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A BILL

To provide for a more competitive electric power industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Electricity Competition Act".

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Sec. 1. Short title.

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TITLE I. RETAIL ELECTRIC SERVICE

SEC.101. RETAIL COMPETITION

(a) Retail Competition. The Public Utility Regulatory Policies Act of 1978 (referred to in this Act as PURPA) is amended by adding after section 608 the following new section:

“SEC. 609. RETAIL COMPETITION.

“(a) Definitions.--For purposes of this section, 'retail stranded costs' means the amount of net costs incurred or obligations undertaken before the date of enactment of the Comprehensive Electricity Competition Act by a distribution utility that--

“(1) were incurred or undertaken by that distribution utility in order to comply with a legal obligation on that utility to provide electricity to electric consumers in its service territory, and

“(2) cannot be recovered because of implementation of retail competition under subsection (b).

“(b) Retail Competition Requirement.--Except as provided in subsection (c), not later than January 1, 2003, any distribution utility that has the capability to deliver electric energy to an electric consumer over its facilities shall offer open access to those facilities for the sale of electric energy to the consumer and shall do so at rates, terms, and conditions that are not unduly discriminatory or preferential, as determined by the appropriate regulatory authority.

“(c) Opt Out.--(1) A State regulatory authority (with respect to a distribution utility for

which it has ratemaking authority) may direct a distribution utility not to implement the retail competition requirement described in subsection (b) if the State regulatory authority finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated.

"(2) A nonregulated distribution utility may determine not to implement the retail competition requirement described in subsection (b) if it finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated.

"(3) The State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or nonregulated distribution utility shall publish the determination and its basis and shall file a notice with the Commission of its determination by January 1, 2002.

"(d) Notice of Retail Competition.--A State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or nonregulated distribution utility shall file with the Commission a notice that the distribution utility has implemented or will implement retail competition consistent with subsection (b). The notice shall describe the implementation of retail competition. The notice is effective for purposes of section 118, 120, and 121 of this Act and sections 212(h), 216, and 217 of the Federal Power Act on the date the notice is filed or the date of implementation of retail competition consistent with subsection (b), whichever is later.

"(e) Consideration of Recovery of Retail Stranded Costs.--(1) If a State regulatory authority or nonregulated distribution utility conducts a public proceeding before a distribution utility implements retail competition as required under subsection (b), as part of this proceeding, the State regulatory authority shall consider the appropriate mechanism under State law to address

"(A) recovery by a distribution utility for which it has ratemaking authority of

retail stranded costs that are legitimate, prudent, and verifiable, if the utility has taken all reasonable steps to mitigate the costs, and

“(B) assistance for workers who are employed or were most recently employed by an electric utility and who may become or have become unemployed as a result of the implementation of retail competition.

A charge imposed for purposes of recovering retail stranded costs should be imposed in a manner so as to minimize to the fullest extent possible any effect on an electric consumer's choice among competing suppliers or products.

“(2) If a State regulatory authority or nonregulated utility imposes or allows a charge to recover retail stranded costs under paragraph (1), it shall consider reducing the charge on an electric consumer who uses electric energy produced on-site when the charge results from the use of new on-site generation produced by—

“(A) a fuel cell,

“(B) a facility with efficiency of at least 50 percent,

“(C) a facility that uses a single fuel source to produce at the point of use either electric or mechanical power and thermal energy and that has a combined efficiency of at least 50 percent, or

“(D) a renewable resource.

“(f) Enforcement.--Any person may bring an action in the appropriate State court against a State regulatory authority, a distribution utility, or a nonregulated distribution utility for failure to comply with this section. Filing an action challenging whether retail competition is being implemented consistent with subsection (b) makes a notice of retail competition ineffective for purposes of section 118, 120, and 121 of this Act and sections 212(h), 216, and 217 of the Federal Power Act until final resolution of the action. Notwithstanding any other law, a court created under Article III of the Constitution does not have jurisdiction over an action arising under this section.”.

(b) Definitions.--Section 3 of PURPA is amended by adding after paragraph (21) the following new paragraph:

"(22) The term 'notice of retail competition' means a notice filed under section 609(d).

"(23) The term 'distribution utility' means a person, State agency, or any other non-Federal entity that owns or operates a local distribution facility used for the sale of electric energy to an electric consumer;

"(24) The term 'nonregulated distribution utility' means a distribution utility not subject to the ratemaking authority of a State regulatory authority; and

.SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

PURPA is amended by adding the following new section after section 117:

"SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

"(a) State Regulatory Authority.--If a State regulatory authority files a notice of retail competition with respect to a distribution utility, beginning on the effective date of the notice, the State regulatory authority may prohibit any other distribution utility located in the United States over which it does not have ratemaking authority (and any affiliate of such a utility, as defined under the Public Utility Holding Company Act of 1998) from selling electric energy to electric consumers of a distribution facility covered by the notice of retail competition, unless a notice of retail competition has been filed with respect to the other distribution utility.

"(b) Nonregulated Distribution Utility.--If a nonregulated distribution utility files a notice of retail competition, beginning on the effective date of the notice, it may prohibit any other distribution utility located in the United States (or affiliate of the utility, as defined under the Public Utility Holding Company Act of 1998) from selling electric energy to electric consumers of the nonregulated distribution utility covered by the notice unless a notice of retail competition has been filed with respect to the other distribution utility."

SEC. 103. AGGREGATION FOR PURCHASE OF RETAIL ELECTRIC ENERGY.

PURPA is amended by adding the following new section after section 120 as added by section 202 of this Act:

“SEC. 121. AGGREGATION FOR PURCHASE OF RETAIL ELECTRIC ENERGY.

“Notwithstanding any other provision of law, and subject to legitimate State requirements imposed on retail electric suppliers, a group of customers or an entity acting on behalf of such group may acquire retail electric energy on an aggregate basis if the group of customers is served by one or more distribution utilities for which a State regulatory authority or nonregulated distribution utility has filed a notice of retail competition under section 609 of this Act for each distribution utility.”.

SEC. 104. RESIDENTIAL ELECTRICITY CONSUMER DATABASE.

PURPA is amended by adding the following new section after section 121 as added by section 103 of this Act:

“SEC. 122. RESIDENTIAL ELECTRICITY CONSUMER DATABASE.

“(a) The Secretary may compile a database to provide residential electric consumers with information to compare the offers of various retail electric suppliers.

“(b) A retail electric supplier who provides electric consumers with information under section 119 shall provide the Secretary the same information and any other information the Secretary considers appropriate for purposes of this section.

“(c) The database under this program shall–

“(1) compare the rates, terms, and conditions of the service offered by the various retail electric suppliers based on the information provided under subsection (b);

“(2) disseminate the comparison to consumers through various communications channels, including the Internet; and

“(3) provide other information the Secretary considers appropriate to carry out the purposes of this section.”.

SEC. 105. MODEL CODE FOR RETAIL SUPPLIERS.

PURPA is amended by adding the following new section after section 122 as added by section 104 of this Act:

“SEC. 123. MODEL CODE FOR RETAIL SUPPLIERS.

“The Secretary shall develop by rule and circulate among the States for their consideration a model code for the regulation of retail electricity suppliers for the protection of electric consumers. The code shall include minimum bonding requirements and requirements for demonstrating supplier financial stability.”.

SEC. 106. MODEL CODE FOR ELECTRIC UTILITY WORKERS.

PURPA is amended by adding the following new section after section 123 as added by section 105 of this Act:

“SEC. 124. MODEL CODE FOR ELECTRIC UTILITY WORKERS

“The Secretary shall develop by rule and circulate among the States for their consideration a model code containing standards for electric facility workers to ensure electric safety, reliability, and efficiency. The standards may include requirements for worker competency; maintenance, service and inspection; and the numbers of employees needed to adequately operate and maintain electric facilities. The Secretary, in developing these standards, shall consult with all interested parties, including representatives of electric facility workers.

TITLE II – CONSUMER PROTECTION

SEC. 201. CONSUMER INFORMATION.

PURPA is amended by adding the following new section after section 118 as added by section 102 of this Act:

“SEC. 119. CONSUMER INFORMATION DISCLOSURE

“(a) Disclosure Rules.--Not later than January 1, 2000, the Secretary, in consultation with the Commission, the Administrator of the Environmental Protection Agency, and the Federal Trade Commission, shall issue rules prescribing the form, content, placement, and timing of the supplier disclosure required under subsections (b) and (c) of this section. The rules shall be

prescribed in accordance with section 553 of title 5, United States Code (the Administrative Procedure Act).

"(b) Disclosure to Electric Consumers.--An electric utility that offers to sell electric energy to an electric consumer shall provide the electric consumer, to the extent practicable and in accordance with rules issued under subsection (a), a statement containing the following information:

"(1) the nature of the service being offered, including information about interruptibility or curtailment of service;

"(2) the price of the electric energy, including a description of any variable charges;

"(3) a description of all other charges associated with the service being offered including, but not limited to, access charges, exit charges, back-up service charges, stranded cost recovery charges, and customer service charges;

"(4) information concerning the type of energy resource used to generate the electric energy and the environmental attributes of the generation (including air emissions characteristics); and

"(5) any other information the Secretary determines can be provided feasibly and would be useful to consumers in making purchasing decisions.

"(c) Disclosure to Wholesale Customers.--In every sale of electric energy for resale, the seller shall provide to the purchaser the information respecting the type of energy resource used to generate the electric energy and the environmental attributes of the generation required by rules established under subsection (a).

"(d) Federal Trade Commission Enforcement.--A violation of a rule prescribed under this section shall constitute an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a). All functions and powers of

the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance with this section notwithstanding jurisdictional limitations in the Federal Trade Commission Act.

"(e) Authority to Obtain Information.--Authority to obtain information under section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) is available to the Secretary to administer this section and to the Federal Trade Commission to enforce this section. In order to carry out its duties under this section, the Federal Trade Commission may use any of its powers under sections 3, 6, 9, and 20 of the Federal Trade Commission Act (15 U.S.C. 43, 46, 49, and 57b-2) without regard to the limitations contained in section 20(b) of that Act (15 U.S.C. 57b-2(b)) or any jurisdictional limitations contained in that Act.

"(f) Enforcement by States.--(1) When a State determines that the interests of its residents have been or are being threatened or adversely affected because any person is violating or has violated a rule of the Secretary under this section, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to--

"(A) enjoin the violation;

"(B) enforce compliance with the rule of the Secretary;

"(C) obtain damages, restitution, or other compensation on behalf of its residents;

or

"(D) obtain other relief the court considers appropriate.

"(2) The State shall serve prior written notice of any civil action under this subsection upon the Federal Trade Commission and provide the Federal Trade Commission with a copy of its complaint, except that if it is not feasible for the State to provide this prior notice, the State shall serve the notice immediately upon instituting the action. Upon receiving a notice respecting a civil action, the Federal Trade Commission may--

"(A) intervene in the action, and

"(B) upon so intervening, be heard on all matters arising in the action and file

petition for appeal.

“(3) For purposes of bringing any civil action under this subsection, this section does not prevent a State official from exercising the powers conferred by State law to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

“(4) While a civil action instituted by or on behalf of the Federal Trade Commission for violation of any rule prescribed under this subsection is pending, a State may not institute a civil action under this section against a defendant named in the complaint in the pending action for a violation alleged in the complaint.

“(5) A civil action brought under this subsection may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

“(6) This section does not prohibit a State from proceeding in State court on the basis of an alleged violation of a State civil or criminal statute.”.

SEC. 202. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME CONSUMERS.

PURPA is amended by adding the following new section after section 119 added by section 103 of this Act:

“SEC. 120. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME CONSUMERS.

“(a) For purposes of this section ‘low-income residential consumer’ is a household, as defined in section 2603(4) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8622(4)), with an annual income that--

“(1) does not exceed 60 percent of the State median income, as defined in section 2603(9) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8622(9)), of the State where the household is located, or

“(2) meets the eligibility criteria for a low-income energy program operated by the

State where the household is located.

“(b) Each State regulatory authority and nonregulated distribution utility that files a notice of retail competition under section 609 of this Act shall conduct a proceeding to determine whether to apply the principles of subsection (c).

“(c) The following are principles for providing electric service to low-income residential consumers:

“(1) A State regulatory authority or nonregulated distribution utility shall assure that its low-income residential consumers obtain benefits from retail competition comparable to its other residential consumers.

“(2) As a condition of offering retail service to residential consumers in a State, a retail electric supplier shall agree to--

“(A) offer, promote, and provide, upon request, retail electric service to a low-income residential consumer on rates, terms, and conditions comparable to those offered to other residential consumers located in the same area where the low-income residential consumer is located, and

“(B) share equitably with other retail electric suppliers in the State any costs necessary to provide service to low-income residential consumers under subparagraph (A).”.

SEC. 203. UNFAIR TRADE PRACTICES.

The Federal Trade Commission Act (15 U.S.C. 45) is amended by adding the following new section:

“SEC. ____ . ELECTRICITY SUPPLY UNFAIR TRADE PRACTICES.

“(a) DEFINITION.—For purposes of this section, ‘retail electric supplier’ has the meaning given that term in section 3(23) of the Public Utility Regulatory Policies Act of 1978.

“(b) SLAMMING.—(1) The Federal Trade Commission shall establish ~~procedures~~ rules in accordance with section 553 of title 5, United States Code for the submittal and verification of a

retail electric customer's selection or change in selection of a retail electric supplier and for the assessment of penalties for violation of these rules. These ~~procedures~~ rules shall ensure that the customer receives electric service from the retail electric supplier of the customer's choice.

“(2) A person shall not submit or change the selection made by a retail electric customer except in accordance with procedures established in paragraph (1). ~~A person shall not use deception to influence a retail electric customer's choice of a retail electric supplier.~~

“(c) CRAMMING.--(1) The Federal Trade Commission shall establish ~~procedures~~ rules in accordance with section 553 of title 5, United States Code for obtaining the consent of a retail electric customer for purchase of goods and services other than those expressly authorized by law or by the customer's electricity supply and metering agreement ~~for the acquisition of electricity services~~ and for the assessment of penalties for violation of these rules.

“(2) A person shall not charge a retail electric customer for a particular service except in accordance with procedures established in paragraph (1).

“(d) FEDERAL TRADE COMMISSION ENFORCEMENT.--Violation of this section or of a rule prescribed under this section constitutes an unfair and deceptive act or practice in violation of section 5 of this Act and shall be treated as a violation of a rule under section 18 of this Act. All functions and powers of the Federal Trade Commission under this Act are available to the Federal Trade Commission to enforce compliance with this section notwithstanding any jurisdictional limitations in this Act.

“(e) STATE PROCEEDINGS AND OTHER REMEDIES.--(1) This section does not preclude a State or State commission from prescribing and enforcing additional laws, regulations, or procedures regarding the practices which are the subject of this section, so long as such laws, regulations or procedures do not conflict with the provisions of this section or with any rule prescribed by the FTC pursuant to it ~~retail electric supply customer selection and servicing~~.

“(2) The remedies provided by this section are in addition to any other remedies available by law.”.

TITLE III. FACILITATING STATE AND REGIONAL REGULATION

SEC. 301. CLARIFICATION OF STATE AND FEDERAL AUTHORITY OVER RETAIL TRANSMISSION SERVICES.

(a) Nonpreemption of State and Nonregulated Utility Authority to Order Retail Wheeling and to Impose Local Delivery Charges.-- Section 201(b) of the Federal Power Act (referred to in this Act as "the FPA") is amended by adding the following new paragraph after paragraph (2):

“(3) This Act does not preempt or otherwise affect any authority under the law of a State or municipality to--

“(A) require unbundled transmission and local distribution services for the delivery of electric energy directly to an ultimate consumer, but if unbundled transmission is in interstate commerce, the rates, terms, and conditions of the transmission are subject to the exclusive jurisdiction of the Commission under this part, or

“(B) impose a delivery charge on an ultimate consumer’s receipt of electric energy.”.

(b) Open Access Transmission Authority; Retail Wheeling in Retail Competition States.

(1) Applicability of Open Access Transmission Rules.--Section 206 of the FPA is amended by adding the following new subsection after subsection (d):

"(e) Open Access Transmission Services.--(1) Under section 205 and this section, the Commission may require, by rule or order, public utilities to provide open access transmission services, subject to section 212(h), and may authorize recovery of stranded costs, as defined by the Commission, arising from any requirement to provide open access transmission services. This section applies to any rule or order issued by the Commission before the date of enactment of the Comprehensive Electricity Competition Act."

(2) Authority to Order Retail Wheeling.--Section 212(h) of the FPA is amended--

(A) by inserting "(1)" before "No";

(B) by striking "(1)", "(2)", "(A)", and "(B)" and inserting in their places

"(A)", "(B)", "(i)", and "(ii)" respectively;

(C) by striking from redesignated paragraph (1)(B)(ii) "the date of enactment of this subsection" and inserting "October 24, 1992," in its place; and

(D) by adding at the end a new paragraph as follows:

"(2) Notwithstanding paragraph (1), the Commission may issue an order that requires the transmission of electric energy directly or indirectly to an ultimate consumer if a notice of retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978 has been filed and is in effect with respect to the ultimate consumer's distribution utility or if a distribution utility offers open access to its delivery facilities to the ultimate consumer."

(3) Conforming Amendments.--

(A) Section 3(23) of the FPA is amended to read as follows:

"(23) 'transmitting utility' means any entity that owns, controls, or operates electric power transmission facilities that are used for the sale of electric energy in the 48 contiguous States and the District of Columbia, notwithstanding section 201(f) of this Act."

(B) Section 3(24) of the FPA is amended to read as follows:

"(24) 'transmission services' means the transmission of electric energy sold or to be sold."

(C) Section 211(a) of the FPA is amended by striking "for resale".

(D) Section 212(a) of the FPA is amended by striking "wholesale" each time it appears, except the last time.

(c) Applicability of Commission Jurisdiction to Transmitting Utilities.--Section 206(e) of the FPA as added by subsection (b)(1) of this section is amended by adding the following new paragraphs after paragraph (1):

"(2)(A) The Commission has jurisdiction over the rates, terms, and conditions for

transmission services provided by a transmitting utility that is not a public utility, subject to section 212(h), and may authorize recovery of stranded costs, as defined by the Commission, by such transmitting utility. The Commission may require, by rule or order, a transmitting utility that is not a public utility to provide open access transmission services, subject to section 212(h).

