

107TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

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IN THE HOUSE OF REPRESENTATIVES

Mr. LARGENT introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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## A BILL

To [to be provided]

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

3 **TITLE I—ELECTRIC RELIABILITY**

4 **PART A—AMENDMENTS TO THE FEDERAL**

5 **POWER ACT RELATING TO FEDERAL TRANS-**

6 **MISSION JURISDICTION**

7 **SEC. 101. CLARIFICATION OF FEDERAL TRANSMISSION JU-**

8 **RISDICTION.**

9 (a) DECLARATION.—Section 201(a) of the Federal

10 Power Act is amended as follows:

1           (1) By inserting after “transmission of electric  
2           energy in interstate commerce” the following: “, in-  
3           cluding the transmission in interstate commerce of  
4           electric energy sold at retail”.

5           (2) By adding at the end thereof: “Except for  
6           the transmission component thereof, the retail sale  
7           of electric energy, local distribution service, and fa-  
8           cilities in such State to the extent related to each of  
9           the foregoing, are subject to the jurisdiction of the  
10          State in which the energy is consumed.”.

11          (b) APPLICATION.—Section 201(b) of the Federal  
12          Power Act is amended as follows:

13               (1) By inserting after “transmission of electric  
14               energy in interstate commerce” the following: “, in-  
15               cluding the transmission component of a retail sale”.

16               (2) By striking “sentence.” and inserting “sen-  
17               tence, except with respect to determining, fixing, and  
18               otherwise regulating the rates, terms, and conditions  
19               for the transmission of electric energy in interstate  
20               commerce under this part pursuant to subsection  
21               (e)(2).”.

22               (3) By adding the following at the end thereof:

23                       “(3) Except for the transmission component  
24                       thereof, the retail sale of electric energy, local dis-  
25                       tribution service, and facilities in such State to the

1 extent related to each of the foregoing, are subject  
2 to the jurisdiction of the State in which the energy  
3 is consumed. The Commission, after consulting with  
4 and giving deference to the views of the appropriate  
5 State regulatory authorities, shall determine, by rule  
6 or order, which facilities used for the transmission  
7 and delivery of electric energy are used for trans-  
8 mission in interstate commerce subject to the juris-  
9 diction of the Commission under this part, and  
10 which are subject to State jurisdiction under this  
11 part.”.

12 (c) LIMITATION ON JURISDICTION.—Section 201(a)  
13 of the Federal Power Act is amended by inserting “(1)”  
14 after “(a)” and by adding the following at the end thereof:  
15 “(2) Nothing in this Act shall provide the Commis-  
16 sion authority to require retail electric competition, or pro-  
17 vide the Commission jurisdiction over sales of electric en-  
18 ergy at retail, or over the local distribution facilities used  
19 for such sales, or otherwise affect the authority of a State  
20 or municipality to require electric competition.”.

21 (d) NONDISCRIMINATORY TRANSMISSION RATES RE-  
22 QUIRED.—Section 205(b) of the Federal Power Act is  
23 amended by inserting “(1)” after “(b)” and adding the  
24 following at the end thereof:

1           “(2) No public utility or transmitting utility shall  
2 maintain any unduly discriminatory or preferential dif-  
3 ference in rates, charges, service, facilities, or in any other  
4 respect, between the transmission component of a bundled  
5 retail sale of electric energy, and the transmission compo-  
6 nent of an unbundled retail or wholesale sale of electric  
7 energy, except as provided in paragraphs (3) and (4).

8           “(3) In implementing paragraph (2), the Commis-  
9 sion, in consultation with appropriate State regulatory au-  
10 thorities, shall ensure that any public utility or transmit-  
11 ting utility has the opportunity to reserve sufficient trans-  
12 mission capacity, on a not unduly discriminatory basis, to  
13 enable it to continue to serve firm wholesale and retail  
14 customers.

15           “(4) Commission regulation of the rates and charges  
16 for any transmission service (or class of service) shall not,  
17 during a 5-year transition period beginning on the effec-  
18 tive date under section 101(k) of the \_\_\_\_\_ Act, re-  
19 duce the revenue recovery for any transmitting utility pro-  
20 viding such service (or class of service), below the level  
21 of such recovery approved for such service (or class of  
22 service) by any State regulatory commission, and in effect  
23 on the day before Commission jurisdiction over such trans-  
24 mission facilities begins.”.

1 (e) DEFINITIONS OF TYPES OF SALES.—Section  
2 201(d) of the Federal Power Act is amended—

3 (1) by inserting “(1)” after the subsection des-  
4 ignation;

5 (2) by adding at the end the following:

6 “(2) The term ‘bundled retail sale of electric  
7 energy’ means the sale of electric energy to an ulti-  
8 mate consumer when the generation and trans-  
9 mission service are not sold separately.

10 “(3) The term ‘unbundled retail sale of electric  
11 energy’ means the sale of electric energy to an ulti-  
12 mate consumer when the generation and trans-  
13 mission service are sold separately.”.

14 (f) DEFINITION OF INTERSTATE COMMERCE.—Sec-  
15 tion 201(c) of the Federal Power Act is amended by in-  
16 serting after “outside thereof” the following: “(including  
17 consumption in a foreign country)”.

18 (g) DEFINITION OF PUBLIC UTILITY.—Section  
19 201(e) of the Federal Power Act is amended to read as  
20 follows:

21 “(e) The term ‘public utility’ means—

22 “(1) any person who owns or operates facilities  
23 subject to the jurisdiction of the Commission under  
24 this part (other than facilities subject to such juris-

1 diction solely by reason of section 210, 211, or 212);  
2 and

3 “(2) any electric utility or other entity that  
4 owns or operates transmission facilities that provide  
5 transmission services in interstate commerce not  
6 otherwise subject to the jurisdiction of the Commis-  
7 sion under this part (other than a utility to which  
8 section 212(k) applies) including, but not limited  
9 to—

10 “(A) the Tennessee Valley Authority;

11 “(B) a Federal power marketing adminis-  
12 tration;

13 “(C) a State or any political subdivision of  
14 a State, or any agency, authority, or instrumen-  
15 tality of a State or political subdivision thereof;

16 “(D) a person who has ever received a loan  
17 for the purpose of providing electric service  
18 from the Administrator of the Rural Electrifica-  
19 tion Administration or the Rural Utilities Serv-  
20 ice under the Rural Electrification Act of 1936;  
21 or

22 “(E) any corporation or other entity that  
23 is wholly owned directly or indirectly, by any 1  
24 or more of the foregoing or by the Federal Gov-  
25 ernment,

1 but only with respect to the determining, fixing, and  
2 otherwise regulating the rates, terms, and conditions  
3 for the transmission of electric energy in interstate  
4 commerce under this part.”.

