

110TH CONGRESS
1ST SESSION

S. 864

To amend the Federal Power Act to clarify the jurisdiction of the Federal Energy Regulatory Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2007

Mr. BUNNING (for himself and Mr. McCONNELL) 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 clarify the jurisdiction of the Federal Energy Regulatory Commission, 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.**

4 This Act may be cited as the “Access to Competitive
5 Power Act of 2007”.

1 **SEC. 2. ESTABLISHMENT OF EQUAL ACCESS AND TREAT-**
2 **MENT WITH RESPECT TO FEDERAL POWER**
3 **RESOURCES.**

4 Section 212(i) of the Federal Power Act (16 U.S.C.
5 824k(i)) is amended—

6 (1) by redesignating paragraphs (2) through
7 (5) as paragraphs (3) through (6), respectively;

8 (2) by striking the subsection designation and
9 heading and all that follows through the end of
10 paragraph (1) and inserting the following:

11 “(i) ESTABLISHMENT OF EQUAL ACCESS AND
12 TREATMENT WITH RESPECT TO FEDERAL POWER RE-
13 SOURCES.—

14 “(1) DEFINITION OF GENERATOR.—In this sub-
15 section, the term ‘generator’ means—

16 “(A) the Bonneville Power Administration;

17 “(B) the Southeastern Power Administra-
18 tion;

19 “(C) the Western Area Power Administra-
20 tion;

21 “(D) the Southwestern Power Administra-
22 tion; and

23 “(E) the Tennessee Valley Authority.

24 “(2) AUTHORITY AND DUTIES OF COMMIS-
25 SION.—

1 “(A) IN GENERAL.—Pursuant to sections
2 210, 211, and 213, the Commission—

3 “(i) may order the administrator or
4 board of directors, as applicable, of any
5 generator to provide transmission service,
6 including by establishing the terms and
7 conditions of the service; and

8 “(ii) shall ensure that—

9 “(I) the provisions of otherwise
10 applicable Federal laws shall continue
11 in full force and effect and shall con-
12 tinue to be applicable to the system;

13 “(II) the rates for the trans-
14 mission of electric power on the sys-
15 tem of each Federal power marketing
16 agency—

17 “(aa) are administered in
18 accordance with applicable Fed-
19 eral law, other than sections 210,
20 211, and 213; and

21 “(bb) are not unjust, unrea-
22 sonable, or unduly discriminatory
23 or preferential, as determined by
24 the Commission.

1 “(B) TENNESSEE VALLEY AUTHORITY
2 RATES.—

3 “(i) IN GENERAL.—Notwithstanding
4 any other provision of law, the Commission
5 shall have jurisdiction over the rates,
6 terms, and conditions of the provision of
7 transmission service in interstate com-
8 merce by the Tennessee Valley Authority.

9 “(ii) TARIFF.—Notwithstanding any
10 other provision of law, pursuant to sections
11 205 and 206, the Board of Directors of
12 the Tennessee Valley Authority shall have
13 on file with the Commission an open access
14 transmission tariff that contains just, rea-
15 sonable, and not unduly preferential or dis-
16 criminatory rates, terms, and conditions
17 for the provision of transmission service in
18 interstate commerce by the Tennessee Val-
19 ley Authority.”;

20 (3) in paragraph (3) (as redesignated by para-
21 graph (1))—

22 (A) by striking “(3) Notwithstanding” and
23 inserting the following:

24 “(3) PROCEDURE FOR DETERMINATIONS.—Not-
25 withstanding”;

1 (B) in the matter preceding subparagraph
2 (A), by inserting “of a Federal power mar-
3 keting agency” after “service”; and

4 (C) in subparagraph (A)—

5 (i) by striking “when the Adminis-
6 trator of the Bonneville Power Administra-
7 tion either” and inserting “if the Adminis-
8 trator of any Federal power marketing
9 agency”; and

10 (ii) by striking “on the Federal Co-
11 lumbia River Transmission System”;

12 (4) in paragraph (4) (as redesignated by para-
13 graph (1))—

14 (A) by striking “(4) Notwithstanding” and
15 inserting the following:

16 “(4) JUDICIAL REVIEW.—Notwithstanding”;

17 (B) by striking “the Administrator of the
18 Bonneville Power Administration” and inserting
19 “the Administrator of a Federal power mar-
20 keting agency”; and

21 (C) by striking “United States Court of
22 Appeals” and all that follows through the end
23 of the paragraph and inserting “United States
24 court of appeals of jurisdiction of the Federal
25 power marketing agency.”;

1 (5) in paragraph (5) (as redesignated by para-
 2 graph (1)), by striking “(5) To the extent the Ad-
 3 ministrators of the Bonneville Power Administration”
 4 and inserting the following:

5 “(5) EXCEPTION.—To the extent that an Ad-
 6 ministrators of a Federal power marketing agency”;

7 (6) in paragraph (6) (as redesignated by para-
 8 graph (1))—

9 (A) by striking “(6) The Commission” and
 10 inserting the following:

11 “(6) PROHIBITION.—The Commission”; and

12 (B) by striking “the Administrator of the
 13 Bonneville Power Administration” and inserting
 14 “the Administrator of a Federal power mar-
 15 keting agency”.