"(B) In exercising its authority under this Act, the Commission--

"(i) shall take into account the different structural and operating characteristics of transmitting utilities, including the multi-tier structure and the not-for-profit operations of cooperatives;

"(ii) with respect to any transmitting utility that has outstanding loans made or guaranteed by the Rural Utilities Service, shall take into account the policies of the Department of Agriculture in implementing the Rural Electrification Act of 1936 and shall assure, to the extent practicable, that the utility will be able to meet any loan obligations under that Act; and

"(iii) shall not approve rates, terms, or conditions the Commission determines would have the effect of jeopardizing the tax exempt status of nonprofit electric cooperatives under the Internal Revenue Code of 1986.

"(C) Notwithstanding any other law, section 205, this section, and part III apply to a transmitting utility that is not a public utility for purposes of this section.

"(3) The Commission may suspend or modify for specified periods application of its rules on nondiscriminatory open access to one or more of the following entities: the Tennessee Valley Authority, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, the Western Area Power Administration, a corporation or association with outstanding debt to the Administrator of the Rural Utility Service relating to electric utility facilities, or a full-requirements wholesale customer of any of these entities, or to any entity with loans made or guaranteed under the Rural Electrification Act of 1936, as amended, or to a wholesale customer of any such entity, if the Commission finds that the entity

will not be able to recover stranded costs.

"(3) Any electric utility that owns, directly or indirectly, generation facilities financed in whole or in part with outstanding loans made or guaranteed by the Rural Utilities Service may apply to the Commission to impose a charge for the recovery of stranded costs as defined by the Commission. If the Commission determines that the proposed charge is just, reasonable, and not unduly discriminatory or preferential, the Commission may issue an order providing for the imposition of the charge on transmission service by the applicant or by another transmitting utility or on any electric utility or transaction subject to the Commission's jurisdiction.

(d) Notice to and Intervention of Secretary of Agriculture in FERC Proceedings – The FPA is amended by adding after section 218, as added by section 601 of this Act, the following new section:

“NOTICE TO AND INTERVENTION OF SECRETARY OF AGRICULTURE
IN COMMISSION PROCEEDINGS

“SEC. 219. Any person filing a complaint or petition for rulemaking under Part II of the FPA that directly affects an electric utility with loans made or guaranteed under the Rural Electrification Act of 1936 shall provide notice of such complaint or petition to the Secretary of Agriculture. The Secretary of the Agriculture may as a matter of right intervene or otherwise participate in any proceeding before the Commission that directly affects an electric utility with loans made or guaranteed under the Rural Electrification Act of 1936. The Secretary of Agriculture shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof.

SEC. 302. INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING.

The FPA is amended by adding after section 214 the following new section:

“INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING

"SEC. 215. (a) The consent of Congress is given for an agreement to establish a regional transmission planning agency, if the Commission determines that the agreement would--

"(1) facilitate coordination among the States within a particular region with regard to the planning of future transmission, generation, and distribution facilities,

"(2) carry out State electric facility siting responsibilities more effectively,

"(3) meet the other requirements of this section and rules prescribed by the Commission under this section, and

"(4) otherwise be consistent with the public interest.

"(b)(1) If the Commission determines that an agreement meets the requirements of subsection (a), the agency established under the agreement has the authority necessary or appropriate to carry out the agreement. This authority includes authority with respect to matters otherwise within the jurisdiction of the Commission, if expressly provided for in the agreement and approved by the Commission.

"(2) The Commission's determination under this section may be subject to any terms or conditions the Commission determines are necessary to ensure that the agreement is in the public interest.

"(c)(1) The Commission shall prescribe--

"(A) criteria for determining whether a regional transmission planning agreement meets subsection (a), and

"(B) standards for the administration of a regional transmission planning agency established under the agreement.

"(2) The criteria shall provide that, in order to meet subsection (a)--

"(A) a regional transmission planning agency must operate within a region that includes all tribal governments and all or part of each State that is a party to the agreement,

"(B) a regional transmission planning agency must be composed of one or more

members from each State and tribal government that is a party to the agreement,

"(C) each participating State and tribal government must vest in the regional transmission planning agency the authority necessary to carry out the agreement and this section, and

"(D) the agency must follow workable and fair procedures in making its decisions, in governing itself, and in regulating parties to the agreement with respect to matters covered by the agreement, including a requirement that all decisions of the agency be made by majority vote (or majority of weighted votes) of the members present and voting.

"(3) The criteria may include any other requirement for meeting subsection (a) that the Commission determines is necessary to ensure that the regional transmission planning agency's organization, practices, and procedures are sufficient to carry out this section and the rules issued under it.

"(d) The Commission, after notice and opportunity for comment, may terminate the approval of an agreement under this section at any time if it determines that the regional transmission planning agency fails to comply with this section or Commission prescriptions under subsection (c) or that the agreement is contrary to the public interest.

"(e) Section 313 applies to a rehearing before a regional transmission planning agency and judicial review of any action of a regional transmission planning agency. For this purpose, when section 313 refers to "Commission", substitute "regional transmission planning agency" and when section 313(b) refers to "licensee or public utility", substitute "entity".

SEC. 303. BACKUP AUTHORITY TO IMPOSE A CHARGE ON AN ULTIMATE CONSUMER'S RECEIPT OF ELECTRIC ENERGY

The FPA is amended by adding the following new section after section 215 as added by section 302 of this Act:

"BACKUP AUTHORITY FOR CHARGE ON RECEIPT OF ELECTRIC ENERGY

"SEC. 216. (a) If a State regulatory authority that has provided notice of retail

competition under section 609 of the Public Utility Regulatory Policies Act of 1978 for a distribution utility determines that the utility should be authorized or required to impose a charge on an ultimate consumer's receipt of electric energy but the State regulatory authority lacks authority to authorize or require imposition of such a charge, the State regulatory authority may apply to the Commission for an order providing for the imposition of the charge. If the Commission determines that the imposition of the charge is just, reasonable, and not unduly discriminatory or preferential; is consistent with the State regulatory authority's policy regarding the imposition of the charge; and is not specifically prohibited by State law, the Commission may issue an order providing for the imposition of the charge.

"(b) If a utility that has outstanding loans made or guaranteed by the Rural Utilities Service and that has filed a notice of retail competition under section 609 of the Public Utilities Regulatory Policies Act of 1978 determines that it is appropriate to impose a charge on an ultimate consumer's receipt of electric energy, but lacks the authority to impose such a charge under State law, the utility may apply to the Commission for an order providing for the imposition of a charge. If the Commission determines that the proposed charge is just, reasonable, and not unduly discriminatory or preferential, and is not specifically prohibited by State law, the Commission may issue an order providing for the imposition of the charge."

SEC. 304. AUTHORITY TO ESTABLISH AND REQUIRE INDEPENDENT REGIONAL SYSTEM OPERATION

Section 202 of the FPA is amended by adding the following new subsections after subsection (g):

"(h) Upon its own motion or upon application or complaint and after notice and an opportunity for a hearing, the Commission may order the establishment of entities for the purpose of independent operation, control, and planning of interconnected transmission facilities; order a transmitting utility to relinquish control over operation of its transmission facilities to an entity for the purpose of independent operation, control, and planning of interconnected

transmission facilities; subject generators to the control of such entity consistent with other laws to the extent necessary to permit reliable operation of the transmission facilities; or take any combination of these actions , if the Commission finds that--

“(1) this action is appropriate to promote competitive electricity markets and efficient, economical, and reliable operation of the interstate transmission grid;

“(2) the entity established for the purpose of independent operation, control, and planning of interconnected transmission facilities will operate, control, and plan the transmission facilities in a manner that assures that--

“(A) ownership of transmission facilities provides no advantage in competitive electricity markets;

“(B) the customers of an affected transmitting utility will not pay a disproportionate share of the entity’s costs;

“(C) there will not be unreasonable costs shifts among or cost increases for customers of an affected transmitting utility; and

“(D) ~~with regard to the~~ TVA Board of Directors, the Bonneville Administrator, the SWPA Administrator, ~~and the WAPA Administrator, the~~ Bureau of Reclamation, and the Corp of Engineers can, ensure that the Authority, Administrator, or Agency is able to satisfy its their respective statutory, treaty, and contractual obligations.

“(3) any transmitting utility ordered to transfer control of its transmission facilities will receive just and reasonable compensation for the use of its facilities, consistent with section 201A; and

“(4) the reliability of the affected transmission facilities will not be reduced.

Nothing in this section limits States from addressing maintenance, planning, siting, and other utility functions in a manner not inconsistent with this Act.

“(i) If not ordered under subsection (h), TVA, the Bonneville Administrator, the SWPA

Administrator, or the WAPA Administrator may participate in a regional system operation after conducting a public process in the relevant service area to receive comments. Notwithstanding any other law, participation may include delegation of operation and control of the Authority or Administrator's transmission system to that entity organization, or other method of participation, under terms and conditions the Authority or Administrator determines necessary or appropriate, including being bound by operational and other orders of the entity organization and by the results of arbitration of disputes with the entity organization or with other participants.”.

TITLE IV. PUBLIC BENEFITS

SEC. 401. PUBLIC BENEFITS FUND

PURPA is amended by adding after section 609, as added by section 101 of this Act, the following new section:

"SEC. 610. PUBLIC BENEFITS FUND.

"(a) Definitions.--For purposes of this section--

"(1) the term 'Board' means the Federal-State Joint Board established under subsection (b)(1);

"(2) the term 'eligible public purpose program' means a program that supports one or more of the following--

"(A) availability of affordable electricity service to low-income customers,

"(B) implementation of energy conservation and energy efficiency measures and energy management practices,

"(C) consumer education,

"(D) the development and demonstration of an electricity generation technology that the Secretary determines is emerging from research and development, provides environmental benefits, and--

"(i) has significant national commercial potential, or

"(ii) provides energy security or generation resource diversity

benefits, or

"(E) rural assistance subsequent to a determination made under subsection (d)(4);

"(3) the term 'fiscal agent' means the entity designated under subsection (b)(2)(B);

"(4) the term 'Fund' means the Public Benefits Fund established under subsection (b)(2)(A); and

"(5) the term 'State' means each of the 48 contiguous States and the District of Columbia.

"(b) Federal-State Joint Board.--(1) A Federal-State Joint Board is established whose membership is composed of two officers or employees of the United States Government appointed by the Secretary, four and five State commissioners appointed by the national organization of State commissions, and one member of an Indian tribal government. The Secretary shall designate the Chair of the Board.

"(2) The Board shall--

"(A) establish a Public Benefits Fund upon petition of States and tribal governments wishing to participate in the program under this section,

"(B) appoint a fiscal agent, from persons nominated by the States and tribal governments petitioning to establish the Fund, and

"(C) administer the Fund as set forth in this section.

"(c) Fiscal Agent.--The fiscal agent appointed by the Board shall collect and disburse the amounts in the Fund as set forth in this section.

"(d) Secretary.--The Secretary shall prescribe rules for--

"(1) the determination of charges under subsection (e);

"(2) the collection of amounts for the Fund, including provisions for overcollection or undercollection;

"(3) distribution of amounts from the Fund; and

"(4) the criteria under which the Board determines whether a State or tribal government's program is an eligible public purpose program, including a rural assistance program. A rural assistance program shall be an eligible public purpose program to the extent that the Secretary, in consultation with the Secretary of Agriculture, determines by rule that significant adverse economic effects on rural customers have occurred or will occur as a result of electricity restructuring that meets the retail competition requirements of this Act. After such a determination is made, the Secretary, in consultation with the Secretary of Agriculture, shall specify by rule the mechanism for distribution of funds to rural assistance programs, amounts to be provided, and variances to the overall requirements to the Public Benefits Fund under this section, if any. For the purposes of funding rural assistance programs, the Secretary shall increase the charge for the Public Benefit Fund as necessary, up to a maximum of .17 mills per kilowatt hour. Funding for rural assistance programs under this section shall be provided exclusively from this increase in the charge.

"(e) Public Benefits Charge.--(1) As a condition of existing or future interconnection with facilities of any transmitting utility, each owner of an electric generating facility whose capacity exceeds one megawatt shall pay the transmitting utility a public benefits charge determined under paragraph (2), even if the generation facility and the transmitting facility are under common ownership or are otherwise affiliated. Each importer of electric energy from Canada or Mexico, as a condition of existing or future interconnection with facilities of any transmitting utility in the United States, shall pay this same charge for imported electric energy. The transmitting utility shall pay the amounts collected to the fiscal agent at the close of each month, and the fiscal agent shall deposit the amounts into the Fund.

"(2)(A) The Board shall notify the Commission of the sum of the requests of all States and tribal governments under subsection (f) within 30 days after receiving the requests.

"(B) The Commission shall calculate the rate for the public benefits charge for each

calendar year at an amount, not in excess of 1 mill per kilowatt-hour, equal to the sum of the requests of all States and tribal governments under subsection (f) for programs described in subsection (a)(2)(A) through (a)(2)(D) divided by the estimated kilowatt hours of electric energy to be generated by generators subject to the charge. Every ~~five~~ years the Secretary shall review the charge and shall direct the Commission to revise the charge as appropriate to maintain a total Fund level relatively close to the target level of approximately \$3 billion per year nationwide, adjusted for inflation. If there are significant receipts from the sale of Renewable Energy Credits under section 611, the Secretary shall ~~review the rate for this charge on a more frequent basis and may direct the Commission to reduce the charge by the amount of some portion of these receipts received as long as sufficient funds remain to ensure that the Fund level is appropriate to achieve the environmental goals of this section and section 611 of this Act.~~

"(C) If a finding is made under subsection (d)(4) in relation to rural customers, the public benefit charge shall be increased as indicated under subsection (d)(4).

"(f) State and Tribal Government Participation.--(1) Not later than 90 days before the beginning of each calendar year, each State and tribal government seeking to participate in the Fund shall submit to the Board a request for payments from the Fund for the calendar year in an amount not in excess of 50 percent of the State or tribal government's estimated expenditures for eligible public purpose programs for the year, except as provided under rules issued under subsection (d)(4) for rural assistance programs.

"(2) To the extent a State or tribal government generates all or part of its funds for eligible public purpose programs through a wires charge on an ultimate consumer's receipt of electric energy, the State or tribal government shall impose the charge on a non-discriminatory basis on all consumers within the State or tribal government jurisdiction.

"(3) Notwithstanding subsection (a)(5)--

"(A) Alaska may participate in the Fund as a State if it certifies to the Board that all generators within Alaska with a nameplate capacity exceeding one megawatt shall pay

into the Fund at the rate calculated by the Board during the year in which Alaska seeks matching funds, and

"(B) Hawaii may participate in the Fund as a State if it certifies to the Board that all generators within Hawaii with a nameplate capacity exceeding one megawatt shall pay into the Fund at the rate calculated by the Board during the year in which Hawaii seeks matching funds.

"(g) Disbursal from the Fund.--(1) The Board shall review State and tribal government submissions and determine whether programs designated by the State or tribal government are eligible public purpose programs, using the criteria prescribed under subsection (d), and whether there is reasonable assurance that spending qualifying as State or tribal government matching funds will occur.

"(2) The fiscal agent shall disburse amounts in the Fund to participating States and tribal governments to carry out eligible public purpose programs in accordance with this subsection and rules prescribed under subsection (d).

"(3) To the extent the aggregate amount of funds requested by the States and tribal governments exceeds the maximum aggregate revenues eligible to be collected under subsection (e) and deposited as payment for Renewable Energy Credits under section 611, the fiscal agent shall reduce each participating State and tribal government's request equitably.

"(4)(A) The fiscal agent shall disburse amounts for a calendar year from the Fund to a State or tribal government in twelve equal monthly payments beginning two months after the beginning of the calendar year. Amounts disbursed may not exceed the lesser of the State or tribal government's request for the fiscal year, after any reduction required under paragraph (3), or 50 percent of the State or tribal government's documented expenditures for eligible public purpose programs for a calendar year, except as provided under rules issued under subsection (d)(4) for rural assistance programs.

"(B) The fiscal agent shall make distributions to the State or tribal government or to an

entity designated by the State or tribal government to receive payments. The State or tribal government may designate a nonregulated utility as an entity to receive payments under this section.

"(C) A State or tribal government may use amounts received only for the eligible public purpose programs the State or tribal government designated in its submission to the Board and the Board determined eligible.

"(h) Report.--One year before the date of expiration of this section, the Secretary shall report to Congress, after consultation with the Board, whether a public benefits fund should continue to exist.

"(i) Sunset.--This section expires at midnight on December 31 of the fifteenth year after the year the Comprehensive Electricity Competition Act is enacted, except with regard to charges and funding for rural assistance programs."

SEC. 402. FEDERAL RENEWABLE PORTFOLIO STANDARD.

(a) Standard.--PURPA is amended by adding after section 610, as added by section 401 of this Act, the following new section:

"SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.

"(a) Minimum Renewable Generation Requirement.--(1) For each calendar year beginning with 2000, a retail electric supplier shall submit to the Secretary Renewable Energy Credits in an amount equal to the required annual percentage, specified in subsection (b), of the total electric energy sold by the retail electric supplier to electric consumers in the calendar year. The retail electric supplier shall make this submission before April 1 of the following calendar year.

"(2) For purposes of this section 'renewable energy' means energy produced by solar, wind, geothermal, or biomass.

"(3) This section does not preclude a State from requiring additional renewable energy generation in that State.

"(b) Required Annual Percentage.--(1) The Secretary shall determine the required annual percentage that is to be applied to all retail electric suppliers for calendar years 2000--2004. This required annual percentage shall be equal to the percent of the total electric energy sold, during the most recent calendar year for which information is available before the calendar year of the enactment of this section, by retail electric suppliers to electric customers in the United States that is renewable energy.

"(2) The Secretary shall determine the required annual percentage for all retail electric suppliers for calendar years 2005-2009. This percentage shall be above the percentage in paragraph (1) and below the percentage in paragraph (3) and shall be selected to promote a smooth transition to the level in paragraph (3).

"(3) for calendar years 2010-2015, 7.5 ~~5.5~~ percent.

"(c) Submission of Credits.--A retail electric supplier may satisfy the requirements of subsection (a) through the submission of--

"(1) Renewable Energy Credits issued under subsection (d) for renewable energy generated by the retail electric supplier in the calendar year for which Credits are being submitted or any previous calendar year,

"(2) Renewable Energy Credits issued under subsection (d) to any renewable energy generator for renewable energy generated in the calendar year for which Credits are being submitted or a previous calendar year and acquired by the retail electric supplier, or

"(3) any combination of Credits under paragraphs (1) and (2).

"(d) Issuance of Credits.--(1) The Secretary shall establish, not later than one year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track Renewable Energy Credits.