5 (h) APPLICATION OF PART TO GOVERNMENT UTILI-  
6 TIES.—Section 201(f) of the Federal Power Act is amend-  
7 ed by striking “No provision” and inserting “Except as  
8 provided in subsection (e)(2) and section 3(23), no provi-  
9 sion”.

10 (i) DEFINITION OF TRANSMITTING UTILITY.—Sec-  
11 tion 3(23) of the Federal Power Act is amended to read  
12 as follows:

13 “(23) TRANSMITTING UTILITY.—The term  
14 ‘transmitting utility’ means any public utility, as de-  
15 fined in section 201(e), that owns or operates elec-  
16 tric power transmission facilities that provide trans-  
17 mission services in interstate commerce and are used  
18 for the sale of electric energy, and any utility to  
19 which section 212(k) applies.”.

20 (j) APPLICATION TO MUNICIPALITIES AND COOPERA-  
21 TIVES.—Section 206 of the Federal Power Act is amended  
22 by adding at the end thereof the following:

23 “(e) OPEN ACCESS TRANSMISSION BY MUNICIPALI-  
24 TIES AND COOPERATIVES.—

1           “(1) LIMITED JURISDICTION AND RULEMAKING  
2           AUTHORITY.—Subject to section 205(b)(2), (3), and  
3           (4), the Commission shall, by rule or order, require  
4           transmitting utilities described in section  
5           201(e)(2)(C) and (D), or any corporation or other  
6           entity that is wholly owned directly or indirectly by  
7           1 or more entities described in subparagraph (C) or  
8           (D), to provide transmission services—

9                   “(A) at rates that are comparable to those  
10                   each such transmitting utility charges itself and  
11                   that are not unduly discriminatory or pref-  
12                   erential; and

13                   “(B) on terms and conditions (not relating  
14                   to rates) that are comparable to those under  
15                   Commission rules that require public utilities  
16                   described in section 201(e)(1) to offer open ac-  
17                   cess transmission service that is not unduly dis-  
18                   criminatory or preferential. In exercising its au-  
19                   thority under subparagraph (a), the Commis-  
20                   sion may remand transmission rates to a trans-  
21                   mitting utility for review and revision where  
22                   necessary to meet the requirements of subpara-  
23                   graph (A).

24           “(2) RULEMAKING REQUIREMENT; EXEMPTION  
25           AUTHORITY.—

1           “(A) Not later than 9 months after the  
2           date of enactment of this subsection, after no-  
3           tice and opportunity for comment, the Commis-  
4           sion shall adopt rules providing criteria and  
5           procedures to exempt certain transmitting utili-  
6           ties from paragraph (1). The Commission shall  
7           exempt from paragraph (1), any public utility  
8           that is (i) a small electric utility, or (ii) that  
9           does not own or operate any transmission facili-  
10          ties that are part of the bulk-power system, or  
11          that meets other criteria the Commission deter-  
12          mines to be in the public interest.

13           “(B) The procedures established by the  
14          Commission shall permit exemptions, after no-  
15          tice and opportunity for comment, based on a  
16          letter application containing a sworn statement,  
17          by a representative legally authorized to bind  
18          the applicant, attesting to the facts dem-  
19          onstrating that the applicant meets the exemp-  
20          tion standards. A good faith application for an  
21          exemption shall be deemed granted unless,  
22          within 60 days of its receipt of such application,  
23          the Commission makes a determination that the  
24          applicant does not meet the exemption criteria.

1           “(C) Upon complaint of any electric utility  
2           or transmitting utility and after notice and op-  
3           portunity for comment, the Commission may re-  
4           voke an exemption if it determines the trans-  
5           mitting utility does not satisfy the exemption  
6           criteria. In determining whether a transmitting  
7           utility owns or operates transmission facilities  
8           that are part of the bulk-power system, the  
9           Commission shall consider any position taken  
10          by the electric reliability organization or an af-  
11          filiated regional reliability entity in the region  
12          where the public utility is located.

13           “(D) The term ‘small electric utility’  
14          means an electric utility that sells no more than  
15          **【4,000,000】** megawatt hours of electric energy  
16          per year; and the terms ‘affiliated regional reli-  
17          ability entity’, ‘bulk-power system’, and ‘electric  
18          reliability organization’ have the meanings given  
19          such terms in section 218(a).”.

20          (k) EFFECTIVE DATE; TRANSITION.—The provisions  
21          of subsections 201(a) and (b), and of paragraphs  
22          205(b)(2), (3), and (4), respecting Commission jurisdic-  
23          tion over the transmission component—

24                  (1) of unbundled retail sales, shall take effect  
25          on enactment; and

1           (2) of bundled retail sales, shall take effect on  
2           and after 2 years after enactment of this provision.

3           (l) REGIONAL TRANSMISSION ORGANIZATION TRANS-  
4           MISSION RATES NOT AFFECTED.—Nothing contained in  
5           paragraphs 205(b)(2), (3), and (4) of the Federal Power  
6           Act shall require any change in rates, terms, or conditions  
7           subject to a tariff administered by a regional transmission  
8           organization approved by the Commission.

9           (m) RULEMAKING.—Pending the effective date of the  
10          final rule issued by the Commission under this provision,  
11          the appropriate State regulatory authorities shall retain  
12          any authority they possessed prior to enactment with re-  
13          spect to the transmission component of the bundled sales  
14          of electric energy at retail.