16 **SEC. 3. EQUITABILITY WITHIN TERRITORY RESTRICTED**
 17 **ELECTRIC SYSTEMS.**

18 Section 212(j) of the Federal Power Act (16 U.S.C.
 19 824k(j)) is amended—

20 (1) by striking “With respect to” and inserting
 21 the following:

22 “(1) IN GENERAL.—Except as provided in para-
 23 graph (2), with respect to”;

1 (2) by striking “electric utility:” and all that
2 follows through “electric utility.” and inserting
3 “electric utility.”; and

4 (3) by adding at the end the following:

5 “(2) EXCEPTION.—Paragraph (1) and sub-
6 section (f) shall not apply to any area served at re-
7 tail by a distributor that—

8 “(A) on October 24, 1992, served as a dis-
9 tributor for an electric utility described in para-
10 graph (1); and

11 “(B) before December 31, 2006, provided
12 to the Commission a notice of termination of
13 the power supply contract between the dis-
14 tributor and the electric utility, regardless of
15 whether the notice was later withdrawn or re-
16 scinded.

17 “(3) STRANDED COSTS.—An electric utility de-
18 scribed in paragraph (1) that provides transmission
19 service pursuant to an order of the Commission or
20 a contract may not recover any stranded cost associ-
21 ated with the provision of transmission services to a
22 distributor.

23 “(4) RIGHTS OF DISTRIBUTORS.—

24 “(A) NOTICE NOT PROVIDED.—A dis-
25 tributor described in paragraph (2) that did not

1 provide a notice described in paragraph (2)(B)
2 by December 31, 2006, may—

3 “(i) construct, own, and operate any
4 generation facility, individually or jointly
5 with another distributor; and

6 “(ii) receive from any electric utility
7 described in paragraph (1) partial require-
8 ments services, unless the cumulative
9 quantity of energy provided by the electric
10 utility exceeds a ratable limit that is equal
11 to a proxy for load growth on the electric
12 utility, based on—

13 “(I) the total quantity of energy
14 sold by each affected agency, corpora-
15 tion, or unit of the electric utility dur-
16 ing calendar year 2006; and

17 “(II) a 3-percent compounded
18 annual growth rate.

19 “(B) NOTICE PROVIDED.—

20 “(i) IN GENERAL.—A distributor de-
21 scribed in paragraph (2) that provided a
22 notice described in paragraph (2)(B) by
23 December 31, 2006, may—

1 “(I) construct, own, and operate
2 any generation facility, individually or
3 jointly with another distributor;

4 “(II) receive from any electric
5 utility described in paragraph (1) par-
6 tial requirements services;

7 “(III) receive from any electric
8 utility described in paragraph (1)
9 transmission services that are suffi-
10 cient to meet all electric energy re-
11 quirements of the distributor, regard-
12 less of whether an applicable contract,
13 or any portion of such a contract, has
14 been terminated under this section;
15 and

16 “(IV) not later than 180 days
17 after the date of enactment of this
18 paragraph, elect to rescind the notice
19 of termination of the distributor with-
20 out the imposition of a reintegration
21 fee or any similar fee.

22 “(ii) TREATMENT.—On an election by
23 a distributor under clause (i)(IV), the dis-
24 tributor shall be entitled to all rights and

1 benefits of a distributor described in sub-
2 paragraph (A).

3 “(5) RIGHT TO RETAIN ACCESS TO SERVICES.—

4 “(A) DEFINITIONS.—In this paragraph:

5 “(i) AFFECTED DISTRIBUTOR.—The
6 term ‘affected distributor’ means a dis-
7 tributor that receives any electric service or
8 power from at least 2 generators.

9 “(ii) GENERATOR.—The term ‘gener-
10 ator’ means an entity referred to in any of
11 subparagraphs (A) through (E) of sub-
12 section (i)(1).

13 “(B) RETENTION OF SERVICES.—An af-
14 fected distributor may elect to retain any elec-
15 tric service or power provided by a generator,
16 regardless of whether an applicable contract, or
17 any portion of such a contract, has been termi-
18 nated under this section.

19 “(C) EFFECT OF NOTICE OF TERMI-
20 NATION.—

21 “(i) IN GENERAL.—The provision or
22 execution by an affected distributor of a
23 notice of termination described in para-
24 graph (2)(B) with 1 generator shall not af-
25 fect the quantity of electric service or

1 power provided to the affected distributor
2 by another generator.

3 “(ii) PRICE.—The price of electric
4 services or power provided to an affected
5 distributor described in clause (i) shall be
6 equal to the price charged by the applica-
7 ble generator for the provision of similar
8 services or power to a distributor that did
9 not provide a notice described in para-
10 graph (2)(B).

11 “(D) TRANSMISSION SERVICE.—On an
12 election by an affected distributor under sub-
13 paragraph (B) to retain an electric service or
14 power, the affected distributor shall be entitled
15 to receive from a generator transmission service
16 to 1 or more delivery points of the affected dis-
17 tributor, as determined by the affected dis-
18 tributor, regardless of whether an applicable
19 contract, or any portion of such a contract, has
20 been terminated under this section.”.

21 **SEC. 4. STUDY OF PRIVATIZATION OF TENNESSEE VALLEY**
22 **AUTHORITY.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study of the costs, benefits, and

1 other effects of privatizing the Tennessee Valley Author-
2 ity.

3 (b) REPORT.—Not later than 180 days after the date
4 of enactment of this Act, the Comptroller General of the
5 United States shall submit to Congress a report that de-
6 scribes the results of the study conducted under this sec-
7 tion.

8 **SEC. 5. STUDY OF DEBT LEVEL OF TENNESSEE VALLEY AU-**
9 **THORITY.**

10 (a) STUDY.—The Comptroller General of the United
11 States shall conduct a study of the financial structure of,
12 and the amount of debt held by, the Tennessee Valley Au-
13 thority, which (as of February 1, 2007) is approximately
14 \$25,000,000,000.

15 (b) REPORT.—Not later than 180 days after the date
16 of enactment of this Act, the Comptroller General of the
17 United States shall submit to Congress a report that de-
18 scribes the results of the study conducted under this sec-
19 tion.

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