"(2) Under the program, an entity that generates electric energy through the use of renewable energy may apply to the Secretary for the issuance of Renewable Energy Credits. The

application shall indicate--

"(A) the type of energy used to produce the electricity,

"(B) the State in which the electric energy was produced, and

"(C) any other information the Secretary determines appropriate.

"(3) The Secretary shall issue to an entity one Renewable Energy Credit for each kilowatt-hour of electric energy the entity generates through the use of renewable energy in any State in 2000 and any succeeding year. To be eligible for a Renewable Energy Credit, the unit of electricity generated through the use of renewable energy may be sold or may be used by the generator. If both renewable energy and non-renewable energy are used to generate the electric energy, the Secretary shall issue credits based on the proportion of renewable energy used. The Secretary shall identify Renewable Energy Credits by type of generation and by the State in which the generating facility is located.

"(4) In order to receive a Renewable Energy Credit, the recipient of a Renewable Energy Credit shall pay a fee, calculated by the Secretary, in an amount that is equal to the administrative costs of issuing, recording, monitoring the sale or exchange of, and tracking the Credit or does not exceed five percent of the dollar value of the Credit, whichever is lower. The Secretary shall retain the fee and use it to pay these administrative costs.

"(5) When a generator sells electric energy generated through the use of renewable energy to a retail electric supplier under a contract subject to section 210 of this Act, the retail electric supplier is treated as the generator of the electric energy for the purposes of this section for the duration of the contract.

"(6) The Secretary shall disqualify an otherwise eligible renewable energy generator from receiving a Renewable Energy Credit if the generator has elected to participate in net metering under section 612.

"(7) If a generator using renewable energy receives matching funds under section 610, the Secretary shall reduce the number of Renewable Energy Credits the generator receives under

paragraph (3) so that the aggregate value of those Credits plus the matching funds received under section 610 equals the aggregate value of the Credits the generator would have received absent this paragraph. For purposes of this paragraph, the Secretary shall value a Credit at a price that is representative of the price of a Credit in private transactions. In no event shall the Secretary use a price to establish values for purposes of this paragraph that exceeds the cost cap established under subsection (f).

"(e) Sale or Exchange.--A Renewable Energy Credit may be sold or exchanged by the entity to whom issued or by any other entity who acquires the Credit. A Renewable Energy Credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may be carried forward for use in another year.

"(f) Renewable Energy Credit Cost Cap.--Beginning January 1, 2000, the Secretary shall offer Renewable Energy Credits for sale. The Secretary shall charge 1.5 cents for each Renewable Energy Credit sold during calendar year 2000, and on January 1 of each following year, the Secretary shall adjust for inflation, based on the Consumer Price Index, the price charged per Credit for that calendar year. The Secretary shall deposit in the Public Benefits Fund established under section 610 the amount received from a sale under this subsection. That amount shall be used for the same purposes as other amounts in the Public Benefits Fund.

"(g) Enforcement.--The Secretary may bring an action in the appropriate United States district court to impose a civil penalty on a retail electric supplier that does not comply with subsection (a). A retail electric supplier who does not submit the required number of Renewable Energy Credits under subsection (a) is subject to a civil penalty of not more than three times the value of the Renewable Energy Credits not submitted. For purposes of this subsection, the value of a Renewable Energy Credit is the price of a Credit determined under subsection (f) for the year the Credits were not submitted.

"(h) Information Collection.--The Secretary may collect the information necessary to verify and audit--

"(1) the annual electric energy generation and renewable energy generation of any entity applying for Renewable Energy Credits under this section,

"(2) the validity of Renewable Energy Credits submitted by a retail electric supplier to the Secretary, and

"(3) the quantity of electricity sales of all retail electric suppliers.

"(i) Sunset.--This section expires December 31, 2015."

(b) Definition.--Section 3 of PURPA is amended by adding after paragraph (24) as added by section 101 of this Act the following new paragraph:

"(25) The term 'retail electric supplier' means a person, State agency, or Federal agency that sells electric energy to an electric consumer."

SEC. 403. NET METERING

PURPA is amended by adding the following new section after section 611 as added by section 402 of this Act:

"SEC. 612. NET METERING FOR RENEWABLE ENERGY

"(a) Definitions.--For purposes of this section--

"(1) The term 'eligible on-site generating facility' means a facility on the site of an electric consumer with a peak generating capacity of 20 kilowatts or less that is fueled solely by a renewable energy resource.

"(2) The term 'renewable energy resource' means solar energy, wind, geothermal, or biomass.

"(3) The term 'net metering service' means service to an electric consumer under which electricity generated by that consumer from an eligible on-site generating facility and delivered to the distribution system through the same meter through which purchased electricity is received may be used to offset electricity provided by the retail electric supplier to the electric consumer during the applicable billing period so that an electric consumer is billed only for the net electricity consumed during the billing period, but in

no event shall the net be less than zero during the applicable billing period.

“(b) Requirement to Provide Net Metering Service.--Each retail electric supplier shall make available upon request net metering service to any retail electric consumer whom the supplier currently serves or solicits for service.

“(c) State Authority.--This section does not preclude a State from imposing additional requirements consistent with the requirements in this section, including the imposition of a cap limiting the amount of net metering available in the State. Nothing in this Act or any other Federal law preempts or otherwise affects authority under State law to require a retail electric supplier to make available net metering service to a retail electric consumer whom the supplier serves or offers to serve.”.

SEC. 404. REFORM OF SECTION 210 OF PURPA

Section 210 of PURPA is amended by adding the following new subsection after subsection (l):

“(m) Repeal of Mandatory Purchase Requirement.--After the date of enactment of the Comprehensive Electricity Competition Act, an electric utility shall not be required to enter into a new contract or obligation to purchase electric energy under this section.”.

SEC. 405. INTERCONNECTIONS FOR CERTAIN FACILITIES.

PURPA is amended by adding the following new section after section 612 as added by section 403 of this Act:

“SEC. 613. INTERCONNECTIONS FOR CERTAIN FACILITIES

“(a) Definition.--As used in this section ‘facility’ means--

“(1) a small-scale electric power generation facility that is designed to serve customers at or near the facility, or

“(2) a facility using a single fuel source to produce at the point of use either electric or mechanical power and thermal energy.

“(b) Interconnection.--A distribution utility shall allow a facility to interconnect with the

distribution utility if the facility owner is located in the distribution utility's service territory and complies with the final rule issued under subsection (c).

“(c) Within one year from the date of enactment of this section, the Secretary shall issue a final rule to implement subsection (b) and issue related safety and power quality standards. To the extent feasible, the Secretary shall develop the standards through a process involving interested parties.

“(d) The Commission shall enforce the rule established under subsection (c) using its authority under this Act.”.

SEC. 406. RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.

Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended by adding after subsection (b) the following new subsections:

“(c) Rural and Remote Communities Electrification Grants.—The Secretary, in consultation with the Secretary of Energy and the Secretary of the Interior, may provide grants to eligible borrowers under this Act for the purpose of increasing energy efficiency, lowering or stabilizing electric rates to end users, or providing or modernizing electric facilities for ~~an Indian tribe or~~ a unit of local government of a State or territory representing or containing a population not in excess of 10,000 permanent inhabitants or an Indian tribe that—

~~“(1) represents or contains a population not in excess of 10,000 permanent inhabitants, and~~

~~“(2) has an average cost per kilowatt hour of electricity that is at least 150 percent of the average retail price per kilowatt hour for all consumers in the United States, as determined by the Secretary using data provided by the Department of Energy.~~

“(d) Definition. — For purposes of this section, the term “Indian tribe” means any Indian tribe, band group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Public Law 93-638) or was considered an

eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

“(ed) Authorization.--There is authorized to be appropriated for purposes of subsection (c) \$20,000,000 for each of the seven fiscal years following enactment of this section.”.

SEC. 407. INDIAN TRIBE ASSISTANCE.

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501-3507) is amended by–

(1) adding after section 2607 the following new section:

“SEC. 2608. TRIBAL ELECTRICITY ASSISTANCE.

“(a) The Secretary of Energy, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall establish a program to assist an Indian tribe to meet its electricity needs. Under the program, the Secretary shall provide to an Indian tribe–

“(1) technical assistance and grants to analyze tribal electricity needs, the availability of natural resources for tribal generation of electricity, the opportunities for the improvement of transmission of electricity to the tribe, and the effect on the tribe ~~of the adoption by a State regulatory authority or nonregulated distribution utility~~ of retail competition in the sale or transmission of electricity, and

“(2) in an area that is not served or served inadequately by an electric utility, as defined in section 3(4) of the Public Utility Regulatory Policies Act, or distribution utility, as defined in section 3(23) of the Public Utility Regulatory Policies Act, grants to plan and construct or improve facilities to generate, transmit, and distribute electricity to serve tribal needs.

In exercising authority under this section, the Secretary shall take into account the ability of entities with loans made or guaranteed under the Rural Electrification Act of 1936 to repay those loans.

“(b) Definition. – For purposes of this section, the term “Indian tribe” means any Indian tribe, band group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan

Native Village, of the United States, which is considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Public Law 93-638) or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter.

“(c**b**) There are authorized to be appropriated to the Department of Energy for each of the seven fiscal years following enactment of this section, \$5,000,000 to carry out subsection (a)(1), and \$15,000,000 to carry out subsection (a)(2).”.

SEC. 408. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

Title II of the Department of Energy Organization Act is amended by adding the following new section after section 213 added by section 603:

“Section 214. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

“(a) The Secretary may establish within the Department an Office of Indian Energy and Policy. The Office shall be headed by a Director appointed by the Secretary.

“(b) The Office is authorized to establish a program to provide, direct, foster, coordinate and implement energy, energy management and energy conservation programs to –

- (1) promote tribal energy efficiency;
- (2) modernize tribal electric infrastructure;
- (3) promote tribal sovereignty and self determination;
- (4) lower or stabilize electricity rates; and
- (5) electrify tribal members homes.

“(c) There are authorized to be appropriated such sums as may be necessary to implement this section.”.

TITLE V. REGULATION OF MERGERS AND CORPORATE STRUCTURE

SEC. 501. REFORM OF HOLDING COMPANY REGULATION UNDER PUHCA.

Effective 18 months after the enactment of this Act, the Public Utility Holding Company Act of 1935 is repealed and the following is enacted in its place.

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Public Utility Holding Company Act of 19998'.

"SEC. 2. DEFINITIONS.

"For purposes of this Act --

"(1) the term 'affiliate' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company;

"(2) the term 'associate company' of a company means any company in the same holding company system with such company;

"(3) the term 'Commission' means the Federal Energy Regulatory Commission;

"(4) the term 'company' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing;

"(5) the term 'electric utility company' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale;

"(6) the terms 'exempt wholesale generator' and 'foreign utility company' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935, as those sections existed on the day before the effective date of this Act;

"(7) the term 'gas utility company' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power;

"(8) the term 'holding company' means--

"(A) any company that directly or indirectly owns, controls, or holds, with

power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

"(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

"(9) the term 'holding company system' means a holding company, together with its subsidiary companies;

"(10) the term 'jurisdictional rates' means rates established by the Commission for the transmission of electric energy, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

"(11) the term 'natural gas company' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale;

"(12) the term 'person' means an individual or company;

"(13) the term 'public utility' means any person who owns or operates facilities used for transmission of electric energy or sales of electric energy at wholesale in interstate commerce;

"(14) the term 'public utility company' means an electric utility company or a gas utility company;

"(15) the term 'State commission' means any commission, board, agency, or

officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies;

"(16) the term 'subsidiary company' of a holding company means--

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

"(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon subsidiary companies of holding companies; and

"(17) the term 'voting security' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

"SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS

"(a) IN GENERAL.--Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, records, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates for the transmission of electric energy, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

"(b) AFFILIATE COMPANIES.--Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

"(c) HOLDING COMPANY SYSTEMS.--The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

"(d) CONFIDENTIALITY.--No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

"SEC. 4. STATE ACCESS TO BOOKS AND RECORDS

"(a) IN GENERAL.--Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection such books, accounts, memoranda, and other records that--

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

"(2) the State commission deems are relevant to costs incurred by such public utility company; and

"(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

"(b) LIMITATION.--Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"(c) CONFIDENTIALITY OF INFORMATION.--The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

"(d) EFFECT ON STATE LAW.--Nothing in this section shall preempt applicable State law concerning the provision of books, records, or any other information, or in any way limit the rights of any State to obtain books, records, or any other information under any other Federal law, contract, or otherwise.

"(e) COURT JURISDICTION.--Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

"SEC. 5. EXEMPTION AUTHORITY

"(a) RULEMAKING.--Not later than 90 days after the effective date of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 3 any person that is a holding company, solely with respect to one or more --

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

"(2) exempt wholesale generators; or

"(3) foreign utility companies.

"(b) OTHER AUTHORITY.--If, upon application or upon its own motion, the Commission finds that the books, records, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company, the Commission shall exempt such person or transaction

from the requirements of section 3.

"SEC. 6. AFFILIATE TRANSACTIONS.

"Nothing in this Act shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

"SEC. 7. APPLICABILITY.

"No provision of this Act shall apply to, or be deemed to include--

"(1) the United States;

"(2) a State or any political subdivision of a State;

"(3) any foreign governmental authority not operating in the United States;

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

"(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of official duty.

"SEC 8. EFFECT ON OTHER REGULATIONS.

"Nothing in this Act precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

"SEC. 9. ENFORCEMENT.

"The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825d-825p) to enforce the provisions of this Act.

"SEC. 10. SAVINGS PROVISIONS.

"(a) IN GENERAL.--Nothing in this Act prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this Act.

"(b) EFFECT ON OTHER COMMISSION AUTHORITY.--Nothing in this Act limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

"SEC. 11. IMPLEMENTATION.

"Not later than 18 months after the date of enactment of the Comprehensive Electricity Competition Act, the Commission shall--

"(1) promulgate such regulations as may be necessary or appropriate to implement this Act (other than section 4); and

"(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this Act and the amendments made by this Act.

"SEC. 12. TRANSFER OF RESOURCES.

"All books and records that relate primarily to the functions transferred to the Commission under this Act shall be transferred from the Securities and Exchange Commission to the Commission.

"SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such funds as may be necessary to carry out this Act.

"SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

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

SEC. 502. ELECTRIC COMPANY MERGERS.

Section 203(a) of the FPA is amended by--

(1) striking "public utility" each time it appears and inserting in its place "person or electric utility company";

(2) inserting after the first sentence the following: "Except as the Commission

otherwise provides, a holding company in a holding company system that includes an electric utility company shall not, directly or indirectly, purchase, acquire, or take any security of an electric utility company or of a holding company in a holding company system that includes an electric utility company, without first securing an order of the Commission authorizing it to do so.";

(3) striking "hearing" in the last sentence and inserting "oral or written presentation of views";

(4) adding after "public interest" the following: "including consideration of the effects on competition in wholesale and retail electric generation markets,"; and

(5) adding at the end the following: "For purposes of this subsection, the terms 'electric utility company', 'holding company', and 'holding company system' have the meaning given them in the Public Utility Holding Company Act of 1998.

Notwithstanding section 201(b)(1), generation facilities are subject to the jurisdiction of the Commission for purposes of this section, except as the Commission otherwise may provide, provided that nothing in this section applies where all applicable entities have existing to any entity with loans made or guaranteed under the Rural Electrification Act of 1936 (5 U.S.C. 901 et seq.).".

SEC. 503. REMEDIAL MEASURES FOR MARKET POWER.

The FPA is amended by adding the following new section after section 216 as added by section 203 of this Act:

“REMEDIAL MEASURES FOR MARKET POWER”

“SEC. 217. (a) Definitions.--As used in this section--

“(1) 'market power' means the ability of an public utility or electric utility profitably to maintain prices above competitive levels for a significant period of time, and

“(2) 'notice of retail competition' has the meaning provided under section 3(22) of

the Public Utility Regulatory Policies Act of 1978.

"(b) Commission Jurisdictional Sales.--(1) If the Commission determines that there are markets in which a public utility that owns or controls generation facilities has market power in sales of electric energy for resale in interstate commerce, the Commission shall order that utility to submit a plan for taking necessary actions to remedy its market power, which may include, but is not limited to, conditions respecting operation or dispatch of generation, independent operation of transmission facilities, or divestiture of ownership of one or more generation facilities.

"(2) In consultation with the Attorney General and the Federal Trade Commission, the Commission shall review the plan to determine if its implementation would adequately mitigate the adverse competitive effects of market power. The Commission may approve the plan with or without modification. The plan takes effect upon approval by the Commission. Notwithstanding any State law, regulation, or order to the contrary and notwithstanding any other provision of this Act or any other law, the Commission has jurisdiction to order divestiture or other transfer of control of generation assets pursuant to the plan.

"(c) State Jurisdictional Sales.--(1) If a State commission that has filed a notice of retail competition has reason to believe that an electric utility doing business in the State has market power, the State commission may apply for an order under this section.

"(2) If, after receipt of such an application and after notice and opportunity for a hearing, the Commission determines that the electric utility has market power in the sales of electric energy sold at retail in the State, this market power would adversely affect competition in the State, and the State commission lacks authority to effectively remedy such market power, the Commission may order the electric utility to submit a plan for taking necessary actions to remedy the electric utility's market power. These actions may include conditions respecting operation or dispatch of generation, competitive procurement of all generation capacity or energy, independent operation of transmission facilities, or divestiture of ownership of one or more generation facilities of the electric utility.

"(3) After consultation with the Attorney General and the Federal Trade Commission, the Commission may approve the plan with or without modification. The plan shall take effect upon approval by the Commission.

"(4) Notwithstanding any State law, regulation, or order to the contrary and notwithstanding any other provision of this Act or any other law, the Commission has jurisdiction to order divestiture or other transfer of control of generation assets pursuant to the plan.”.

TITLE VI--ELECTRIC RELIABILITY

SEC. 601. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

(a) Electric Reliability Organization and Oversight.--The Federal Power Act is amended by adding the following new section after section 217:

“ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

“SEC. 218. (a) Purpose.-- The purpose of this section is to provide for the establishment and enforcement of mandatory reliability standards in order to ensure the reliable operation of the bulk-power system.

(b) Definitions.--As used in this section:

“(1) The term ‘Affiliated Regional Reliability Entity’ means an entity delegated authority under the provisions of subsection (i).

“(2) The term ‘Bulk-Power System’ means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including high-voltage transmission lines, substations, control centers, communications, data, and operations planning facilities, and the output of generating units necessary to maintain transmission system reliability.

“(3) The term ‘Electric Reliability Organization’ or ‘Organization’ means the organization approved by the Commission under subsection (e)(4).