15                   **PART B—TRANSMISSION EXPANSION**

16           **SEC. 102. REGIONAL TRANSMISSION ORGANIZATIONS.**

17          (a) DEFINITIONS.—Section 3 of the Federal Power  
18          Act is amended by adding after paragraph (25) the fol-  
19          lowing new paragraphs:

20                   “(26) REGIONAL TRANSMISSION ORGANIZA-  
21                   TION.—The term ‘regional transmission organiza-  
22                   tion’ means an entity that has the responsibility for  
23                   the operation of transmission facilities owned by  
24                   itself or others.

1           “(27) MARKET PARTICIPANT.—The term ‘mar-  
2           ket participant’ means any entity that produces,  
3           sells, or aggregates electric power (other than State-  
4           ordered transition or default service) that is trans-  
5           mitted on the transmission grid operated by a re-  
6           gional transmission organization.”.

7   **SEC. 103. ELECTRIC TRANSMISSION CONSTRUCTION AND**  
8                           **EXPANSION.**

9           Part II of the Federal Power Act is amended by add-  
10          ing at the end the following new section:

11   **“SEC. 215. ELECTRIC TRANSMISSION CONSTRUCTION AND**  
12                           **EXPANSION.**

13           “(a) CONSTRUCTION AND EXPANSION.—A regional  
14          transmission organization, a member of a regional trans-  
15          mission organization, or any other applicant (provided  
16          that the application is consistent with a planning process  
17          approved by a regional transmission organization or com-  
18          parable approved regional transmission planning process),  
19          may develop and submit for review and approval by the  
20          Commission a transmission expansion planning process  
21          for the construction and expansion of the transmission fa-  
22          cilities it operates or proposes to operate. The Commission  
23          shall approve the transmission expansion planning process  
24          if the planning process—

1           “(1) permits the input of all market partici-  
2 pants and other stakeholders in the region and other  
3 interconnected regions;

4           “(2) is designed to determine efficient solutions  
5 to relieve constraints in the transmission system  
6 without preference for either transmission or genera-  
7 tion solutions; and

8           “(3) provides for aggrieved market participants  
9 or stakeholders to contest the plans through an al-  
10 ternative dispute resolution process or through re-  
11 view by the Commission.

12          “(b) COMMISSION APPROVAL.—The Commission  
13 shall, after notice and opportunity for hearing, approve a  
14 request of a regional transmission organization (or such  
15 member or other applicant) for a certificate of public con-  
16 venience and necessity to construct any proposed trans-  
17 mission facilities developed through a transmission expan-  
18 sion plan resulting from a transmission expansion plan-  
19 ning process approved by the Commission under sub-  
20 section (a), if it finds—

21           “(1)(A) a State in which the transmission fa-  
22 cilities are to be constructed or modified is without  
23 authority to approve the siting of the facilities; or

24           “(B) any State commission or body in a State  
25 in which the transmission facilities are to be con-

1       structured or modified has authority to approve the  
2       siting of the facilities but has withheld approval,  
3       modified or conditioned its approval in a manner  
4       that materially alters the transmission expansion  
5       plan, or delayed the final determination of its ap-  
6       proval for more than 180 days after the filing of an  
7       application seeking approval; and

8               “(2) the facilities to be authorized by the cer-  
9       tificate are or will be required by the present or fu-  
10      ture public convenience and necessity.

11 The Commission shall have the power to attach to the  
12 issuance of such certificate and to the exercise of the  
13 rights granted thereunder such reasonable terms and con-  
14 ditions as the public convenience and necessity may re-  
15 quire: *Provided*, That the Commission shall have no au-  
16 thority to compel the construction or enlargement of  
17 transmission facilities directly or as a condition of the re-  
18 ceipt of any other approval from the Commission. The  
19 Commission shall issue its final decision in the certificate  
20 proceeding within 180 days after the filing of the request  
21 for a certificate.

22               “(c) NATIONAL ENVIRONMENTAL POLICY ACT COM-  
23 PLIANCE.—(1) Any certificate of public convenience and  
24 necessity issued by the Commission pursuant to this sec-

1 tion shall be subject to the National Environmental Policy  
2 Act (42 U.S.C. 4321 et seq.).

3 “(2) The Commission shall be the lead agency for en-  
4 vironmental reviews under the National Environmental  
5 Policy Act of 1969 and shall be responsible for conducting  
6 a single consolidated review for each project that is the  
7 subject of a certificate of public convenience and necessity  
8 under this section, or, if appropriate, for multiple projects  
9 located in the same area.

10 “(3) The issuance of a certificate of public conven-  
11 ience and necessity shall be conclusive as to the need for  
12 the facilities which are the subject of the certificate.

13 “(d) APPLICATIONS.—Applications for certificates  
14 under subsection (b) shall be made in writing to the Com-  
15 mission, be verified under oath, and shall be in such form,  
16 contain such information, and notice thereof shall be  
17 served upon such interested parties and in such manner  
18 as the Commission shall, by regulation, require.

19 “(e) OPPORTUNITY FOR COMMENT.—In any pro-  
20 ceeding before the Commission initiated under subsection  
21 (b), the Commission shall afford each State in which  
22 transmission facilities covered by the certificate is or will  
23 be located and other interested parties a reasonable oppor-  
24 tunity to present their views and recommendations with

1 respect to the need for and impact of any facilities covered  
2 by the certificate.

3       “(f) RIGHT OF EMINENT DOMAIN.—When any holder  
4 of a certificate of public convenience and necessity for elec-  
5 tric transmission facilities issued by the Commission pur-  
6 suant to subsection (b) cannot acquire by contract, or is  
7 unable to agree with the owner of the property to the com-  
8 pensation to be paid for the necessary rights-of-way, it  
9 may acquire the same by the exercise of the right of emi-  
10 nent domain in the district court of the United States for  
11 the district in which such property may be located, or in  
12 the State courts. The practice and procedure in any action  
13 or proceeding for that purpose in the district court of the  
14 United States shall conform as nearly as may be possible  
15 with the practice and procedure in similar actions or pro-  
16 ceedings in the courts of the State where the property is  
17 situated.

