1 or to set and enforce compliance with standards for ade-
2 quacy or safety of electric facilities or services.

3 “(3) Nothing in this section shall be construed to pre-
4 empt any authority of any State to take action to ensure
5 the safety, adequacy, and reliability of electric service
6 within that State, as long as such action is not incon-
7 sistent with any reliability standard.

8 “(4) Within 90 days of the application of the Electric
9 Reliability Organization or other affected party, and after
10 notice and opportunity for comment, the Commission shall
11 issue a final order determining whether a State action is
12 inconsistent with a reliability standard, taking into consid-
13 eration any recommendation of the Electric Reliability Or-
14 ganization.

15 “(5) The Commission, after consultation with the
16 Electric Reliability Organization, may stay the effective-
17 ness of any State action, pending the Commission’s
18 issuance of a final order.

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

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

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

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

23 **SEC. 201. DEFINITIONS.**

24 For the purposes of this subtitle:

1 (1) The term “affiliate” of a company means
2 any company 5 percent or more of the outstanding
3 voting securities of which are owned, controlled, or
4 held with power to vote, directly or indirectly, by
5 such company.

6 (2) The term “associate company” of a com-
7 pany means any company in the same holding com-
8 pany system with such company.

9 (3) The term “Commission” means the Federal
10 Energy Regulatory Commission.

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

16 (5) The term “electric utility company” means
17 any company that owns or operates facilities used
18 for the generation, transmission, or distribution of
19 electric energy for sale.

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

1 (7) The term “gas utility company” means any
2 company that owns or operates facilities used for
3 distribution at retail (other than the distribution
4 only in enclosed portable containers or distribution
5 to tenants or employees of the company operating
6 such facilities for their own use and not for resale)
7 of natural or manufactured gas for heat, light, or
8 power.

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

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

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

1 the obligations, duties, and liabilities imposed
2 by this subtitle upon holding companies.

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

6 (10) The term “jurisdictional rates” means
7 rates established by the Commission for the trans-
8 mission of electric energy in interstate commerce,
9 the sale of electric energy at wholesale in interstate
10 commerce, the transportation of natural gas in inter-
11 state commerce, and the sale in interstate commerce
12 of natural gas for resale for ultimate public con-
13 sumption for domestic, commercial, industrial, or
14 any other use.

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

19 (12) The term “person” means an individual or
20 company.

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

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

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

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

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

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

1 abilities imposed by this subtitle upon sub-
2 sidiary companies of holding companies.

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

7 **SEC. 202. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
8 **PANY ACT OF 1935.**

9 The Public Utility Holding Company Act of 1935 (15
10 U.S.C. 79a and following) is repealed, effective 12 months
11 after the date of enactment of this Act.

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

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

21 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
22 ing company or of any subsidiary company of a holding
23 company shall maintain, and make available to the Com-
24 mission, such books, accounts, memoranda, and other
25 records with respect to any transaction with another affil-

1 iate, as the Commission determines are relevant to costs
 2 incurred by a public utility or natural gas company that
 3 is an associate company of such holding company and nec-
 4 essary or appropriate for the protection of utility cus-
 5 tomers with respect to jurisdictional rates.

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

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

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

22 (a) IN GENERAL.—Upon the written request of a
 23 State commission having jurisdiction to regulate a public
 24 utility company in a holding company system, and subject
 25 to such terms and conditions as may be necessary and ap-

1 appropriate to safeguard against unwarranted disclosure to
2 the public of any trade secrets or sensitive commercial in-
3 formation, a holding company or any associate company
4 or affiliate thereof, wherever located, shall produce for in-
5 spection books, accounts, memoranda, and other records
6 that—

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

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

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

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

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

1 **SEC. 205. EXEMPTION AUTHORITY.**

2 (a) RULEMAKING.—Not later than 90 days after the
3 date of enactment of this Act, the Commission shall pro-
4 mulgate a final rule to exempt from the requirements of
5 section 203 any person that is a holding company, solely
6 with respect to one or more—

7 (1) qualifying facilities under the Public Utility
8 Regulatory Policies Act of 1978;

9 (2) exempt wholesale generators; or

10 (3) foreign utility companies.

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

20 **SEC. 206. AFFILIATE TRANSACTIONS.**

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

1 or services acquired by such public utility company, public
2 utility, or natural gas company from an associate com-
3 pany.

4 **SEC. 207. APPLICABILITY.**

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

7 (1) the United States;

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

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

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

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

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

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

23 **SEC. 209. ENFORCEMENT.**

24 The Commission shall have the same powers as set
25 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**

9 **Subtitle A—Market Transparency, Anti-Manipulation and Enforcement**

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

13 Part II of the Federal Power Act is amended by adding 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 Commission shall issue rules establishing an electronic information
 18 system to provide the Commission and the public with access to such information as is necessary or appropriate
 19 to facilitate price transparency and participation in markets subject to the Commission’s jurisdiction. Such systems shall provide statistical information about the availability and market price of wholesale electric energy and
 20 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 an entity that matches
18 offers to sell and offers to buy physical sales of 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 added 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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