“(4) The term ‘Entity Rule’ means a rule adopted by an Affiliated Regional

Reliability Entity for a specific region and designed to implement or enforce one or more Organization Standards. An Entity Rule shall be subject to approval by the Organization, and once approved, shall be treated as an Organization Standard.

“(5) The term ‘Industry Sector’ means a group of Users of the Bulk Power System with substantially similar commercial interests, as determined by the board of the Electric Reliability Organization.

“(6) The term ‘Interconnection’ means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely effect the ability of the operators of other components within the Interconnection to maintain safe and reliable operation of the facilities within their control.

“(7) The term ‘Organization Standard’ means a policy or standard duly adopted by the Electric Reliability Organization to provide for the reliable operation of a Bulk-Power System.

“(8) The term ‘Public Interest Group’ means any non-profit private or public organization that has an interest in the activities of the Electric Reliability Organization, including, but not limited to, ratepayer advocates, environmental groups, and state and local government organizations that regulate market participants and promulgate government policy.

“(9) The term ‘Variance’ means an exception or variance from the requirements of an Organization Standard (including a proposal for an Organization standard where there is no Organization Standard) that is adopted by an Affiliated Regional Reliability Entity and applicable to all or a part of the region for which the Affiliated Regional Reliability Entity is responsible. A Variance shall be subject to approval by the Organization, and once approved, shall be treated as an Organization Standard.

“(10) The term ‘System Operator’ means any entity that operates or is responsible

for the operation of a Bulk-Power System, including but not limited to a control area operator, an independent system operator, a transmission company, a transmission system operator, or a regional security coordinator.

“(11) The term ‘User of the Bulk-Power System’ means any entity that sells, purchases, or transmits electric power over a Bulk-Power System, or that owns, operates or maintains facilities or control systems that are part of a Bulk-Power System, or that is a System Operator.

“(c) Commission Authority.—Notwithstanding any other provision of law, within the United States the Commission has jurisdiction over the Electric Reliability Organization, all Affiliated Regional Reliability Entities, all System Operators, and all Users of the Bulk-Power System, for purposes of approving and enforcing compliance with the requirements of this section.

“(d) Existing Reliability Standards.-- Following enactment of this section, and prior to the approval of an Organization under subsection (e), any person, including the North American Electric Reliability Council and its member Regional Reliability Councils, may file with the Commission any reliability standard, guidance, or practice, or any amendment thereto, that the person would propose to be made mandatory and enforceable. The Commission, after allowing interested persons an opportunity to submit comments, may approve the proposed mandatory standard, guidance, or practice, or any amendment thereto, if it finds that the standard, guidance, or practice, or amendment is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Filed standards, guidance, or practices, including any amendments thereto, shall be mandatory and applicable according to their terms following approval by the Commission and shall remain in effect until—

“(1) withdrawn, disapproved or superseded by an Organization Standard, issued or approved by the Electric Reliability Organization and made effective by the Commission under section (f); or

“(2) disapproved or suspended by the Commission if, upon complaint or upon its own motion and after notice and an opportunity for comment, the Commission finds the standard, guidance, or practice unjust, unreasonable, unduly discriminatory, or preferential or not in the public interest.

Standards, guidance, or practices in effect pursuant to the provisions of this subsection shall be enforceable by the Commission under Part III of this Act.

“(e) Organization Approval.--(1) Not later than 90 days after the date of enactment of this section, the Commission shall issue proposed rules specifying procedures and requirements for an entity to apply for approval as the Electric Reliability Organization. The Commission shall provide notice and opportunity for comment on the proposed rules. The Commission shall issue a final rule under this subsection within 180 days after the date of enactment of this section.

“(2) Following the issuance of a final Commission rule under paragraph (1), an entity may submit an application to the Commission for approval as the Electric Reliability Organization. The applicant shall specify in its application its governance and procedures, as well as its funding mechanism and initial funding requirements.

“(3) The Commission shall provide public notice of the application and afford interested parties an opportunity to comment.

“(4) The Commission shall approve the application if the Commission determines that the applicant –

“(A) has the ability to develop, implement, and enforce standards that provide for an adequate level of reliability of the Bulk-Power System;

“(B) permits voluntary membership to any User of the Bulk-Power System or Public Interest Group;

“(C) assures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical

competency in the development of Organization Standards and the exercise of oversight of Bulk-Power System reliability;

“(D) assures that no two Industry Sectors have the ability to control, and no one Industry Sector has the ability to veto, the Electric Reliability Organization’s discharge of its responsibilities (including actions by committees recommending standards to the board or other board actions to implement and enforce standards);

“(E) provides for governance by a board of no more than eleven members, one of whom shall be appointed by the Secretary of Energy;

“(F) provides a funding mechanism and requirements that are just, reasonable, and not unduly discriminatory or preferential and are in the public interest, and which satisfy the requirements of subsection (n);

“(G) establishes procedures for development of Organization Standards that provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of Organization Standards, and which standards development process has the following attributes: (i) openness, (ii) balance of interests, and (iii) due process, except that the procedures may include alternative procedures for emergencies;

“(H) establishes fair and impartial procedures for implementation and enforcement of Organization Standards, either directly or through delegation to an Affiliated Regional Reliability Entity, including the imposition of penalties, limitations on activities, functions, or operations, or other appropriate sanctions;

“(I) establishes procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information the directors determine should take place in closed session, such as litigation, personnel actions, or commercially

sensitive information;

“(J) provides for the consideration of recommendations of States and State commissions, and

“(K) addresses other matters that the Commission may deem necessary or appropriate to ensure that the procedures, governance, and funding of the Electric Reliability Organization are just, reasonable, not unduly discriminatory or preferential, and are in the public interest.

“(5) The Commission shall approve only one Electric Reliability Organization. If the Commission receives two or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best implement the provisions of this section.

“(f) Establishment of and Modifications to Organization Standards.-- (1) The Electric Reliability Organization shall file with the Commission any new or modified Organization Standards, including any Variances or Entity Rules, and the Commission shall follow the procedures under paragraph (2) for review of that filing. Submissions shall include:

“(A) a concise statement of the purpose of the proposal, and

“(B) a record of any proceedings conducted with respect to the proposal.

“(2) The Commission shall provide notice of the filing of the proposal and afford interested persons a reasonable time, but not more than 30 days, to submit comments. The Commission, after taking into consideration any submitted comments, shall approve or disapprove the proposal not later than 60 days after the deadline for the submission of comments, except that:

“(A) the Commission may extend the 60 day period for an additional 90 days for good cause, and

“(B) if the Commission does not act to approve or disapprove a proposal within the periods set forth in this paragraph, the proposal shall go into effect, without prejudice

to the authority of the Commission thereafter to suspend or modify the proposal in accordance with the standards and requirements of this section. Proposals approved by the Commission take effect according to their terms but not earlier than 30 days after the effective date of the Commission's order, except as provided in paragraph (3).

“(3)(A) In the exercise of its review responsibilities under this subsection, the Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a new or modified Organization Standard, but shall not defer to the Organization with respect to the effect of the standard on competition. The Commission shall approve a proposed new or modified Organization Standard if it determines the proposal to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(B) The Commission, either upon complaint or upon its own motion, shall suspend an existing Organization Standard, if it determines the standard to be unjust, unreasonable, unduly discriminatory or preferential or not in the public interest.

“(C) An existing or proposed Organization standard which is disapproved or suspended in whole or in part by the Commission shall be remanded to the Electric Reliability Organization for further consideration.

“(D) The Commission, on its own motion or upon complaint, may direct the Electric Reliability Organization to develop an Organization Standard, including modification to an existing Organization Standard, addressing a specific matter by a date certain if the Commission considers a new or modified Organization Standard necessary or appropriate to further the purposes of this section. The Electric Reliability Organization shall file any new or modified Organization Standard in accordance with this subsection.

“(E) An Affiliated Regional Reliability Entity may propose a Variance or Entity Rule to the Electric Reliability Organization under subsection (i)(3). The Affiliated Regional Reliability Entity may request that the Electric Reliability Organization expedite consideration of the

proposal, and may file a notice of this request with the Commission, if expedited consideration is necessary to provide for Bulk-Power System reliability. If the Electric Reliability Organization fails to adopt the Variance or Entity Rule, either in whole or in part, the Affiliated Regional Reliability Entity may request that the Commission review such action. If the Commission determines, after its review of such a request, that the action of the Electric Reliability Organization did not conform to the applicable standards and procedures approved by the Commission, or if the Commission determines that the Variance or Entity Rule is just, reasonable, not unduly discriminatory or preferential, and in the public interest, and that the Electric Reliability Organization has unreasonably rejected the proposed Variance or Entity Rule, then the Commission may remand the proposed Variance or Entity Rule for further consideration by the Electric Reliability Organization or may direct the Electric Reliability Organization or the Affiliated Regional Reliability Entity to develop a Variance or Entity Rule consistent with that requested by the Affiliated Regional Reliability Entity. Such a Variance or Entity Rule proposed by an Affiliated Regional Reliability Entity shall be submitted to the Electric Reliability Organization for review and filing with the Commission in accordance with the procedures specified in this subsection.

“(F) Notwithstanding any other provision of this subsection, a proposed Organization Standard or amendment shall take effect according to its terms if the Electric Reliability Organization determines that an emergency exists requiring that the proposed Organization Standard or amendment take effect without notice or comment. The Electric Reliability Organization shall notify the Commission immediately following this determination and shall file the emergency Organization Standard or amendment with the Commission not later than five days following the determination and shall include in the filing an explanation of the need for the emergency standard. Subsequently, the Commission shall provide notice of the emergency Organization Standard or amendment for comment, and shall follow the procedures set out in paragraphs (2) and (3) for review of a new or modified Organization Standard. An emergency

Organization Standard that has gone into effect shall remain in effect unless and until suspended or disapproved by the Commission. If the Commission determines at any time that the emergency Organization Standard or amendment is not necessary, the Commission may suspend the emergency Organization Standard or amendment.

“(4) All Users of the Bulk- Power System shall comply with any Organization Standard that takes effect under this section.

“(g) Coordination with Canada and Mexico.--The Electric Reliability Organization shall take all appropriate steps to gain recognition in Canada and Mexico. Subject to the President’s authority with respect to foreign policy, tThe United States shall use its best efforts to enter into international agreements with the appropriate governments of Canada and Mexico to provide for effective compliance with Organization Standards and to provide for the effectiveness of the Electric Reliability Organization in carrying out its mission and responsibilities. All actions taken by the Electric Reliability Organization, any Affiliated Regional Reliability Entity, and the Commission shall be consistent with the provisions of such an international agreements.

“(h) Changes in Procedures, Governance, or Funding.--(1) The Electric Reliability Organization shall file with the Commission any proposed change in its procedures, governance, or funding, or any changes in the Affiliated Regional Reliability Entity’s procedures, governance or funding relating to delegated functions, and shall include with the filing an explanation of the basis and purpose for the change.

“(2) A proposed procedural change may take effect 90 days after filing with the Commission if the change constitutes a statement of policy, practice, or interpretation with respect to the meaning or enforcement of an existing procedure. Any other proposed procedural change takes effect only upon a finding by the Commission, after notice and opportunity for comments, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (e)(4).

“(3) A change in governance or funding does not take effect unless the Commission finds

that the change is just, reasonable, not unduly discriminatory or preferential, and is in the public interest, and satisfies the requirements of subsection (e)(4).

“(4)(A) The Commission, either upon complaint or upon its own motion, may suspend a procedure or governance or funding provision if it determines the procedure or provision does not meet the requirements of subsection (e)(4) or is unjust, unreasonable, unduly discriminatory or preferential, or otherwise not in the public interest.

“(B) The Commission, upon complaint or upon its own motion, may require the Electric Reliability Organization to amend the procedures, governance or funding if the Commission determines that the amendment is necessary to meet the requirements of this section. The Electric Reliability Organization shall file the amendment in accordance with paragraph (1) of this subsection.

“(i) Delegations of Authority. -- (1) The Electric Reliability Organization shall, upon request by an entity, enter into an agreement with the entity for the delegation of authority to implement and enforce compliance with Organization Standards approved by the Commission in a specified geographic area if the Organization finds that the entity requesting the delegation satisfies the requirements of subsection (e)(4)(A), (B), (C), (D), (F), and (K), and if the delegation promotes the effective and efficient implementation and administration of Bulk-Power System reliability. The Electric Reliability Organization may enter into an agreement to delegate to the entity any other authority, except that the Electric Reliability Organization shall reserve the right to set and approve standards for Bulk-Power System reliability.

“(2) The Electric Reliability Organization shall file with the Commission any agreement entered into under this subsection and any information the Commission requires with respect to the Affiliated Regional Reliability Entity to which authority is to be delegated. The Commission shall approve the agreement, following public notice and an opportunity for comment, if it finds that the agreement meets the requirements of paragraph (1), and is just, reasonable, not unduly discriminatory or preferential, and is in the public interest. A proposed delegation agreement

with an Affiliated Regional Reliability Entity organized on an Interconnection-wide basis shall be rebuttably presumed by the Commission to promote the effective and efficient implementation and administration of Bulk-Power System reliability. No delegation by the Electric Reliability Organization shall be valid unless approved by the Commission.

“(3)(A) A delegation agreement entered into under this subsection shall specify the procedures for an Affiliated Regional Reliability Entity to propose Entity Rules or Variances for review by the Electric Reliability Organization.

“(B) With respect to any such proposal that would apply on an Interconnection-wide basis, the Electric Reliability Organization shall presume the proposal valid if made by an Interconnection-wide Affiliated Regional Reliability Entity unless the Electric Reliability Organization makes a written finding that the proposal--

“(i) was not developed in a fair and open process that provided an opportunity for all interested parties to participate;

“(ii) has a significant adverse impact on reliability or commerce in other Interconnections;

“(iii) fails to provide a level of reliability of the Bulk-Power System within the Interconnection such that it would constitute a serious and substantial threat to public health, safety, welfare, or national security; or

“(iv) creates a serious and substantial burden on competitive markets within the Interconnection that is not necessary for reliability.

“(C) With respect to a proposal that would apply only to part of an Interconnection, the Electric Reliability Organization shall find the proposal valid if the Affiliated Regional Reliability Entity or Entities making the proposal demonstrate that it--

“(i) was developed in a fair and open process that provided an opportunity for all interested parties to participate;

“(ii) would not have an adverse impact on commerce that is not necessary for

reliability;

“(iii) provides a level of Bulk-Power System reliability adequate to protect public health, safety, welfare, and national security, and would not have a significant adverse impact on reliability; and

“(iv) in the case of a Variance, is based on legitimate differences between regions or between subregions within the Affiliated Regional Reliability Entity’s geographic area.

“(D) The Electric Reliability Organization shall approve or disapprove the proposal within 120 days, or the proposal is deemed approved. Following approval of a proposal under this paragraph, the Electric Reliability Organization shall seek Commission approval pursuant to subsection (f)(3). Affiliated Regional Reliability Entities may not make requests for approval directly to the Commission except pursuant to subsection (f)(3)(F).

“(4) If an Affiliated Regional Reliability Entity requests, consistent with paragraph (1) of this subsection, that the Electric Reliability Organization delegate authority to it, but is unable within 180 days to reach agreement with the Electric Reliability Organization with respect to the requested delegation, the entity may seek relief from the Commission. If, following notice and opportunity for comment, the Commission determines that the delegation to the entity would meet the requirements of paragraph (1); that the delegation would be just, reasonable, not unduly discriminatory or preferential, and in the public interest; and that the Electric Reliability Organization has unreasonably withheld the delegation, the Commission may, by order, direct the Electric Reliability Organization to make the delegation.

“(5) (A) The Commission may, upon its own motion or upon complaint, and with notice to the appropriate Affiliated Regional Reliability Entity or Entities, direct the Electric Reliability Organization to propose a modification to an agreement entered into under this subsection if the Commission determines that:

“(i) the Affiliated Regional Reliability Entity no longer has the capacity to carry out effectively or efficiently its implementation or enforcement responsibilities under that

agreement, has failed to meet its obligations under that agreement, or has violated any provision of this section,

“(ii) the rules, practices, or procedures of the Affiliated Regional Reliability Entity no longer provide for fair and impartial discharge of its implementation or enforcement responsibilities under the agreement,

“(iii) the geographic boundary of a transmission entity approved by the Commission is not wholly within the boundary of an Affiliated Regional Reliability Entity and such difference is inconsistent with the effective and efficient implementation and administration of Bulk-Power System reliability, or

“(iv) the agreement is inconsistent with another delegation agreement as a result of actions taken under paragraph (4) of this subsection.

“(B) Following an order of the Commission issued under paragraph (5)(A) of this subsection, the Commission may suspend the affected agreement if the Electric Reliability Organization or the Affiliated Regional Reliability Entity does not propose an appropriate and timely modification. If the agreement is suspended, the Electric Reliability Organization shall assume the previously delegated responsibilities. The Commission shall allow the Electric Reliability Organization and the Affiliated Regional Reliability Entity an opportunity to appeal the suspension.

“(j) Organization Membership.--Every System Operator shall be a member of the Electric Reliability Organization and shall be a member of any Affiliated Regional Reliability Entity operating under an agreement effective pursuant to subsection (i) applicable to the region in which the System Operator operates or is responsible for the operation of Bulk-Power System facilities.

“(k) Federal Power Systems and Nuclear Regulatory Commission. – Any actions taken under this section by the Commission, the Electric Reliability Organization, and any Affiliated Regional Reliability Entity shall be consistent with any statutory, contractual, or treaty

obligations of a Federal Power Marketing Administration, the Tennessee Valley Authority, the Bureau of Reclamation and the Corps of Engineers and any Nuclear Regulatory Commission requirements.

“(l) Injunctions and Disciplinary Action.--(1) Consistent with the range of actions approved by the Commission under subsection (e)(4)(H), the Electric Reliability Organization may impose a penalty; may limit activities, functions, or operations; or may take other disciplinary action the Electric Reliability Organization finds appropriate against a User of the Bulk-Power System if the Electric Reliability Organization, after notice and an opportunity for interested parties to be heard, issues a finding in writing that the User of the Bulk-Power System has violated an Organization Standard approved by the Commission. The Electric Reliability Organization shall immediately notify the Commission of any disciplinary action imposed with respect to an act or failure to act of a User of the Bulk-Power System that affected or threatened to affect Bulk-Power System facilities located in the United States, and the sanctioned party shall have the right to seek modification or rescission by the Commission of such disciplinary action. If the Organization finds it necessary to prevent a serious threat to reliability, the Organization may seek injunctive relief in a Federal Court in the district in which the affected facilities are located.