18       “(g) RECOVERY OF COSTS.—All reasonable costs for  
19 the construction, operation, and maintenance of trans-  
20 mission facilities developed through a transmission expan-  
21 sion planning process approved by the Commission under  
22 subsection (a) shall be recoverable in the transmission  
23 rates charged by the regional transmission organization  
24 or other such applicant.

1       “(h) STATE LAW.—Nothing in this section shall pre-  
2 clude any person from constructing any transmission fa-  
3 cilities pursuant to State law.

4       **“SEC. 216. TRANSMISSION PRICING.**

5       “(a) IN GENERAL.—The Commission shall encourage  
6 innovative transmission pricing policies for a regional  
7 transmission organization, a comparable transmission or-  
8 ganization approved by the Commission before the enact-  
9 ment of this Act, or a transmitting utility whose facilities  
10 are controlled but not owned by either such entity. Such  
11 transmission pricing policies shall—

12               “(1) provide incentives to transmitting utilities  
13 to promote the voluntary participation and forma-  
14 tion of regional transmission organizations, without  
15 having the effect of forcing transmitting utilities to  
16 join regional transmission organizations and extend  
17 such incentives to transmitting utilities that already  
18 have formed a regional transmission organization;

19               “(2) limit separate, additive access charges for  
20 transmission service over the transmission facilities  
21 operated by the regional transmission organization:  
22 *Provided, however,* That a reasonable transition  
23 mechanism or period may be used before eliminating  
24 such separate, additive access charges;

1           “(3) minimize the shifting of costs among exist-  
2           ing customers of the transmitting utilities within the  
3           regional transmission organization, including permit-  
4           ting the use of transmission rates based on a single  
5           transmitting utility’s costs for transmission service  
6           provided within the regional transmission organiza-  
7           tion;

8           “(4) encourage the efficient and reliable oper-  
9           ation of the transmission grid and supply of trans-  
10          mission services through congestion management,  
11          performance-based or incentive ratemaking, and  
12          other measures;

13          “(5) encourage efficient and adequate invest-  
14          ment in and expansion of the transmission facilities  
15          owned [and/or] controlled by the regional trans-  
16          mission organization; and

17          “(6) provide enhanced returns on equity for in-  
18          vesting in transmission and related facilities that im-  
19          prove the operational reliability of the transmission  
20          grid.

21          “(b) NEGOTIATED RATES.—The Commission may  
22          permit the charging of negotiated rates for transmission  
23          services under this section without regard to costs when-  
24          ever an individual company or companies are willing to  
25          pay such negotiated rates: *Provided, however,* That costs

1 associated with such negotiated rates shall not be recov-  
2 ered from other transmission customers.

3 “(c) RULEMAKING.—Within 180 days of the enact-  
4 ment of this section, the Commission shall establish by  
5 rule definitions and standards to govern its approval of  
6 performance-based or incentive pricing policies under sub-  
7 section (a) and negotiated rates under subsection (b).  
8 With respect to performance-based or incentive rates, the  
9 definitions and standards shall include, but not be limited  
10 to—

11 “(1) a method for calculating initial trans-  
12 mission rates (including price caps that would in-  
13 clude discounting);

14 “(2) an index mechanism for adjusting initial  
15 rates;

16 “(3) time periods for redetermining initial  
17 rates; and

18 “(4) costs to be excluded from performance-  
19 based rates.

20 **“SEC. 217. NO BYPASS OF CHARGES.**

21 “No orders allowing interconnections to the electric  
22 transmission or distribution system shall be issued that  
23 would have the effect of allowing the applicant directly or  
24 indirectly to avoid any Federal- or State-approved rates

1 or charges that would otherwise apply if the interconnec-  
2 tions were not authorized or approved.”.

3 **PART C—ENHANCING TRANSMISSION**

4 **RELIABILITY**

5 **SEC. 104. RELIABILITY STANDARDS.**

6 The Federal Power Act is amended by adding the fol-  
7 lowing new section after section 218:

8 **“SEC. 219. ELECTRIC RELIABILITY ORGANIZATION AND**  
9 **OVERSIGHT.**

10 **“[Reliability language to be provided]**

11 **SEC. 105. INTERCONNECTION.**

12 (a) DEFINITIONS.—Section 3 of the Federal Power  
13 Act (16 U.S.C. 796) is amended by adding at the end the  
14 following:

15 “(26) APPROPRIATE REGULATORY AUTHOR-  
16 ITY.—The term ‘appropriate regulatory authority’  
17 means—

18 “(A) the Commission;

19 “(B) a State commission;

20 “(C) a municipality; or

21 “(D) a cooperative that is self-regulating  
22 under State law and is not a public utility.

23 “(27) GENERATING FACILITY.—The term ‘gen-  
24 erating facility’ means a facility that generates elec-  
25 tric energy.

1           “(28) LOCAL DISTRIBUTION UTILITY.—the  
2 term ‘local distribution utility’ means an entity that  
3 owns, controls, or operates an electric power dis-  
4 tribution facility that is used for the sale of electric  
5 energy.

6           “(29) NON-FEDERAL REGULATORY AUTHOR-  
7 ITY.—The term ‘non-Federal regulatory authority’  
8 means an appropriate regulatory authority other  
9 than the Commission.”.

10       (b) INTERCONNECTION TO DISTRIBUTION FACILI-  
11 TIES.—Section 210 of the Federal Power Act (16 U.S.C.  
12 924i) is amended—

13           (1) by redesignating subsection (e) as sub-  
14 section (h); and

15           (2) by inserting after subsection (d) the fol-  
16 lowing:

17       “(e) INTERCONNECTION TO DISTRIBUTION FACILI-  
18 TIES.—

19           “(1) INTERCONNECTION.—

20           “(A) IN GENERAL.—A local distribution  
21 utility shall interconnect a generating facility  
22 with the distribution facilities of the local dis-  
23 tribution utility if the owner of the generating  
24 facility—

1                   “(i) complies with the final rule pro-  
2                   mulgated under paragraph (2); and

3                   “(ii) pays the costs of interconnecting.