“(2) A disciplinary action taken under paragraph (1) may take effect not earlier than the 30th day after the Electric Reliability Organization files with the Commission its written finding and record of proceedings before the Electric Reliability Organization and the Commission posts the Organization’s written finding, unless the Commission, on its own motion or upon application by the User of the Bulk-Power System which is the subject of the action, suspends the action. The action shall remain in effect or remain suspended unless and until the Commission, after notice and opportunity for hearing, affirms, sets aside, modifies, or reinstates the action, but the Commission shall conduct such a hearing under procedures established to ensure expedited consideration of the action taken.

“(3) The Commission, on its own motion, may order compliance with an Organization

Standard and may impose a penalty; may limit activities, functions, or operations; or may take such other disciplinary action as the Commission finds appropriate, against a User of the Bulk-Power System with respect to actions affecting or threatening to affect Bulk-Power System facilities located in the United States if the Commission finds, after notice and opportunity for a hearing, that the User of the Bulk-Power System has violated or threatens to violate an Organization Standard.

“(4) The Commission may take such action as is necessary against the Electric Reliability Organization or an Affiliated Regional Reliability Entity to assure compliance with an Organization Standard, or any Commission order affecting the Electric Reliability Organization or an Affiliated Regional Reliability Entity.

“(m) Reliability Reports.--The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the interconnected Bulk-Power System in North America and shall report annually to the Secretary of Energy and the Commission its findings and recommendations for monitoring or improving system reliability and adequacy.

“(n) Assessment and Recovery of Certain Costs.-- The reasonable costs of the Electric Reliability Organization, and the reasonable costs of each Affiliated Regional Reliability Entity that are related to implementation and enforcement of Organization Standards or other requirements contained in a delegation agreement approved under subsection (i), shall be assessed by the Electric Reliability Organization and each Affiliated Regional Reliability Entity, respectively, taking into account the relationship of costs to each region and based on an allocation that reflects an equitable sharing of the costs among all end-users. The Commission shall provide by rule for the review of such costs and allocations, pursuant to the standards in this subsection and subsection (e)(4)(F).

“(o) Rule of Reason Standard. -- In any action under the antitrust laws, the conduct of the Electric Reliability Organization, of an Affiliated Regional Reliability Entity operating under an agreement in effect under subsection (i), or of a member of the Electric Reliability Organization

or an Affiliated Regional Reliability Entity, to the extent such conduct is undertaken to develop or implement an Organization Standard which is approved by the Commission under subsection (f), shall not be deemed illegal per se. Such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition. For purposes of this section, "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition".

(b) Conforming Amendments.--(1) Section 316 of the FPA is amended by striking "or 214" each place it appears and inserting "214, or 218".

(2) Section 316A of the FPA is amended by striking "section 211, 212, 213, or 214" each time it appears and inserting "Part II of this Act".

~~SEC. 602. APPLICATION OF ANTITRUST LAWS.~~

~~Notwithstanding any other law, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:~~

~~(1) activities undertaken by the Electric Reliability Organization under section 218 of the FPA or Affiliated Regional Reliability Entity operating under an agreement in effect under section 218(h) of the FPA, and~~

~~(2) activities of a member of the Electric Reliability Organization or Affiliated Regional Reliability Entity in pursuit of organization objectives under section 218 of the FPA undertaken in good faith under the rules of the organization.~~

~~SEC. 6023. ELECTRICITY OUTAGE INVESTIGATION.~~

Title II of the Department of Energy Organization Act is amended by adding the following new section after section 212:

~~SEC. 213. OFFICE OF ELECTRICITY OUTAGE INVESTIGATION.~~

"(a) The Secretary shall establish within the Department an Office of Electricity Outage Investigation. The Office shall be headed by a Director appointed by the Secretary.

“(b) At the request of the Secretary, the Director shall—

“(1) investigate a major bulk-power system failure in the United States to determine its causes,

“(2) report to the Secretary the results of the investigation, and

“(3) recommend to the Secretary actions to minimize the possibility of a future bulk-power system failure.

“(c) Upon receipt of recommendations from the Director, the Secretary may recommend to the Commission new reliability standards or modifications to existing standards. The Secretary shall inform Congress of such a recommendation.

“(d) There are authorized to be appropriated such sums as may be necessary to implement this section.”.

SEC. 6034. ADDITIONAL TRANSMISSION CAPACITY.

Section 209 of PURPA is amended by adding a new subsection after subsection (c):

“(d) Consideration of Additional Transmission Capacity.--The Secretary of Energy may call and chair a meeting of representatives of States in a region that may need additional transmission capacity in order to discuss provision of additional capacity and related concerns.”.

TITLE VII -- ENVIRONMENTAL PROTECTION

SEC. 701. NITROGEN OXIDES CAP AND TRADE PROGRAM.

(a) Purpose.--The purpose of this section is to facilitate the implementation of a regional strategy for reducing ambient concentrations of ozone through regional reductions in emissions of NO_x.

(b) Definitions.--For purposes of this section--

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency,

(2) the term "NO_x" means oxides of nitrogen,

(3) the term "NO_x allowance" means an authorization to emit a specified amount

of NOx into the atmosphere, and

(4) the term "NOx allowance cap and trade program" means a program under which, in accordance with regulations issued by the Administrator, the Administrator establishes the maximum number of NOx allowances that may be allocated for specified control periods, allocates or authorizes a State to allocate NOx allowances, allows the transfer of NOx allowances for use in States subject to such a program, requires monitoring and reporting of NOx emissions that meet the requirements of section 412 of the Clean Air Act, and prohibits, and requires penalties and offsets for, any emissions of NOx in excess of the number of NOx allowances held.

(c) Program Implementation.--(1) If the Administrator determines under section 110(a)(2)(D) of the Clean Air Act that any source or other type of emissions activity in a State emits NOx in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any national ambient air quality standard for ozone, the Administrator shall establish by regulation, within 12 months of the determination for primary standards and as expeditiously as practicable for secondary standards, and shall administer a NOx allowance cap and trade program in all States in which such a source or other type of emissions activity is located.

(2) Any NOx allowance cap and trade program shall contribute to providing for emissions reductions that mitigate adequately the contribution or interference and shall be taken into account by the Administrator in determining compliance with section 110(a)(2)(D) of the Clean Air Act.

(3) For purposes of sections 113, 114, 304, and 307 of the Clean Air Act, regulations promulgated under this section shall be treated as regulations promulgated under title IV of the Clean Air Act (entitled Acid Deposition Control). A requirement of regulations promulgated under this section is considered an "emission standard" or "emission limitation" within the meaning of section 302 of the Clean Air Act and an "emission standard or limitation under this

Act" within the meaning of section 304 of the Clean Air Act.

TITLE VIII – AMENDMENTS TO INTERNAL REVENUE CODE

SEC. 801. TREATMENT OF BONDS ISSUED TO FINANCE ELECTRIC OUTPUT FACILITIES.

(a) IN GENERAL.—Section 141 of the Internal Revenue Code of 1986 (relating to private activity bond; qualified bond) is amended by redesignating subsection (e) as subsection (f) and inserting after subsection (d) the following new subsection:

“(e) BONDS FOR ELECTRIC OUTPUT FACILITIES.—

“(1) BONDS ISSUED BEFORE ENACTMENT OF COMPREHENSIVE ELECTRICITY COMPETITION ACT.—

“(A) IN GENERAL.—The determination of whether any pre-effective date electric output facility bond is a private activity bond (or an industrial development bond under the Internal Revenue Code of 1954) shall be made without regard to any permissible competitive actions taken by the issuer.

“(B) PRE-EFFECTIVE DATE ELECTRIC OUTPUT FACILITY BOND.—For purposes of subparagraph (A), the term ‘pre-effective date electric output facility bond’ means any bond issued as part of an issue if—

“(i) such bond was issued before the date of the enactment of the Comprehensive Electricity Competition Act,

“(ii) any portion of the proceeds of such issue was used with respect to an electric output facility, and

“(iii) the bond was not, as of such date of enactment, a private activity bond (or an industrial development bond under the Internal Revenue Code of 1954).

“(C) PERMISSIBLE COMPETITIVE ACTIONS.—For purposes of subparagraph (A), the term ‘permissible competitive actions’ means any action

taken by the issuer on or after the date of the enactment of the Comprehensive Electricity Competition Act regarding–

“(i) transmission property owned by the issuer if the issuer is subject to an order of the Federal Energy Regulatory Commission requiring nondiscriminatory, open access to transmission facilities in a manner consistent with rules promulgated by the Commission under sections 205 and 206 of the Federal Power Act (as in effect on the date of the enactment of the Comprehensive Electricity Competition Act), or

“(ii) generation property or distribution property owned by the issuer if the issuer–

“(I) implements retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978, or

“(II) enters into a contract for the sale of electricity or use of its distribution property which will not become effective prior to the date that the issuer implements retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978.

“(2) BONDS ISSUED ON OR AFTER ENACTMENT OF COMPREHENSIVE ELECTRICITY COMPETITION ACT.--

“(A) IN GENERAL.--For purposes of this title, the term ‘private activity bond’ includes any bond issued as part of an issue any of the proceeds of which are to be used (directly or indirectly) for electric output facilities other than distribution property.

“(B) DISTRIBUTION PROPERTY.--For purposes of subparagraph (A), the term ‘distribution property’ means any output facility, including functionally related and subordinate property, that operates at 69 kilovolts or less.”.

(b) EFFECTIVE DATE.–

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by this section shall apply to obligations issued on or after the date of the enactment of this Act.

(2) TREATMENT OF PRE-EFFECTIVE DATE BONDS.—Section 141(e)(1) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date of enactment of this Act.

(3) REFUNDING BONDS.—

(A) IN GENERAL.—For purposes of this subsection and the amendment made by this section, section 141(e)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to any qualified refunding bond.

(B) QUALIFIED REFUNDING BOND.—For purposes of subparagraph (A), the term “qualified refunding bond” means any bond (or a bond that is part of a series of refundings) issued to refund a pre-effective date electric output facility bond if—

(i) the weighted average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of such Code),

(ii) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(iii) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of issuance of the refunding bond.

SEC. 802. NUCLEAR DECOMMISSIONING COSTS.

(a) IN GENERAL.—Subsection (b) of section 468A of the Internal Revenue Code of 1986

is amended to read as follows:

“(b) LIMITATION ON AMOUNT PAID INTO FUND.–The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.”.

(b) EFFECTIVE DATE.–The amendment made by this section shall apply to taxable years beginning after the date of enactment of this Act.

[SEC. 803. ACCELERATED DEPRECIATION SCHEDULE FOR DISTRIBUTED POWER. - to be provided at a later time.]

[SEC. 804. ENERGY CREDIT FOR COMBINED HEAT AND POWER FACILITIES. – to be provided at a later time.]

TITLE IX--FEDERAL POWER SYSTEMS

Subtitle A–Tennessee Valley Authority

[Wholesale sales and market power authority – reserved]

SEC. 901. DEFINITION.

Section 3 of the Federal Power Act is amended by adding after paragraph (25) the following new paragraph:

“(26) ‘TVA’ means the Tennessee Valley Authority, an agency and instrumentality of the United States created by the Tennessee Valley Authority Act of 1933.”.

~~SEC. 902. APPLICATION OF FEDERAL POWER ACT SALES OF ELECTRIC ENERGY AT WHOLESALE.~~

Part II of the Federal Power Act is amended by adding the following new section after section 201:

“APPLICATION TO FEDERAL POWER SYSTEMS

“SEC. 201A. (a) After September 30, 2001, sections 202(h) and (i), 203 (with respect to

dispositions of transmission facilities), 205, 206, 208, and 210 through 213 of this Part and sections 301 through 304, 306, 307 (except the last sentence of paragraph (c)), 308, 309, 313, and 317 of Part III apply to the Tennessee Valley Authority's transmission facilities and transmission of electric energy and the provision of necessary associated services over the TVA Transmission System Tennessee Valley Authority. Unless otherwise provided in this Act, beginning January 1, 2003, this Part and Part III of this Act, except for sections 204, 207, 209, 214, and 305, apply to the transmission of electric energy over the TVA transmission system, and the Commission has jurisdiction under Parts II and III over the rates, terms, and conditions of transmission. Those provisions, and the rules, regulations and policies of the Commission under those provisions, apply to transmission to the same extent and in the same manner as those provisions apply to transmission by a public utility subject to the jurisdiction of the Commission under Part II, except that any determination made by the Commission under those provisions as to whether an action or matter is just, reasonable, or not unduly discriminatory or preferential shall be subject to any other laws applicable to TVA, including the requirement that TVA recover its costs."

SEC. 903. ANTITRUST COVERAGE.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) is amended by adding the following after section 21:

"SEC. 21a. ANTITRUST LAWS.

"(a) Effective January 1, 2003, ~~t~~The Tennessee Valley Authority is subject to the antitrust laws of the United States with respect to the operation of its electric power system to the same extent that an electric utility as defined in section 3 of the Federal Power Act is subject to the antitrust laws. For purposes of this subsection, 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes the Act of June 19, 1936 (15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods of competition.

“(b) A person injured by violation of the antitrust laws by TVA may bring a civil action against TVA in Federal district court for injunctive relief, but neither TVA nor its officers, attorneys, employees, agents or representatives shall be liable for civil damages or attorney’s fees.”.

SEC. 904. TVA POWER SALES.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) is amended by adding the following after section 15d:

“SEC.15e. SALE OF ELECTRIC POWER AT WHOLESALE AND RETAIL.

“(a) For the purposes of this section:

“(1) ‘distributor’ means an electric power system that—

“(A) is owned by a cooperative organization or by a municipality or other public body (or any successor in interest), and

“(B) on the date of enactment of this section, purchased electric power at wholesale from the Tennessee Valley Authority under an all-requirements power contract; and

“(2) ‘distributor service area’ means the geographic area within which a distributor is authorized on the date of enactment to provides electric power at retail to the ultimate consumer.

“(b)(1) Effective January 1, 2003, the Tennessee Valley Authority may sell electric power at wholesale to any person.

“(2) Beginning January 1, 2003, the Tennessee Valley Authority shall not sell power at retail, except it may sell power to a retail customer who consumes that power within a distributor service area, if—

“(A) the customer (or predecessor in interest) purchased electric power directly from the Tennessee Valley Authority as a retail customer on the date of enactment of this Act, or

“(B) the distributor’s firm power purchases from the Tennessee Valley Authority are 50 percent or less of its total retail sales, or

“(C) the distributor agrees that the Tennessee Valley Authority can sell power to the customer.

Nothing in this paragraph shall prohibit TVA from continuing to serve a retail customer which TVA was serving on the date of enactment which is not located within a distributor service area.

“(3) Notwithstanding any other provision of law, the rates, terms, and conditions of retail electric service, and rates for the use of distribution lines are not subject to regulation by the Tennessee Valley Authority.”.

SEC. 905. RENEGOTIATION OF LONG-TERM POWER CONTRACTS.

Section 15e of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) as added by section 904 of this Act is amended by adding the following after subsection (b):

“(c)(1) Within one year following the date of enactment of this section, the Tennessee Valley Authority and the distributors shall renegotiate their existing long-term contracts with respect to—

“(A) the remaining term;

“(B) the length of the termination notice;

“(C) the amount of power a distributor may purchase from a supplier other than the Tennessee Valley Authority beginning January 1, 2003, and access to the Tennessee Valley Authority transmission system for that power; and

“(D) stranded cost recovery.

“(2) If the parties are unable to reach agreement within the one-year period set forth in paragraph (1), they shall submit the issues in dispute to the Federal Energy Regulatory Commission for final resolution pursuant to 206(f)(1) of the Federal Power Act. ~~In resolving an issue, the Federal Energy Regulatory Commission shall choose the alternative that is most consistent with the public interest.”.~~

SEC. 906. STRANDED COST RECOVERY.

(a) Section 206 of the Federal Power Act is amended by adding the following new subsection after subsection (e) as added by section 301(b) of this Act:

“(f)(1) Within one year of the date of enactment of this Act, Prior to January 1, 2003, the Commission shall promulgate regulations with respect to TVA’s recovery of stranded costs (as defined by the Commission) imposed on TVA resulting from wholesale or retail competition by ~~a particular power or transmission customer~~. These regulations shall provide that--

“(A) a customer that did not impose stranded costs upon TVA is not obligated to pay those costs on behalf of other customers;

“(B) no stranded investment recovery charge shall have the effect of unfairly shifting costs among distributors or TVA retail customers;

~~“(C) stranded cost revenues shall be used to pay down TVA’s debt to the extent determined by the TVA Board to be consistent with the proper financial management of the TVA power system, provided that TVA may not use amounts recovered to pay for additions to TVA’s generating capacity;~~

“(C~~D~~) for a stranded cost recovery charge TVA assesses on a retail or wholesale customer, TVA shall unbundle the charge from other retail or wholesale rates applicable to that customer and state the charge separately on the customer’s bill; and

“(D~~E~~) TVA shall not impose a stranded cost recovery charge after September 30, 2007, unless the person against whom the charge is assessed agrees otherwise.

“(2) After notice and opportunity for comment by distributors, TVA’s retail customers, and State authorities, TVA shall submit a stranded cost recovery plan to the Commission for review and approval.

“(3) The Commission shall review the recovery plan and shall approve recovery of the stranded costs and the cost recovery mechanism, which may be the imposition of a non-bypassable transition charge, that the Commission determines to be just and reasonable and

not unduly discriminatory or preferential and meets the requirements of regulations issued under paragraph (1). TVA may recover only the stranded costs approved by the Commission and may use only the mechanism approved by the Commission.

(b) Section 15e of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) as added by section 904 of this Act is amended by adding the following after subsection (c):

“(d) amounts recovered by TVA as stranded cost recovery charges under section 206(f) of the Federal Power Act shall be used to pay down TVA’s debt to the extent determined by the TVA Board to be consistent with the proper financial management of the TVA power system, provided that TVA may not use amounts recovered to pay for additions to TVA’s generating capacity.”

(c) Section 9106 of Title 31, United States Code, is amended by adding the following new subsection after subsection (b):

“(c4) For fiscal years 2003 through 2007, as part of the annual management report submitted by TVA to Congress under ~~this section 9106(a) of Title 31, United States Code, for each such fiscal year,~~ TVA shall also specifically report:

(A) the status of TVA’s long-range financial plans and the progress toward its goal of competitively priced power, and a general discussion of TVA’s prospects on meeting the objectives of the TVA Ten Year Business Outlook issued on July 22, 1997;

(B) any changes in ~~fundamental~~ assumptions since the previous report that may have a material ~~impact effect~~ on TVA’s long-range financial plans ~~projected performance under the TVA Ten Year Business Outlook;~~

(C) the source of funds used for any capacity additions;

(D) the use or other disposition of amounts recovered by TVA under this section;

(E) the amount by which TVA’s publicly-held debt was reduced; and

(F) the projected amount by which TVA’s publicly-held debt will be reduced over the period ending September 30, 2007.”.

SEC. 907. CONFORMING AMENDMENTS.

Effective January 1, 2003 —

(1) section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4(a)), which limit the sales or delivery of electric power by TVA or distributors outside a certain geographic area, is repealed;

(2) subsections (f) and (j) of section 212 of the Federal Power Act (16 U.S.C. 824k(f) and (j)), are repealed; and

(3) the third proviso of section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831i) and the second and third provisos of section 12 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831k) do not apply to a wholesale sale of electric energy by the Tennessee Valley Authority.

Subtitle B. Bonneville Power Administration**SEC. 911. DEFINITIONS.**

Section 3 of the Federal Power Act is amended by adding the following new paragraphs after paragraph (26) added by section 901 of this Act:

“(27) ‘Bonneville Administrator’ means the Administrator of the Bonneville Power Administration;

“(28) ‘Pacific Northwest’ has the meaning given that term in section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839a(14)).

“(29) ‘Bonneville Transmission System’ means transmission facilities owned or leased by the United States, acting through the Bonneville Administrator, and operated by the Bonneville Administrator or another entity under section 202(h) or (i) of this Act.”.

SEC. 912. APPLICATION OF FEDERAL POWER ACT.

Section 201A of the Federal Power Act as added by section 902 of this Act is amended by adding the following new subsection after subsection (a):

“(b) Bonneville Power Administration. -- After September 30, 2001, sections 202(h) and (i), 203 (with respect to dispositions of transmission facilities), 205, 206, 208, and 210 through 213 of this Part and sections 301 through 304, 306, 307 (except the last sentence of paragraph (c)), 308, 309, 313, and 317 of Part III apply to the ~~Bonneville Administrator’s~~ transmission facilities and transmission of electric energy and the provision of necessary associated services over the Bonneville Transmission System, provided that--

“(1) any determination made under those sections as to whether an action or matter is just, reasonable, not unduly discriminatory or preferential shall be subject to--

“(A) phasing in Commission-ordered changes in transmission rates or charges that would cause unreasonable cost shifts among users of the Bonneville Transmission System if implemented at once;

“(B) mitigating unreasonable adverse impacts on remote transmission customers in the Pacific Northwest that would otherwise result from Commission-ordered changes in the historic treatment of costs to acquire transmission to serve customers historically served by General Transfer Agreements entered into between the Bonneville Administrator and other transmission providers;

“(C) complying with requirements of other laws applicable to the Bonneville Administrator;

“(D) assuring the Bonneville Administrator’s transmission rates and charges are established sufficient to--

“(i) recover existing and future Federal investment in the Bonneville Transmission System over a reasonable number of years after first meeting all the Bonneville Administrator’s other transmission costs and expenses; and

“(ii) produce the revenues necessary to assure timely payment of

all transmission related costs and expenses, including revenues to establish reserves;

“(E) allowing the recovery through transmission rates and charges of costs relating to any generation or conservation resources financed by debt issued by a non-Federal party before October 1, 1998, and secured by an obligation of the Bonneville Administrator to make payments or net bill power and transmission service, under circumstances where the costs could not be recovered through power rates and charges, and then only to the extent that recovery would have been required under laws applicable to the Bonneville Administrator as of October 1, 1998;

“(F) rules established by the Commission to--

“(i) assure transmission access is provided over the Bonneville Transmission System for hydroelectric power that must be generated and transmitted at a particular time in order to reduce spill and levels of dissolved nitrogen gas harmful to fish, and

“(ii) govern compensation to adversely affected transmission users when capacity is made available for transmission of hydroelectric power in those circumstances; and

“(G) subsection 206(g) of this Act; and

“(2) these sections shall not apply to--

“(A) the Bonneville Administrator’s activities other than transmission of electric energy and provision of necessary associated services over the facilities of the Bonneville Transmission System; or

“(B) a contract in effect on the date of enactment of this Section, except for rates which are adjustable by the Administrator under the contract; a Treaty of the United States; or a contract concerning the physical delivery of energy and

capacity entered into by entities designated pursuant to such a Treaty.”.

SEC. 9134. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE
NON-RECOVERABLE COSTS.

Section 206 of the Federal Power Act is amended by adding the following after subsection (f) as added by section 906 of this Act:

“(g)(1) Subject to the requirements of paragraph (2), the Bonneville Administrator shall propose and the Commission shall establish a mechanism that enables the Administrator to place a surcharge on rates or charges for transmission services over the Bonneville Transmission System when necessary in order to recover power costs unable to be recovered through power revenues in time to meet the cost recovery requirements of section 7(a) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(a)(1)).

“(2) The transmission surcharge mechanism set forth in paragraph (1) shall--

“(A) recover not more than \$600 million in total and no more than \$100 million in any fiscal year;

“(B) be available only between October 1, 2001, and October 1, 2016;

“(C) be implemented by the Bonneville Administrator only when the Bonneville Administrator projects that available financial reserves attributable to the power function will be less than \$150 million; and

“(D) to the fullest extent possible ~~extent practicable~~, be designed and established to recover the costs from transmission users in a manner that –

“(i) is as competitively neutral as possible,

“(ii) does not apply to use of the Bonneville Transmission System for power sales from a generating plant outside the Pacific Northwest to the same or another area outside the Pacific Northwest, and

“(iii) minimizes bypass of the Bonneville Transmission System by transmission users seeking to avoid the surcharge.

“(3) The Bonneville Administrator shall have sole discretion to determine whether to implement the cost recovery mechanism established by the Commission under paragraph (1). Before imposing the surcharge, the Bonneville Administrator shall conduct a public process in the Pacific Northwest to receive comment on implementation of the surcharge. As a part of that public process, the Bonneville Administrator shall make available information concerning the need for and amount of the surcharge. If the Bonneville Administrator decides to implement a surcharge, it shall take effect on the date designated by the Bonneville Administrator following submission of the proposed surcharge to the Commission for approval.

“(4)(A) Within 150 days after the Administrator’s decision to implement the surcharge, the Commission shall approve, reject, or modify the surcharge and communicate its decision to the Bonneville Administrator. In conducting its review, the Commission shall not consider the appropriateness of the cost recovery mechanism established by the Commission under paragraph (1).

“(B) If the Commission rejects or modifies the surcharge, the Commission may order the Bonneville Administrator to refund, with interest, the portion of the surcharge the Commission found not justified. If the Commission orders modification of the Bonneville Administrator’s surcharge, such modified charge shall be effective on the date and for the time period specified by the Commission.

“(5) Any payment of power costs through application of transmission revenues collected by surcharge or otherwise shall be treated as a loan to the Bonneville Administrator's power function. The Bonneville Administrator shall repay the loan as soon as possible from power function revenues once the Bonneville Administrator is able to meet other power cost recovery and Treasury repayment obligations on an annual basis using power revenues, to the extent practicable, and refund such revenues to all transmission customers charged the surcharge. The borrowed revenues shall bear interest at an annual rate equal to the weighted average rate of interest for long-term Treasury bonds outstanding ~~pursuant to section 13 of the Transmission~~

~~System Act of 1974 (16 U.S.C. 838k) during the period of the loan.”~~

SEC. ~~9145.~~ COMPLAINTS.

Section 306 of the Federal Power Act is amended by inserting “any agency or instrumentality of the United States ~~Federal Power Marketing Administration,~~” after “person,” in the first sentence.

SEC. ~~9156.~~ REVIEW OF COMMISSION ORDERS.

Section 313 of the Federal Power Act is amended by inserting “any agency or instrumentality of the United States,” after “person,” in the first sentence in subsection (a) ~~striking the first sentence in subsection (a) and inserting: “Any party to a proceeding under this Act aggrieved by an order issued by the Commission in the proceeding may apply for a rehearing within 30 days after the issuance of the order.”; and by inserting the following after the first sentence in subsection (b): “With respect to a Federal Power Marketing Administration, the~~ petition for review appeal may be at the sole discretion of the Administrator.”.

SEC. ~~9167.~~ CONFORMING AMENDMENTS TO EXISTING LAW.

(a) Section 201(f) of the Federal Power Act is amended by striking “No” and inserting “(1) Except as provided in sections 201A and 202(h)-(i), no”.

(b) Section 212(i) of the Federal Power Act (16 U.S.C. 824(i)) is repealed.

(c) Section 6 of the Federal Columbia River Transmission System Act (16 U.S.C. 838d) is repealed.

(d) Section 9 of the Federal Columbia River Transmission System Act (16 U.S.C. 838g) is amended to read as follows:

“RATES AND CHARGES

“Sec. 9. Schedules of rates and charges for the sale, including dispositions to a Federal agency, of all electric power made available to the Administrator pursuant to section 8 of this Act or otherwise acquired, ~~and for the transmission of non-Federal electric power over the Federal transmission system, shall become effective upon confirmation and approval thereof by the~~

~~Secretary of Energy. Such rate schedules may be modified from time to time by the Secretary of Energy, acting by and through the Administrator, subject to confirmation and approval by the Secretary of Energy, and shall be fixed and established—~~

“(1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles;

“(2) having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing ~~and transmitting~~ such electric power, including the amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 11(b)(9) of this Act; and

“(3) at levels to produce such additional power revenues as may be required, in the aggregate with all other power revenues of the Administrator, to pay when due the principal of, premiums, discounts, and expenses in connection with the issuance of and interest on all bonds issued and outstanding pursuant to this Act for other than the construction, acquisition, and replacement of the Federal transmission system, and amounts required to establish and maintain reserve and other funds and accounts established in connection therewith.

Electric power rates under this section shall be established by the Administrator in accordance with section 7 of the Pacific Northwest Electric Power Planning and Conservation Act.”.

(e) Section 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838h) is repealed.

(f) Section 6 of the Pacific Northwest Regional Preference Act (16 U.S.C. 837e) is amended by striking the "Federal energy or" in the first sentence and by striking the second sentence.

(g) Section 7(a)(1) of the Pacific Northwest Electric Power Planning and Conservation

Act (16 U.S.C. 839e(a)(1)) is amended to read as follows:

“(a)(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric ~~energy and capacity~~ power and shall periodically review and, if necessary, propose revisions to rates for the transmission of ~~non-Federal power~~ electric power. ~~Such rates~~ Rates for the sale and disposition of electric power shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition and conservation ~~and transmission~~ of electric power, including the amortization of the Federal investment allocable to electric power rates in the Federal Columbia River Power System (including irrigation electric-power-related costs required to be repaid out of electric power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Rates for the sale and disposition of electric power ~~Rates~~ shall be established in accordance with section 9 ~~and 10~~ of the Federal Columbia River Transmission System Act (16 U.S.C. 838g), section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), and this Act.”.

(h) Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(a)(2)) is amended by–

- (1) striking “Rates” and inserting “Power rates”;
- (2) inserting “and” after the comma in subparagraph (A);
- (3) striking “, and” and inserting a period at the end of subparagraph (B); and
- (4) striking subparagraph (C).

(i) Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839(i)) is amended by inserting “power” immediately after “establishing” in the first sentence.

(j) Section 9(d) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839f(d)) is amended by striking “transmission access,” and inserting “power” immediately before “services” in the second sentence.

(k) Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839f(i)(3)) is amended by inserting “power” immediately before “services” each time it appears, and by striking “transmission,” in the first sentence.

(l) Section 2(e) of the Bonneville Project Act (16 U.S.C. 832a(e)) is amended by striking the colon and all that follows and inserting a period.

Subtitle C—Western Area Power Administration and
Southwestern Area Power Administration

SEC. 921. DEFINITIONS.

Section 3 of the Federal Power Act is amended by adding the following new paragraphs after paragraph (29) as added by subsection 911:

“(30) ‘SWPA Administrator’ means the Administrator of the Southwestern Power Administration.

“(31) ‘SWPA Transmission System’ means transmission facilities owned or controlled by the United States and operated by the SWPA Administrator or an entity with authority over these facilities under section 202(h) or (i) of this Act.

“(32) ‘WAPA Administrator’ means the Administrator of the Western Area Power Administration.

“(33) ‘WAPA Transmission System’ means transmission facilities owned or controlled by the United States and operated by the WAPA Administrator or an entity with authority over these facilities under section 202(h) or (i) of this Act.”

SEC. 922. APPLICATION OF FEDERAL POWER ACT.

Section 201A of the Federal Power Act as added by section 902 of this Act is amended by adding the following new subsection after subsection (b):

“(c) Western Area Power Administration and Southwestern Power Administration.-- After September 30, 2001, sections 202(h) and (i), 203 (with respect to dispositions of transmission facilities), 205, 206, 208, and 210 through 213 of this Part and sections 301 through

304, 306, 307 (except the last sentence of paragraph (c)), 308, 309, 313, and 317 of Part III apply to the transmission facilities and transmission of electric energy over the SWPA and WAPA Transmission Systems and the provision of necessary associated services over the SWPA and WAPA Transmission Systems, provided that--

“(1) any determination made under these Parts as to whether an action or matter is just, reasonable, not unduly discriminatory or preferential shall be subject to--

“(A) phasing in Commission-ordered changes in transmission rates or charges that would cause unreasonable cost shifts among users of the SWPA and WAPA Transmission Systems if implemented at once;

“(C) complying with requirements of other laws applicable to the SWPA and WAPA Administrators;

“(D) assuring the transmission rates and charges of SWPA and WAPA are established sufficient to--

“(i) recover existing and future Federal investment in the transmission system over a reasonable number of years after first meeting all other transmission costs and expenses; and

“(ii) produce the revenues necessary to assure timely payment of all transmission related costs and expenses, including revenues to establish reserves;

“(D) subsection 206(h) of this Act; and

“(E) permitting the WAPA Administrator to establish more than one rate for the transmission facilities of its regions or projects; and

“(2) these sections shall not apply to--

“(A) SWPA and WAPA’s activities other than transmission of electric energy and provision of necessary associated services over the facilities of their respective systems; or

“(B) a contract in effect on the date of enactment of this Act, except for rates which are adjustable by the Administrator under the contract.”.

SEC. 9234. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NON-RECOVERABLE COSTS.

Section 206 of the Federal Power Act is amended by adding the following after subsection (g) as added by section 914 of this Act:

“(h)(1) The Commission shall establish rules for Commission approval of a surcharge on rates or charges for transmission services over the SWPA and WAPA transmission systems, including a reasonable limitation on amounts to be recovered under the surcharge, in order to recover power costs unable to be recovered through power revenues in time to meet statutory or regulatory cost recovery requirements.

“(2) The Administrators of SWPA and WAPA shall have sole discretion to determine whether to implement the cost recovery mechanism established by the Commission under paragraph (1) for their respective transmission systems. Before imposing the surcharge, the Administrator shall conduct a public process to receive comment on implementation of the surcharge. As a part of that public process, the Administrator shall make available information concerning the need for and amount of the surcharge. If the Administrator decides to implement a surcharge, it shall take effect on the date designated by the Administrator following submission of the proposed surcharge to the Commission for approval.

“(3)(A) Within 150 days after the Administrator’s decision to implement the surcharge, the Commission shall approve, reject, or modify the surcharge and communicate its decision to the Administrator. In conducting its review, the Commission shall not consider the appropriateness of the cost recovery mechanism established by the Commission under paragraph (1).

“(B) If the Commission rejects or modifies the surcharge, the Commission may order the Administrator to refund, with interest, the portion of the surcharge the Commission found not

justified. If the Commission orders modification of the Administrator's surcharge, such modified charge shall be effective on the date and for the time period specified by the Commission.

“(5) Any payment of power costs through application of transmission revenues collected by surcharge or otherwise shall be treated as a loan to the Administrator's power function. The Administrator shall repay the loan as soon as possible from power function revenues once the Administrator is able to meet other power cost recovery and Treasury repayment obligations on an annual basis using power revenues, and, to the extent practicable, refund such revenues to all transmission customers charged the surcharge. The borrowed revenues shall bear interest at an annual rate equal to the weighted average rate of interest for long-term Treasury bonds outstanding during the period of the loan.”

SEC. 9245. CONFORMING AMENDMENTS.

(a) Section 302(a)(1) of the Department of Energy Organization Act of 1977 (42 U.S.C. 825s) is amended by –

(1) striking “There” and inserting in its place “Except for the authority addressed in paragraph (G) below, there”, and

(2) adding the following new subparagraph after subparagraph (F):

“(G) Authority for the approval, rejection, and modification of transmission rates for the Southwestern and Western Area Power Administrations is transferred to the Federal Energy Regulatory Commission.”.

(b) Section 221 of the Reclamation Reform Act of 1982 (43 U.S.C. 390uu) is amended by–

(1) striking “executed pursuant to Federal reclamation law”, and

(2) inserting “as defined in section 202 of this Act” after “contract”.

TITLE X -- OTHER PROVISIONS

Sec. 1001. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY.

Section 523 of title 11, United States Code (section 523 of the Bankruptcy Code of 1978),

is amended by adding the following new subsection after subsection (e):

"(f) Obligations to comply with, and claims resulting from compliance with, Nuclear Regulatory Commission regulations or orders governing the decontamination and decommissioning of nuclear power reactors licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)) shall be given priority and shall not be rejected, avoided, or discharged under title 11 of the United States Code or in any liquidation, reorganization, receivership, or other insolvency proceeding under State or Federal law."

SEC. 1002. ENERGY INFORMATION ADMINISTRATION STUDY OF IMPACTS OF COMPETITION IN ELECTRICITY MARKETS.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding after subsection (l) the following new subsection:

"(m)(1) The Administrator shall collect and publish information regarding the impact of wholesale and retail competition on the electric power industry. The Administrator shall prescribe forms for collecting this information. Information to be collected may include, but is not limited to --

"(A) the ownership and control of electric generation, transmission, distribution, and related facilities;

"(B) electricity consumption and demand;

"(C) the transmission, distribution, and delivery of electric services;

"(D) the price of competitive electric services;

"(E) the costs, revenues, and rates of regulated electric services;

"(F) the reliability of the electric generation and transmission system, including the availability of adequate generation and transmission capacity to meet load requirements, generation and transmission capacity additions and retirements, and fuel suppliers and stocks for electric generation;

"(G) electric energy efficiency programs and services and their impacts on energy

consumption;

"(H) the development and use of renewable electric energy resources; and

"(I) research, development and demonstration activities to improve the nation's electric system.