4                   “(B) COSTS.—The costs of interconnecting  
5                   shall be just and reasonable, not unduly dis-  
6                   criminatory, and shall be comparable to the  
7                   costs charged by the local distribution utility for  
8                   interconnection by any similarly situated gener-  
9                   ating facility to the distribution facilities of the  
10                  local distribution utility, as determined by the  
11                  appropriate regulatory authority.

12                  “(C) APPLICABLE REQUIREMENTS.—The  
13                  right of a generating facility to interconnect  
14                  under subparagraph (A) does not—

15                  “(i) relieve the generating facility or  
16                  the local distribution utility of other Fed-  
17                  eral, State, or local requirements, including  
18                  the recovery of stranded costs, where re-  
19                  quired; or

20                  “(ii) provide the generating facility  
21                  with transmission or distribution service.

22                  “(2) RULE.—

23                  “(A) IN GENERAL.—Not later than 1 year  
24                  after the date of enactment of this subpara-  
25                  graph, the Commission shall promulgate a final

1 rule to establish reasonable and appropriate  
2 technical standards for the interconnection of a  
3 generating facility with the distribution facili-  
4 ties of a local distribution utility, and shall pro-  
5 vide for the updating or modification of such  
6 standards when appropriate.

7 “(B) PROCESS.—To the extent feasible,  
8 the Commission shall develop the standards  
9 through a process involving interested parties,  
10 and shall rely, where appropriate, on standards  
11 developed through independent standard setting  
12 organizations.

13 “(C) ADVISORY COMMITTEE.—The Com-  
14 mission shall establish an advisory committee  
15 composed of qualified technical and reliability  
16 experts to make recommendations to the Com-  
17 mission concerning development of the stand-  
18 ards.

19 “(D) ADMINISTRATION.—

20 “(i) BY A NON-FEDERAL REGULATORY  
21 AUTHORITY.—Except where subject to the  
22 jurisdiction of the Commission pursuant to  
23 provisions other than clause (ii), a non-  
24 Federal regulatory authority may admin-

1           ister and enforce the rule promulgated  
2           under subparagraph (A).

3           “(ii) BY THE COMMISSION.—To the  
4           extent that a non-Federal regulatory au-  
5           thority does not administer and enforce the  
6           rule, the Commission shall administer and  
7           enforce the rule with respect to inter-  
8           connection in that jurisdiction.

9           “(3) RIGHT TO BACKUP POWER.—

10          “(A) IN GENERAL.—In accordance with  
11          subparagraph (B), a local distribution utility  
12          shall offer to sell backup power to a generating  
13          facility that has interconnected with the local  
14          distribution utility to the extent that the local  
15          distribution utility—

16               “(i) is not subject to an order of a  
17               non-Federal regulatory authority to pro-  
18               vide open access to the distribution facili-  
19               ties of the local distribution utility;

20               “(ii) has not offered to provide open  
21               access to the distribution facilities of the  
22               local distribution utility; or

23               “(iii) does not allow a generating fa-  
24               cility to purchase backup power from an-

1           other entity using the distribution facilities  
2           of the local distribution utility.

3           “(B) RATES, TERMS, AND CONDITIONS.—A  
4           sale of backup power under subparagraph (A)  
5           shall be at such a rate, and under such terms  
6           and conditions, as are just and reasonable and  
7           not unduly discriminatory or preferential, tak-  
8           ing into account the actual incremental cost  
9           whenever incurred by the local distribution util-  
10          ity, to supply such backup power service during  
11          the period in which the backup power service is  
12          provided, and any standby charges, as deter-  
13          mined by the appropriate regulatory authority.

14          “(C) NO REQUIREMENT FOR CERTAIN  
15          SALES.—A local distribution utility shall not be  
16          required to offer backup power for resale to any  
17          entity other than the entity for which the  
18          backup power is purchased.

19          “(D) NEW OR EXPANDED LOADS.—To the  
20          extent backup power is used to serve a new or  
21          expanded load on the distribution system, the  
22          generating facility shall pay any reasonable  
23          costs associated with any upgrades to trans-  
24          mission, distribution, or generation facilities re-  
25          quired to provide such service.”.

1           (c) INTERCONNECTION TO TRANSMISSION FACILI-  
2 TIES.—Section 210 of the Federal Power Act (16 U.S.C.  
3 824i) is amended by inserting after subsection (e) (as  
4 added by subsection (b)) the following:

5           “(f) INTERCONNECTION TO TRANSMISSION FACILI-  
6 TIES.—

7           “(1) INTERCONNECTION.—

8                   “(A) DEFINITION.—For purposes of this  
9 subsection and subsection (g), the term ‘trans-  
10 mitting utility’ means any entity (notwith-  
11 standing section 201(f)) that owns, controls, or  
12 operates an electric power transmission facility  
13 that is used for the sale of electric energy.

14                   “(B) IN GENERAL.—Notwithstanding sub-  
15 sections (a) and (c), a transmitting utility shall  
16 interconnect a generating facility with the  
17 transmission facilities of the transmitting utility  
18 if the owner of the generating facility—

19                           “(i) complies with the final rule pro-  
20 mulgated under paragraph (2); and

21                           “(ii) pays the costs of interconnecting.

22                   “(C) COSTS.—

23                           “(i) IN GENERAL.—The costs of the  
24 interconnecting shall be just and reason-  
25 able, not unduly discriminatory, and shall

1 be comparable to the costs charged by the  
2 transmitting utility for interconnection by  
3 any similarly situated generating facility to  
4 the transmitting facilities of the transmit-  
5 ting utility.

6 “(ii) EFFECT OF FERC LITE.—A non-  
7 Federal regulatory authority that, under  
8 any provision of Federal law enacted be-  
9 fore, on, or after the date of enactment of  
10 this subparagraph, is authorized to deter-  
11 mine the rates for transmission service  
12 shall be authorized to determine the costs  
13 of any interconnection under this subpara-  
14 graph in accordance with that provision of  
15 Federal law.

16 “(D) APPLICABLE REQUIREMENTS.—The  
17 right of a generating facility to interconnect  
18 under subparagraph (A) does not—

19 “(i) relieve the generating facility or  
20 the transmitting utility of other Federal,  
21 State, or local requirements, including the  
22 recovery of stranded costs, where required;  
23 or

24 “(ii) provide the generating facility  
25 with transmission or distribution service.