"(2) In carrying out the purposes of this subsection, the Administrator shall take into account reporting burdens and the protection of proprietary information as required by law."

SEC. 1003. ANTITRUST SAVINGS CLAUSE.

This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede the operation of the antitrust laws. For purposes of this section, "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods of competition.

SEC. 1004. ELIMINATION OF ANTITRUST REVIEW BY THE NUCLEAR REGULATORY COMMISSION.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding the following after subsection c.:

"d. Following the effective date of this subsection,~~s~~Subsection 105 c. shall~~does~~ not apply to any pending or future an application filed for a license to construct or operate a utilization ~~or production~~ facility under sections 103 or 104 b. ~~following the date of enactment of this subsection.~~ This Act shall~~does~~ not affect the Commission's authority to enforce antitrust conditions included in licenses issued under sections 103 or 104 b. before the date of enactment of this subsection."

SEC. 1005. ENVIRONMENTAL LAWS SAVINGS CLAUSE.

Nothing in this Act alters or affects environmental requirements imposed by Federal or State law, including, but not limited to, the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C. 791a et seq.); and the Endangered Species Act (16 U.S.C. 1531 et seq.).

SEC. 1006. SOUTHEAST ALASKA ELECTRICAL INTERTIE.

There is authorized to be appropriated to the Department of Energy up to a total sum of \$20,000,000 for the purpose of providing financial assistance to the State of Alaska for construction of an electric transmission line to connect the Swan Lake Hydroelectric Project with the Tyee Lake Hydroelectric Project.

SEC. 1007. GENERATING PLANT EFFICIENCY STUDY.

Part C of title VI of the Department of Energy Organization Act is amended by adding after section 662, the following new section:

“GENERATING PLANT EFFICIENCY STUDY

“SEC. 663. Within three years following the date of enactment of this section, the Secretary shall issue a report regarding the efficiency of new and existing electric generating facilities after wholesale and retail competition is in effect as compared with their efficiency before wholesale and retail competition is in effect.”.

COMPREHENSIVE ELECTRICITY COMPETITION PLAN

Benefits of the Proposal

The Comprehensive Electricity Competition Plan embodies the overall agenda of the Clinton Administration to expand the economy and improve the environment. A more competitive electricity industry will provide significant benefits to individual consumers and will be a boon to our economy. Our proposal will lower prices, clean the environment, encourage innovation and new services, increase the reliability of our nation's power supply grid, and provide support to rural communities and Indian tribes.

- **Provides \$20 Billion in Annual Savings to America's Families**

The Administration estimates that retail competition will save consumers at least \$20 billion a year. When factoring in both lower electric bills and the reduced cost of goods and services, the typical family of four could save \$232 per year.

- **Improves the Environment**

Restructuring will also produce significant environmental benefits through both market mechanisms and policies that promote investments in energy efficiency, renewable energy, distributed power and combined heat and power technologies. We estimate that our proposals, taken together, will reduce greenhouse gas emissions by 40 to 60 million metric tons in 2010.

Competitive forces will create a more efficient, leaner and cleaner industry. A generator that wrings as much energy as it can from every unit of fuel will be rewarded by the market. Today, a monopoly supplier generally recovers its costs regardless of whether it uses its resources efficiently. Competition also provides opportunities for consumers to vote with their wallets for green power and facilitates the marketing of energy efficiency services along with electricity.

Restructuring also makes possible the introduction of new policy mechanisms such as the renewable portfolio standard and public benefits funding which will guarantee substantial environmental benefits from competition notwithstanding market outcomes. Specific provisions will remove market barriers to the use of combined heat and power technologies, complementing the effects of competition itself in advancing technologies that reduce energy waste.

- **New Products and Services**

Restructuring will also spark innovation in the American economy, creating new industries, jobs, products and services just as telecommunications reform spawned cellular phones and other new technologies. For instance, restructuring will allow competing energy service companies to provide a variety of energy management services and technologies in addition to the traditional gas and electric service offered by utilities today. This will further strengthen our nation's position as the most vibrant and dynamic economy in the world.

- **Strengthens Reliable Service**

The electricity industry, through a tradition of voluntary self-regulation and cooperation, has performed admirably in maintaining reliability over the past thirty years. However, in the highly competitive market environment that is already evolving as a result of actions by the states, a different mix of incentives is at work that mitigates against reliance on a wholly voluntary system. Through Federal legislation, we will establish a framework that requires all participants in electric transactions on the grid to comply with mandatory reliability standards developed by a reliability organization operating under the oversight of the Federal Energy Regulatory Commission (FERC). Reliability will be further strengthened by our proposals to give FERC the authority to require utility participation in independent regional transmission organizations and to facilitate state formation of regional organizations for transmission planning.

- **Protects Consumers**

Under the traditional monopoly structure, consumers have no ability to choose suppliers, so there is generally no need for information comparing the price and environmental qualities of different electricity generators. In competitive markets, consumers need information in order to choose wisely among the many suppliers who will be offering them a diverse menu of energy products and services with differing pricing and billing options. To address this need, the Administration proposes that electricity suppliers be required to disclose information on price and terms and conditions of service in a standardized format. To further facilitate informed consumer choice, the Department will also establish an Electricity Shoppers Database that consumers could access in order to make adequate comparisons among various offers. Our proposed legislation will also provide federal protections against "slamming" and "cramming" abuses by unscrupulous suppliers and encourages aggregation to increase consumers' purchasing power..

Finally, our proposal benefits low-income consumers through the Public Benefits Fund which will provide matching funds to state-level programs for low-income energy assistance and other public purpose programs, and through a provision that asks states to consider mechanisms to provide low-income customers with access to electricity services comparable to those offered to other residential customers in the same state .

- **Benefits Rural Communities**

The Administration's plan takes special care to address the needs of rural communities. Competition will provide a powerful incentive to find and implement opportunities for electricity providers to become more efficient and responsive in serving customers that exist in rural as well as non-rural systems. Rural customers will also benefit from a greater variety of service combinations and the ability to choose their power supplier, while continuing to receive service through their existing distribution network. The ability of states to tailor competition to meet

local needs and circumstances under the opt-out provision provides a further assurance of benefits to rural consumers. Our proposal also authorizes grants for rural and remote service in currently unserved or underserved areas.

Notwithstanding our expectation that rural customers will benefit from the advent of competition, the Administration recognizes a special commitment to provide a rural safety net should these expectations not be realized. Under the safety net provision, a national wires charge which could generate up to \$680 million at projected electricity generation levels in 2010 would be available in the unlikely event that rural consumers should suffer an adverse impact from competition.

- **Benefits Indian Tribes**

The Administration's plan recognizes that a fully comprehensive proposal must address the electricity needs of Indian tribes and other native communities. Competition itself will provide new opportunities for communities already connected to the grid to seek low-cost electricity supplies. In addition, our proposed Renewable Portfolio Standard program includes targeted incentives to locate renewable energy facilities on Indian lands, providing both electricity and economic development opportunities. Finally, our proposal authorizes a grant program to provide electricity to unserved and underserved Indian areas and establishes an office within the Department of Energy to address Indian energy needs.

WHITE HOUSE STAFFING MEMORANDUM

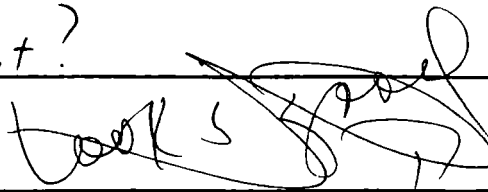
Date: 4/6 ACTION / CONCURRENCE / COMMENT DUE BY: 4/7Subject: Electricity Restructuring Summary

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	MOORE	☐	☐
PODESTA	☒	☐	NASH	☐	☐
ECHAVESTE	☒	☐	REED	☐	☐
RICCHETTI	☒	☐	RUFF	☐	☐
LEW	☒	☐	SOSNIK	☒	☐
BERGER	☐	☐	SPERLING	☐	☐
BLUMENTHAL	☐	☐	STEIN	☒	☐
CAHILL	☐	☐	STERN 	☒	☐
FRAMPTON	☒	☐	STREETT	☐	☐
IBARRA	☐	☐	TRAMONTANO	☒	☐
JOHNSON	☐	☐	UCELLI	☐	☐
KLAIN	☐	☐	VERVEER	☐	☐
LANE	☐	☐	WALDMAN	☐	☐
LEWIS	☐	☐	YELLEN	☐	☐
LINDSEY	☐	☐	_____	☐	☐
LOCKHART	☐	☒	_____	☐	☐
MARSHALL	☐	☐	_____	☐	☐

REMARKS:

Any comment?

RESPONSE:



THE WHITE HOUSE

WASHINGTON

April 5, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
SALLY KATZEN

SUBJECT: Summary of the Administration's Electricity Restructuring Bill

As you may recall, last year we submitted an electricity restructuring bill to Congress. Our bill would have encouraged states to open the market for electricity generation to competition; electricity transmission and distribution would remain subject to existing regulation. Efficient electricity generators would be able to attract customers based on lower rates; those that used environmentally friendly technologies (e.g., solar, wind, etc.) could sell electricity to consumers based on those features. Consumers would be able to purchase electricity from any generator that served their market, just as they are currently able to choose their long distance telephone carrier.

The bill was projected to generate \$20 billion of savings. This represents a savings of about \$230 per home -- the equivalent of a five percent tax cut for the average family -- of which about half would represent direct savings that would reduce consumers' electric bills and the remaining half would be achieved through lower prices for goods and services purchased by the average family. This savings would partially offset any future costs of implementing the Kyoto Accord. Congress did not act on our bill or any of the other competing bills.

This past winter, Secretary Richardson directed his staff to update the Administration's bill to address several previously unaddressed issues and several concerns that were raised about our bill last summer. The additions to the bill were reviewed by an NEC-led interagency group, which has resolved all outstanding questions. As a result, we expect to be able to send a revised Administration bill to Congress when it returns from its current recess. Principal provisions of the bill are described below, beginning with the provisions of last year's bill that remain unchanged.

I. KEY PROVISIONS OF THE ADMINISTRATION'S BILL THAT ARE UNCHANGED

There is a general recognition of the need for electricity restructuring legislation even though electricity restructuring is happening already at the state level. (At least eighteen states have already enacted some form of electricity deregulation, and the pace appears to be picking-up.) Unlike the movement of water or telephone signals, the flow of electricity cannot be directed down a specific path; it flows through any connected route that lies in front of it, following the

path of least resistance. Because the electricity grid crosses state lines (and because the path of least resistance may also cross state borders), electricity restructuring will necessarily occur in an interstate environment. Moreover, the existing framework of federal electricity law, which is over 60 years old, is based on states' engaging in cost-of-service regulation, which will generally disappear for electricity generation (but not transmission and distribution) in the move to competition. For the restructured market to operate efficiently and effectively, federal law must be updated to reflect the changing structure of the industry. The key components of the previous bill were:

Flexible Federal Mandate: Among the most contentious issues is federal preemption of a traditional state role -- regulating public utilities. In order to balance the federal preference for consumer choice with the desire to avoid supplanting the states' traditional responsibilities, our bill includes a flexible mandate for state regulators. Specifically, although the bill requires that states offer consumers the opportunity to choose their electricity supplier by 2003, it allows states to opt out of this requirement if a state determines that its citizens would be served better by the state maintaining a traditional cost-of-service regulatory framework or its designing and implementing its own competitive framework.

Recovery of Stranded Costs: If a previously regulated utility loses market share in a competitive market, it may no longer be able to recover previously incurred costs of underutilized investments, resulting in stranded costs (*i.e.*, costs that are not recoverable in a competitive marketplace). Reflecting our sensitivity to federalism issues, the bill requires states to examine the issue of recovery of stranded costs as part of their restructuring process, but to take whatever action they deem appropriate.

Consumer Information: In a competitive electricity market, consumers will need information to enable them to compare the costs and sources of electricity from different suppliers. Therefore, the bill directs the Department of Energy ("DOE") to establish uniform "labeling" requirements for electricity so that consumers can compare easily the cost electricity available from different generators. In addition, it is expected to assist consumers who want to purchase electricity generated from environmentally friendly sources ("green labeling").

System Reliability: In a competitive generation market, utilities must provide fair access to their transmission and distribution lines so that their competitors may reach new customers. To that end, the bill directs utilities to join an organization that would establish standards for access to the power grid that protects reliability, subject to Federal Energy Regulatory Commission ("FERC") oversight.

Environmental Protection: Power plants are significant emitters of pollution, and restructuring offers them the potential to increase pollution either through increased demand in response to lower costs or as a result of incentives for generators to use cheaper (dirtier) fuel (*i.e.*, coal). To counteract these incentives, the bill contains several features to enhance environmental protection, including a \$3 billion public benefits fund (funded from a federal fee collected on the sale of electricity) to support conservation programs and the deployment of renewable energy

technologies. (The public benefits fund will also support programs to assist low-income consumers of electricity.) The bill also includes a requirement that a specified percentage of electricity generated by each generator come from non-hydro renewable resources.

Repeal of PUHCA: The Public Utilities Holding Companies Act of 1935 (PUHCA) was passed to curb the abuses of the giant utility holding companies in the early part of the century. Today, the law limits the ability of utility holding companies to operate generation facilities in non-contiguous geographic territories and is a significant barrier to genuine competition in a restructured industry. In order to enable generators to compete on a nationwide basis, and in order to ensure that consumers have a wide range of choice of their electricity providers, the bill repeals most of the restrictive language in PUHCA, but enhances the ability of states and the federal government to oversee holding company activities.

II. NEW PROVISIONS INCORPORATED INTO THE ADMINISTRATION'S BILL

Environmental Protection/Renewable Portfolio Standard: As noted above, the Administration's previous bill included a requirement that a specified percentage of electricity be generated from renewable resources. Last year's bill set the standard at 5.5 percent of electricity generated. In response to concerns that our bill was not sufficiently environmentally friendly, we have raised the standard to 7.5 percent. Generators may meet the standard by generating 7.5 percent of their power from renewable non-hydropower sources, by purchasing credits from another generator that has exceeded the 7.5 percent standard, or by purchasing credits from DOE for 1.5 cents per kilowatt hour, the proceeds of which will be deposited in the public benefits fund. (To the extent that the sale of such credits raise money for the public benefits fund, the federal fee on the sale of electricity will be reduced.)

Efficient Generation Technologies: There is increasing interest in the use of small distributed power generation equipment and the use of combined heat and power generating equipment (similar to the move to PCs from mainframes). These smaller power systems, which are located near the site where the electricity is used, have both environmental and economic benefits. The bill seeks to promote their use through tax credits (included in the FY 2000 budget) and shortened depreciation periods, and facilitates their interconnection to the power grid.

Tennessee Valley Authority: The Tennessee Valley Authority ("TVA") is among the largest utilities in the United States. The current bill removes the "TVA Fence," which currently prohibits TVA from competing outside its service territory and prevents competitors from competing within TVA's service territory. This will ensure that the Tennessee Valley obtains the benefits of a competitive electricity market. The bill will not, however, subject TVA to FERC jurisdiction, either for review of its wholesale power rates or its accumulation of market power, notwithstanding the fact that virtually all other generators are subject to FERC oversight and calls for such oversight of TVA are widespread.

Power Marketing Administrations: The Bonneville Power Administration and the Western and Southwestern Power Marketing Administrations (“PMAs”) sell federally generated power, generally in the Western states. This bill subjects the PMAs transmission rates to FERC jurisdiction under the Federal Power Act, which requires FERC to review proposed transmission rates to ensure that they are just and reasonable and not unduly discriminatory. The bill also requires FERC to consider that, in addition to generation costs, the PMAs have additional costs for environmental and other public responsibilities that may legitimately be recouped.

Assistance for Remote Communities and Indian Tribes: In order to ensure that remote communities and Indian tribes benefit from a restructured electricity industry, the bill establishes grant programs to assist remote communities and tribes in connecting to the grid and participating in a competitive market. In addition, to promote economic development on Indian reservations, the bill provides extra credit towards meeting the renewable portfolio standard (of 7.5 percent) for renewable power that is generated on tribal lands.

Consumer Protection: The bill enhances consumer protection by requiring states to hold proceedings to examine how to maintain service to low income individuals, providing protection against “slamming” (switching providers without the consumer’s permission) and “cramming” (billing consumers for fictitious service), requiring generators to provide clear information about the source and price of their electricity, and requiring FERC to consider the effects of utility mergers on consumers.

Promotes Reliability: The bill enhances reliability in a competitive market by directing the Secretary of Energy to convene a board to investigate major electricity outages and also directing the Secretary to convene a panel to examine the need for additional transmission capacity to ensure that consumers in all parts of the country have access to a wide range of generators.

Worker Displacement: Labor unions have expressed concern about the loss of jobs among utility workers in a restructured industry. In response to their concerns, the bill directs states to consider the treatment of displaced workers when they consider stranded costs and directs DOE to establish a model reliability code sought by the utility industry. Moreover, all displaced workers will be eligible for training and benefits under the Federal displaced worker training programs at the Department of Labor.

III. NEXT STEPS

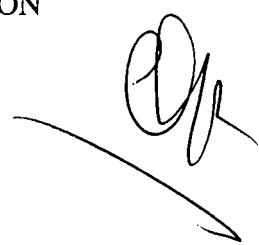
As noted above, we expect to clear the legislative language through an interagency process and send the Administration’s bill to Congress as soon as it returns from its current recess. We understand that Congress will appreciate that we are sending a bill up earlier this year than we did last year, and expect it to stimulate active consideration of the issues addressed in the bill. We will include a number of Departments other than DOE (e.g., EPA (and/or CEQ), USDA and DOI) in the roll-out to make it clear that the Administration speaks with a single voice on this matter.

We believe that the Administration's bill presents a reasonable proposal, although by occupying the center it is likely to draw some fire from both the left and the right. For example, some environmentalists remain deeply concerned that power plants contribute to pollution; notwithstanding the changes we are making, they would like to see a much greener bill. Similarly, some in the labor movement remain concerned about the potential job losses from restructuring, and while they will welcome the changes in our bill, they are unlikely to actively support it. At the same time, industry will notice that we have moved to the left, but should also give us credit for maintaining our focus on economic considerations. In short, we believe that the bill represents a credible plan, and is a good starting point that will enable us to engage fully in the legislative debate over the matter.