1           “(2) RULE.—

2                   “(A) IN GENERAL.—Not later than 1 year  
3 after the date of enactment of this subpara-  
4 graph, the Commission shall promulgate a final  
5 rule to establish reasonable and appropriate  
6 technical standards for the interconnection of a  
7 generating facility with the transmission facili-  
8 ties of a transmitting utility.

9                   “(B) PROCESS.—To the extent feasible,  
10 the Commission shall develop the standards  
11 through a process involving interested parties,  
12 and shall rely, where appropriate, on standards  
13 developed through independent standard setting  
14 organizations.

15                   “(C) ADVISORY COMMITTEE.—The Com-  
16 mission shall establish an advisory committee  
17 composed of qualified technical and reliability  
18 experts to make recommendations to the Com-  
19 mission concerning development of the stand-  
20 ards.

21           “(3) RIGHT OF BACKUP POWER.—

22                   “(A) IN GENERAL.—In accordance with  
23 subparagraph (B), a transmitting utility shall  
24 offer to sell backup power to a generating facil-

1           ity that has interconnected with the transmit-  
2           ting utility unless—

3                   “(i) Federal or State law (including  
4                   regulations) allows a generating facility to  
5                   purchase backup power from an entity  
6                   other than the transmitting utility; or

7                   “(ii) a transmitting utility allows a  
8                   generating facility to purchase backup  
9                   power from an entity other than the trans-  
10                  mitting utility using—

11                   “(I) the transmission facilities of  
12                   the transmitting utility; or

13                   “(II) the transmission facilities  
14                   of any other transmitting utility.

15                  “(B) RATES, TERMS, AND CONDITIONS.—A  
16                  sale of backup power under subparagraph (A)  
17                  shall be at such a rate, and under such terms  
18                  and conditions, as are just and reasonable and  
19                  not unduly discriminatory or preferential, tak-  
20                  ing into account the actual incremental cost,  
21                  whenever incurred by the transmitting utility,  
22                  to supply such backup power service during the  
23                  period in which the backup power service is pro-  
24                  vided, and any standby charges, as determined  
25                  by the appropriate regulatory authority.

1           “(C) NO REQUIREMENT FOR CERTAIN  
2 SALES.—A transmitting utility shall not be re-  
3 quired to offer backup power for resale to any  
4 entity other than the entity for which the  
5 backup power is purchased.

6           “(D) NEW OR EXPANDED LOADS.—To the  
7 extent backup power is used to serve a new or  
8 expanded load on the transmission system, the  
9 generating facility shall pay any reasonable  
10 costs associated with any upgrades to trans-  
11 mission, distribution, or generation facilities, to  
12 provide such service.”.

13       (d) TRANSMISSION INTERCONNECTION PROCESS AND  
14 PROCEDURES.—Section 210 of the Federal Power Act is  
15 amended by inserting after subsection (f) (as added by  
16 subsection (e)) the following:

17       “(g) TRANSMISSION INTERCONNECTION PROCESS  
18 AND PROCEDURES.—(1) Within 180 days of the enact-  
19 ment of this section, the Commission shall issue a rule  
20 to establish procedures governing—

21           “(A) the interconnection of new generating fa-  
22 cilities to a transmission system owned or operated  
23 by any transmitting utility or any Commission-ap-  
24 proved regional transmission organization; or

1           “(B) the increase in capacity of an existing gen-  
2           erating facility interconnected to a transmission sys-  
3           tem owned or operated by any transmitting utility or  
4           any Commission-approved regional transmission or-  
5           ganization.

6 Such rulemaking proceeding shall establish interconnec-  
7 tion procedures and required elements for interconnection  
8 agreements as provided in paragraphs (2) and (3).

9           “(2) INTERCONNECTION PROCEDURES.—Pursuant to  
10 the rulemaking proceeding under paragraph (1) of this  
11 subsection, the Commission shall establish interconnection  
12 procedures to govern the process in which any transmit-  
13 ting utility or regional transmission organization responds  
14 to and resolves interconnection requests. Such procedures  
15 shall include provisions governing—

16           “(A) the studies to be conducted to ensure that  
17           the interconnection can occur without compromising  
18           the reliability of the transmission system;

19           “(B) the timeframes for completing those stud-  
20           ies;

21           “(C) the priorities among generators that sub-  
22           mit interconnection requests;

23           “(D) the rights that new generators have upon  
24           interconnection;

1           “(E) compensation, as appropriate, for trans-  
2           mitting utilities and regional transmission organiza-  
3           tions for processing the interconnection requests;

4           “(F) criteria for assuring that such inter-  
5           connections will meet applicable reliability criteria  
6           and will not adversely affect existing transmission  
7           operations or service; and

8           “(G) criteria for assuring that such inter-  
9           connections will not violate applicable laws (includ-  
10          ing safety and environmental laws), rules, or con-  
11          tracts.

12 Any transmitting utility or regional transmission organi-  
13 zation shall include such interconnection procedures in its  
14 tariffs filed with and approved by the Commission under  
15 section 205 of the Federal Power Act: *Provided, however,*  
16 That any transmitting utility or regional transmission or-  
17 ganization may include different or additional provisions  
18 in the interconnection procedures, upon a showing that the  
19 different or additional provisions are consistent with the  
20 procedures established by the Commission.

21          “(3) REQUIRED ELEMENTS FOR INTERCONNECTION  
22 AGREEMENTS.—Pursuant to the rulemaking proceeding  
23 under paragraph (1) of this subsection, the Commission  
24 shall also identify the required elements for interconnec-

1 tion agreements. Each such interconnection agreement  
2 shall contain provisions respecting—

3 “(A) the cost responsibility for facilities nec-  
4 essary to interconnect the new generator or for up-  
5 grades to the transmission system required to allow  
6 the reliable interconnection of the new generator;

7 “(B) the security and creditworthiness require-  
8 ments for constructing the interconnection facilities  
9 or system upgrades;

10 “(C) the methods for preserving the confiden-  
11 tiality of information exchanged between any new  
12 generator and any transmitting utility or regional  
13 transmission organization;

14 “(D) the requirements for operating any new  
15 generator in parallel with the transmission system;  
16 and

17 “(E) the methods for resolving disputes be-  
18 tween any new generator, and any transmitting util-  
19 ity or regional transmission organization.

20 “(4) EXECUTION OF INTERCONNECTION AGREE-  
21 MENT.—Each such interconnection agreement shall be ex-  
22 ecuted by any new generator, and any transmitting utility  
23 or regional transmission organization before the com-  
24 mencement of the construction of facilities necessary to  
25 interconnect such new generator: *Provided, however,* That

1 such generator and transmitting utility or regional trans-  
2 mission organization may agree to different or additional  
3 terms and conditions in their interconnection agreement  
4 if they are consistent with the elements for interconnection  
5 agreements established by the Commission.

6 “(5) EXEMPTION FOR COMMISSION APPROVED PRO-  
7 CEDURES.—Any transmitting utility or regional trans-  
8 mission organization shall be exempted by the Commission  
9 from the requirements of this subsection, upon a showing  
10 that substantially comparable generator-transmission  
11 interconnection procedures and agreements have already  
12 been filed with and approved by the Commission.”

13 (e) CONFORMING AMENDMENTS.—Section 210 of the  
14 Federal Power Act (16 U.S.C. 824i) is amended—

15 (1) in subsection (a)(1)—

16 (A) by inserting “transmitting utility, local  
17 distribution utility,” after “electric utility,”;  
18 and

19 (B) in subparagraph (A), by inserting  
20 “any transmitting utility,” after “small power  
21 production facility,”;

22 (2) in subsection (b)(2), by striking “an evi-  
23 dentiary hearing” and inserting “a hearing”;

24 (3) in subsection (c)(2)—

1 (A) in subparagraph (B), by striking “or”  
2 at the end;

3 (B) in subparagraph (C), by striking  
4 “and” at the end and inserting “or”; and

5 (C) by adding at the end the following:

6 “(D) promote competition in electricity  
7 markets, and”; and

8 (4) in subsection (d), by striking the last sen-  
9 tence.

10 **TITLE II—ELECTRIC**  
11 **RELIABILITY**

12 **SEC. 201. ELECTRIC RELIABILITY.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and  
14 following) is amended by adding at the end the following  
15 section:

16 **“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND**  
17 **OVERSIGHT.**

18 “(a) DEFINITIONS.—As used in this section:

19 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-  
20 TY.—The term ‘affiliated regional reliability entity’  
21 means an entity delegated authority under the provi-  
22 sions of subsection (h).

23 “(2) BULK-POWER SYSTEM.—The term ‘bulk-  
24 power system’ means all facilities and control sys-  
25 tems necessary for operating an interconnected

1 transmission grid (or any portion thereof), including  
2 high-voltage transmission lines, substations, control  
3 centers, communications, data, and operations plan-  
4 ning facilities, and the output of generating units  
5 necessary to maintain transmission system reli-  
6 ability.

7 “(3) ELECTRIC RELIABILITY ORGANIZATION.—  
8 The term ‘electric reliability organization’ means the  
9 organization approved by the Commission under  
10 subsection (d)(4).

11 “(4) ENTITY RULE.—The term ‘entity rule’  
12 means a rule adopted by an affiliated regional reli-  
13 ability entity for a specific region and designed to  
14 implement or enforce one or more organization  
15 standards. An entity rule shall be subject to ap-  
16 proval by the electric reliability organization and  
17 once approved, shall be treated as an organization  
18 standard.

19 “(5) INDUSTRY SECTOR.—The term ‘industry  
20 sector’ means a group of users of the bulk-power  
21 system with substantially similar commercial inter-  
22 ests, as determined by the board of the electric reli-  
23 ability organization.

24 “(6) INTERCONNECTION.—The term ‘inter-  
25 connection’ means a geographic area in which the

1 operation of bulk-power system components is syn-  
2 chronized such that the failure of one or more of  
3 such components may adversely affect the ability of  
4 the operators of other components within the inter-  
5 connection to maintain safe and reliable operation of  
6 the facilities within their control.

7 “(7) ORGANIZATION STANDARD.—The term ‘or-  
8 ganization standard’ means a policy or standard  
9 duly adopted by the electric reliability organization  
10 to provide for the reliable operation of a bulk-power  
11 system.

12 “(8) PUBLIC INTEREST GROUP.—The term  
13 ‘public interest group’ means any nonprofit private  
14 or public organization that has an interest in the ac-  
15 tivities of the electric reliability organization, includ-  
16 ing, but not limited to, ratepayer advocates, environ-  
17 mental groups, and State and local government or-  
18 ganizations that regulate market participants and  
19 promulgate government policy.

20 “(9) SYSTEM OPERATOR.—The term ‘system  
21 operator’ means any entity that operates or is re-  
22 sponsible for the operation of a bulk-power system,  
23 including a control area operator, an independent  
24 system operator, a transmission company, a trans-

1 mission system operator, or a regional security coordi-  
2 nator.

3 “(10) USER OF THE BULK-POWER SYSTEM.—  
4 The term ‘user of the bulk-power system’ means any  
5 entity that sells, purchases, or transmits electric en-  
6 ergy over a bulk-power system, or that owns, oper-  
7 ates or maintains facilities or control systems that  
8 are part of a bulk-power system, or that is a system  
9 operator.

10 “(11) VARIANCE.—The term ‘variance’ means  
11 an exception or variance from the requirements of  
12 an organization standard (including a proposal for  
13 an organization standard where there is no organiza-  
14 tion standard) that is adopted by an affiliated re-  
15 gional reliability entity and applicable to all or a  
16 part of the region for which the affiliated regional  
17 reliability entity is responsible. A variance shall be  
18 subject to approval by the electric reliability organi-  
19 zation and once approved, shall be treated as an or-  
20 ganization standard.

21 “(b) COMMISSION AUTHORITY.—(1) Notwithstanding  
22 section 201(f), the Commission shall have jurisdiction  
23 within the United States over the electric reliability orga-  
24 nization, all affiliated regional reliability entities, all sys-  
25 tem operators, and all users of the bulk-power system, for

1 purposes of approving and enforcing compliance with the  
2 requirements of this section.