4/8/98

DRAFT – NOT ADMINISTRATION POLICY - NOT FOR DISTRIBUTION

DRAFT PRESIDENTIAL DIRECTIVE



TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY:

The Administration's proposal to promote retail competition in the electric power industry will deliver economic savings, cleaner air and a significant down-payment on greenhouse gas emissions reductions. Our proposal to promote retail competition in the electric power industry exemplifies the Administration's commitment to pursue simultaneously policies that advance economic growth and environmental progress.

As action to advance retail competition proceeds at both the state and Federal levels, both the Administration and the Congress share an interest in tracking environmental indicators in this vital sector. It will be important to have accurate and frequently updated data.

Under current law, electric power generators report various types of data relating to generation and air emissions to the Department of Energy and the Environmental Protection Agency. To ensure that this data is coordinated and provided for timely consideration by both the Administration and the Congress, you are directed to take the following actions:

1. On an annual basis, your agencies are to provide me with information that summarizes the data on CO₂ emissions from all utility and non-utility electricity generators providing power to the grid during the previous year, beginning with 1998 data. This information shall be provided to me no more than six months after the end of the previous year, and for 1998, within six months after the date of this directive.
2. The report, which may be presented in the form of a joint memorandum or a letter, shall present CO₂ emissions information on both a national and regional basis, stratified by type of fuel used for electricity generation, and shall indicate the percentage of electricity generated by each type of fuel or energy resource. Emissions shall be reported on both a total mass (tons) and output rate (e.g., pounds per megawatt-hour) basis.
3. The report shall present information on voluntary utility sector activity in carbon-reducing and carbon-sequestration projects, both domestically and internationally, and the level of reduced CO₂ due to these activities.
4. The report shall identify the main factors contributing to any change in emissions or emission rates relative to the previous year on a national, and, if relevant, regional basis. In addition, the report shall identify deviations between the actual emissions, generation, and fuel mix and the most recent projections of those values developed by the Department of Energy and

the Energy Information Administration pursuant to their existing authorities and missions.

5. Prior to the enactment of restructuring legislation at the Federal level, the report shall include any necessary updates to estimates of the environmental effects of the Administration's restructuring legislation.

6. Neither DOE nor EPA may collect new information from electricity generators or other parties in order to prepare the report.

EPA revision, 3/18

DRAFT – NOT ADMINISTRATION POLICY - NOT FOR DISTRIBUTION

PRESIDENTIAL DIRECTIVE (REVISED DRAFT)

TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY:

Retail competition in the electric power industry will deliver economic savings, cleaner air and a significant down-payment on greenhouse gas emissions reductions. Our proposal to promote retail competition in the electric power industry exemplifies the Administration's commitment to pursue policies that advance economic growth and environmental progress at the same time.

As action to advance retail competition proceeds at both the state and federal levels, both the Administration and the Congress share an interest in tracking economic and environmental indicators in this vital sector. It will be important to have accurate and frequently updated data.

Under current law, electric power generators report various types of data relating to generation and air emissions to the Department of Energy and the Environmental Protection Agency. To ensure that this data is coordinated and provided for timely consideration by both the Administration and the Congress, you are directed to take the following actions:

1. Following the end of each calendar year, you are to provide me with a report that summarizes the data on emissions of carbon dioxide from all utility and nonutility electricity generators providing power to the grid during the previous year, beginning with 1998 data. This report shall be provided no less than six months after the end of the previous year (and, for 1998, six months after the date of this directive), or sooner if possible, and shall be based on the best data available within that time frame.
2. This report shall present emissions information on both a national and regional basis, stratified by type of fuel used for electricity generation, and shall indicate the percentage of electricity generated by each type of fuel or energy resource. Emissions shall be reported on both a total mass (tons) and output rate (e.g., pounds per megawatt-hour) basis.
3. The report shall identify the main factors contributing to any change in emissions or emission rates relative to the previous year on a national, and, if relevant, regional basis. In addition, the report shall identify deviations between the actual emissions, generation, and fuel mix and the most recent projections of those values developed by the Department of Energy and the Energy Information Administration pursuant to their existing authorities and missions.

DRAFT – NOT ADMINISTRATION POLICY - NOT FOR DISTRIBUTION

PRESIDENTIAL DIRECTIVE (REVISED DRAFT)

TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY:

Retail competition in the electric power industry will deliver economic savings, cleaner air and a significant down-payment on greenhouse gas emissions reductions. Our proposal to promote retail competition in the electric power industry exemplifies the Administration's commitment to pursue policies that advance economic growth and environmental progress at the same time.

As action to advance retail competition proceeds at both the state and federal levels, both the Administration and the Congress share an interest in tracking economic and environmental indicators in this vital sector. It will be important to have accurate and frequently updated data.

Under current law, the electric power industry reports various types of emissions. Both the Department of Energy and the Environmental Protection Agency receive such data. To ensure that this data is coordinated and provided for timely consideration by both the Administration and the Congress, you are directed to take the following actions:

1. On an annual basis, as soon as adequate data that are available through existing reporting systems are reconciled, you are to provide me with a report that summarizes the data on air emissions from all electricity generation capacity providing power to the grid. This series of reports should begin with 1998 data.
2. This report shall present emissions information on both a national and regional basis, stratified by type of fuel used for electricity generation, and indicate the percentage of electricity generated by each type of fuel.
3. If the level of emissions from electricity generation has changed since the previous year, the report shall identify the main factors contributing to such change. In addition, the report shall identify discrepancies between the actual generation level and fuel mix from those included in recent national, and, if relevant, regional projections developed by the Department of Energy and the Energy Information Administration pursuant to their existing authorities and missions.

NO REASON FOR THIS

DRAFT -- NOT ADMINISTRATION POLICY -- NOT FOR DISTRIBUTION

as testimony from
shg emm?

PRESIDENTIAL DIRECTIVE

TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY:

Retail competition in the electric power industry will deliver economic savings, cleaner air and a down-payment on greenhouse gas emissions reductions. However, the precise impacts on air emissions are difficult to predict. In working with the Congress to enact federal legislation to promote effective retail competition and to ensure that any unintended consequences with respect to utility air emissions are addressed quickly, it will be important to have accurate and frequently updated data.

Under current law, the electric power industry reports various types of emissions. Both the Department of Energy and the Environmental Protection Agency receive such data. To ensure that this data is coordinated and provided quickly for consideration by the Administration as efforts on restructuring proceed, you are directed to take the following actions:

1. Within six months of this directive, and annually thereafter, you are to provide a report to me that will review the data on air emissions from all electricity generation capacity providing power to the grid. Thus, six months from today you are to report data from 1998.

2. Such reports shall, at a minimum provide the following information: emissions of carbon dioxide from all utility generation capacity; a comparison of those emissions with such emissions from the five previous years; and projected emissions for the next ten years. This information shall be provided nationally, on a regional basis, and by type of technology used for generation. Your report shall also indicate the percentage of electricity generated by each type of generation technology.

3. If the level of such emissions has changed since the previous year, the report shall identify the reasons for such change and any deviations from projected emissions, both nationally and, if relevant, by region.

4. If such emissions have increased since the previous year, or are projected to increase in future years, the report shall discuss the most cost effective means by which such increases could be slowed or avoided. This discussion shall include identification of technologies that could contribute to reducing future emissions and the reasons why such technologies are not projected to be utilized. This discussion also shall include identification of any policy options not included in the Administration's restructuring proposal that would cost effectively address increases in carbon emissions, and an analysis of the costs and benefits of such policies.

Can't read this w/o sense of clear intent to
force reductions...

But this takes effect even if no elec. bill; so disingen. to say cover pt is to unintended consequences

if it's only carbon, better say so - you do 3% down, & hope disingenuous...

Does EPA have this data? Does this require new data collection?

OPEN ISSUES

Bonneville Power Administration

Proposal: The bill language authorizes a FERC imposed transmission charge in the unlikely event that the cap on the non-recoverable cost fee prevents the repayment of the WPPS debt.

Objection: OMB/Treasury/CEA believe this provision is unnecessary and anticompetitive.

Proposal: The bill language would authorize FERC to phase-in any increase in BPA's transmission rates resulting from the transition to FERC regulation to prevent unreasonable cost shifts.

Objection: OMB believes that BPA's rates are already low and shouldn't be further subsidized and that BPA should not be given a benefit not available to other utilities.

Proposal: The bill language pertaining to the transmission surcharge allows that once FERC approves the surcharge mechanism, the BPA Administrator can implement the surcharge pursuant to the mechanism which would then go to FERC for review and possible reversal.

Objection: OMB believes that FERC should authorize the specific surcharge before BPA is allowed to impose the charge.

Proposal: The bill language states that the transmission surcharge would be treated as a loan from generation that would be paid-back when generation is able. Interest on the loan would be set at Treasury rates.

Objection: OMB believes the interest rate should be set at market rates.

Public Benefits Fund

Proposal: The bill language proposes that the PBF fund be capped at \$3 billion.

Objection: CEQ wants to return to the original language which does not cap the

fund.

Proposal: The bill proposes, in addition to the PBF, a rural safety net charge. Funds recovered would be separate and apart from the PBF programs.

Objection: OMB, Treasury and CEA would like to see the funds recovered from the rural safety net charge count against the \$3 billion PBF cap.

Proposal: The bill proposes that of the 5, non-Federal members of the PBF Board, Indian Tribes have one representative.

Objection: OMB believes the tribal representative would constitute excess representation for Indians.

Proposal: The bill language proposes to modify last year's version by requiring that, to the extent PBF funds are insufficient to meet grant requests, the amounts available to the states should be reduced on an equitable basis. Last year's bill required a proportional reduction.

Objection: OMB would prefer to return to the original language.

Indian Tribe Economic Development

Proposal: DOE would like to add a provision to the bill which would double the RPS credits available to renewable energy facilities built on Indian land.

Rural and Remote Area Grants

Proposal: The bill language defines an eligible community as an area with a population of 10,000 or less or an Indian tribe with an average cost of power in excess of 150% of the national average.

Objection: The RUS wants to strike the requirement of a population less than 10,000 or an Indian tribe and, instead, allow the Secretary of Agriculture to designate eligible areas. RUS also wants to strike Indian tribes as eligible communities.

80% RPS
cap on PBF
double credit India
annual safety net separate

on 4/1/91

Double
Indians
credit
347 RPS
for
renewables
on Indian
land

if 1.5%
cap on
renewable
credits
is not
binding
i.e. the
7 1/2%
is met
so govt
not selling
credits

if
might
reduce
renewables

if
they
be b-lt
unhappy
this
I want
to
Indians?

Proposal: The grants would be available to rural coops in eligible areas for "the purpose of increasing energy efficiency, lowering or stabilizing electric rates to end users, or providing or modernizing electric facilities".

Objection: OMB wants to limit these grants to persons ineligible for RUS loans.

Objection: OMB has suggested that a requirement be imposed that the grants be cost-effective.

Objection: OMB wants to make persons living in remote areas for religious or lifestyle purposes ineligible for the grants.

Objection: OMB wants to prohibit tribes that receive grants under the tribal grant program from receiving remote area grants.

Proposal: The bill proposes that funding for the program be authorized for seven years.

Objection: OMB wants to add specific sunset language.

Indian Grant Program

Proposal: The bill proposes to create two grant programs for Indian tribes: (1) grants to analyze tribal needs, the availability of natural resources for tribal generation, opportunities for improvement of transmission and effects of retail competition on tribes; and (2) grants to tribes unserved or underserved to plan and construct or improve facilities to generate, transmit, and distribute electricity to serve tribal needs. DOE would have to take into account the impact of the grant program on the ability of a coop to pay back its RUS loans.

Objection: RUS wants DOE to ensure, to the maximum extent practicable, that the grant program does not impair a coops ability to pay back RUS loans.

Objection: OMB wants to prohibit the grants to tribal members living in a particular area for religious or lifestyle preference reasons.

Objection: OMB wants to require that the grant program be cost-effective.

Proposal: The bill proposes that funding for the program be authorized for seven years.

Objection: OMB wants to add specific sunset language.

Office of Indian Energy Policy and Programs

Proposal: The legislation proposes to create an Office of Indian Energy Policy and Programs to: (1) promote tribal energy efficiency; (2) modernize tribal electric infrastructure; (3) promote tribal sovereignty and self-determination; (4) lower or stabilize electricity rates and (5) electrify tribal members homes.

Objection: OMB wants to delete purposes #3 and #4.

Objection: OMB wants to authorize \$1 million per year for the office.

Rural Electric Cooperatives

Proposal: The bill proposes to delete placeholder language in last year's version which would authorize FERC to suspend its open-access requirements if TVA, a PMA, or coop can't recover stranded costs.

Objection: RUS wants to restore the language.

Proposal: The bill proposes that FERC be given backup authority to allow a coop to recover its stranded costs if it can't do so on its own, subject to applicable state law.

Objection: RUS wants the backup authority to exist even if it would be contrary to state law.

Proposal: The bill contains language clarifying that FERC has regulatory authority over a merger between a jurisdictional utility and a coop.

Objection: RUS wants to strike this language.

Proposal: The bill makes it clear that, notwithstanding any other law, FERC has authority over the Electric Reliability Organization.

Objection: RUS wants to repeal this clarification.



Ronald Minsk
03/02/99 09:50:26 AM

Record Type: Record

To: Todd Stern/WHO/EOP
cc:
bcc:
Subject: Re: labor (again)

Our bill directs DOE to write a model code for reliability and directs states to consider treating worker transition costs when they consider stranded costs. That ensures that workers will at least have a place in the room when that discussion happens at the state level.

They will also be eligible for comprehensive benefits available for all unemployed workers at DOL.

If you would like, I'm happy to get the DOE guy over here to talk with you, and if you feel that it would be helpful, Karen.

Ron

Todd Stern

Todd Stern 03/02/99 09:40:43

Record Type: Record

To: Ronald Minsk/OPD/EOP
cc:
Subject: labor (again)

I'm afraid I'm not really clear on where we've ended up. Maybe it's because we haven't ended up anywhere yet. Can you call me when you have a chance so we can reconnoiter on this? Thanks. tds

DRAFT -- NOT ADMINISTRATION POLICY -- NOT FOR DISTRIBUTION

*File to
TODD STERN
4/22/15*

PRESIDENTIAL DIRECTIVE

TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY:

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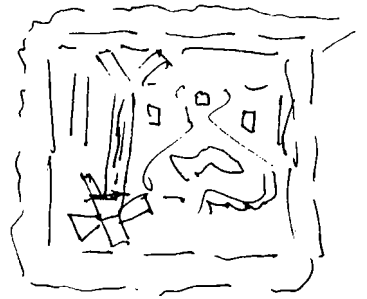
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THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR NEC DEPUTIES

FROM: Ronald E. Minsk

SUBJECT: Department of Energy's Recommended Modifications to the Administration's Electricity Restructuring Bill

DATE: February 26, 1999

At a meeting of the National Economic Council (NEC) Deputies on February 24th, five issues were remanded to the interagency working group for further resolution. In meetings conducted on February 25th, four of the five issues were resolved. Accordingly, the NEC presents one remaining issue, an adjustment to the renewable portfolio standard (RPS), to the NEC Deputies for further discussion and resolution.

I. Issues Resolved By the Working Group

The working group supported a position put forward by the NEC to maintain separate grant programs for remote power and for Indian tribes. The remote power grant program will be administered by the Rural Utility Service (RUS) of the Department of Agriculture (USDA) in consultation with the Secretaries of Energy and the Interior. The grant program for Indian tribes will be administered by the Department of Energy (DOE) in consultation with the Secretaries of the Interior and Agriculture.

The working group reached an agreement regarding the funding of the Bonneville Power Administration's (BPA) environmental costs. As a safety valve, the bill will authorize BPA to impose a surcharge on transmission customers in the event that BPA's costs are unexpectedly high, provided that BPA set its rates in an analytically sound manner that accounts for the expected value of its environmental costs. Any such surcharge will be subject to review by the Federal Energy Regulatory Commission (FERC). In reviewing BPA's proposed surcharges, FERC shall examine the surcharge to ensure that to the extent possible it is competitively neutral, avoids charging sales that flow through the BPA region, and avoids economic bypass.

The Department of the Treasury has reconsidered its position with regard to the asset class life of distributed power equipment. It has agreed with DOE to support a fifteen year asset class life for all such equipment. Other members of the working group agree.

The working group was also able to resolve the outstanding issues regarding treatment of the Tennessee Valley Authority (TVA). Some members of the working group noted, however, that there is a perception that in a competitive market, TVA would operate a competitive advantage because of its size and because it faces certain advantages regarding its financing and tax status. TVA noted that all entities operate with certain competitive advantages and disadvantages, and that the goal of the bill should be simply to ensure that all entities compete fairly. The working group did not examine this issue in further detail, but simply wanted to alert the Deputies that this issue is likely to attract attention when the Administration's bill is submitted to Congress.

II. Issues Presented to the NEC Deputies for Further Consideration

The working group was unable to resolve one remaining issue. Accordingly, the NEC presents the following issue for further consideration by the NEC Deputies:

- Increasing the renewable portfolio standard from the 5.5 percent agreed to in last year's bill.

DOE has proposed increasing the RPS from 5.5 percent in last year's bill to 7 percent in this year's bill. DOE estimates the cost of the increase at \$800 million to consumers, and \$1.912 billion to the economy. It will reduce the overall benefits of the bill from \$20 billion to \$18.1 billion.

The Council on Environmental Quality (CEQ) has proposed increasing the RPS from 5.5 percent in last year's bill to 10 percent in this year's bill. CEQ's put forward its proposal based on a study from the Union of Concerned Scientists that concluded that increasing the RPS would not cost any more than the 5.5 standard that the Administration proposed last year. DOE has reviewed the UCS study and concluded that its analysis is not sound. Based on its own analysis, DOE estimates that increasing the RPS to 10 percent would cost consumers \$3 billion, and the economy \$5 billion, thereby reducing the overall benefits of the bill from \$20 billion to \$15 billion. DOE has also estimated that if the RPS is increased to 10 percent, the marginal cost per ton of carbon emissions avoided would be \$588.

*** TX REPORT ***

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DRAFT -- NOT ADMINISTRATION POLICY -- NOT FOR DISTRIBUTION

PRESIDENTIAL DIRECTIVE

TO THE SECRETARY OF ENERGY AND THE ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY:

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3. If the level of such emissions has changed since the previous year, the report shall identify the reasons for such change and any deviations from projected emissions, both nationally and, if relevant, by region.

4. If the level of such emissions has increased since the previous year, or are projected to increase in future

*sent to
TODD SERVO
4/22/15*