3 “(2) The Commission may, by rule, define any other  
4 term used in this section, provided such definition is con-  
5 sistent with the definitions in, and the purpose and intent  
6 of, this Act.

7 “(c) EXISTING RELIABILITY STANDARDS.—Fol-  
8 lowing enactment of this section, and prior to the approval  
9 of the electric reliability organization under subsection (d),  
10 any person, including the North American Electric Reli-  
11 ability Council and its member regional reliability councils,  
12 shall file with the Commission any reliability standard,  
13 guidance or practice, or any amendment thereto, that the  
14 person would propose to be made mandatory and enforce-  
15 able. The Commission, after allowing interested persons  
16 an opportunity to submit comments, may approve any  
17 such proposed mandatory standard, guidance or practice,  
18 or any amendment thereto, if it finds that the standard,  
19 guidance, or practice, or amendment is just, reasonable,  
20 not unduly discriminatory or preferential, and in the pub-  
21 lic interest. Filed standards, guidances, or practices, in-  
22 cluding any amendments thereto, shall be mandatory and  
23 applicable according to their terms following approval by  
24 the Commission and shall remain in effect until—

1           (1) withdrawn, disapproved or superseded by an  
2           organization standard, issued or approved by the  
3           electric reliability organization and made effective by  
4           the Commission under subsection (e); or

5           (2) disapproved or suspended by the Commis-  
6           sion if, upon complaint or upon its own motion and  
7           after notice and opportunity for comment, the Com-  
8           mission finds the standard, guidance or practice un-  
9           just, unreasonable, unduly discriminatory or pref-  
10          erential, or not in the public interest.

11 Standards, guidances or practices in effect pursuant to the  
12 provisions of this subsection shall be enforceable by the  
13 Commission.

14          “(d) ORGANIZATION APPROVAL.—(1) Not later than  
15 90 days after the date of enactment of this section, the  
16 Commission shall issue proposed rules specifying proce-  
17 dures and requirements for an entity to apply for approval  
18 as the electric reliability organization. The Commission  
19 shall provide notice and opportunity for comment on the  
20 proposed rules. The Commission shall promulgate a final  
21 rule under this subsection within 180 days after the date  
22 of enactment of this section.

23          “(2) Following the issuance of a final Commission  
24 rule under paragraph (1), an entity may submit an appli-  
25 cation to the Commission for approval as the electric reli-

1 ability organization. The applicant shall specify in its ap-  
2 plication its governance and procedures, as well as its  
3 funding mechanism and initial funding requirements.

4 “(3) The Commission shall provide public notice of  
5 the application and afford interested parties an oppor-  
6 tunity to comment.

7 “(4) The Commission shall approve the application  
8 if the Commission determines that the applicant—

9 “(A) has the ability to develop, implement and  
10 enforce standards that provide for an adequate level  
11 of reliability of the bulk-power system;

12 “(B) permits voluntary membership to any user  
13 of the bulk-power system or public interest group;

14 “(C) assures fair representation of its members  
15 in the selection of its directors and fair management  
16 of its affairs, taking into account the need for effi-  
17 ciency and effectiveness in decisionmaking and oper-  
18 ations and the requirements for technical com-  
19 petency in the development of organization stand-  
20 ards and the exercise of oversight of bulk-power sys-  
21 tem reliability;

22 “(D) assures that no two industry sectors have  
23 the ability to control, and no one industry sector has  
24 the ability to veto, the electric reliability organiza-  
25 tion’s discharge of its responsibilities (including ac-

1 tions by committees recommending standards to the  
2 board or other board actions to implement and en-  
3 force standards);

4 “(E) provides for governance by a board wholly  
5 comprised of independent directors;

6 “(F) provides a funding mechanism and re-  
7 quirements that are just, reasonable and not unduly  
8 discriminatory or preferential and are in the public  
9 interest, and which satisfy the requirements of sub-  
10 section (l);

11 “(G) establishes procedures for development of  
12 organization standards that provide reasonable no-  
13 tice and opportunity for public comment, taking into  
14 account the need for efficiency and effectiveness in  
15 decisionmaking and operations and the requirements  
16 for technical competency in the development of orga-  
17 nization standards, and which standards develop-  
18 ment process has the following attributes:

19 “(i) openness,

20 “(ii) balance of interests, and

21 “(iii) due process, except that the proce-  
22 dures may include alternative procedures for  
23 emergencies;

24 “(H) establishes fair and impartial procedures  
25 for implementation and enforcement of organization

1 standards, either directly or through delegation to  
2 an affiliated regional reliability entity, including the  
3 imposition of penalties, limitations on activities,  
4 functions, or operations, or other appropriate sanc-  
5 tions;

6 “(I) establishes procedures for notice and op-  
7 portunity for public observation of all meetings, ex-  
8 cept that the procedures for public observation may  
9 include alternative procedures for emergencies or for  
10 the discussion of information the directors reason-  
11 ably determine should take place in closed session,  
12 such as litigation, personnel actions, or commercially  
13 sensitive information;

14 “(J) provides for the consideration of rec-  
15 ommendations of States and State commissions; and

16 “(K) addresses other matters that the Commis-  
17 sion may deem necessary or appropriate to ensure  
18 that the procedures, governance, and funding of the  
19 electric reliability organization are just, reasonable,  
20 not unduly discriminatory or preferential, and are in  
21 the public interest.

22 “(5) The Commission shall approve only one electric  
23 reliability organization. If the Commission receives two or  
24 more timely applications that satisfy the requirements of  
25 this subsection, the Commission shall approve only the ap-

1 plication it concludes will best implement the provisions  
2 of this section.

3 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO  
4 ORGANIZATION STANDARDS.—(1) The electric reliability  
5 organization shall file with the Commission any new or  
6 modified organization standards, including any variances  
7 or entity rules, and the Commission shall follow the proce-  
8 dures under paragraph (2) for review of that filing.

9 “(2) Submissions under paragraph (1) shall include:

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

12 “(B) a record of any proceedings conducted  
13 with respect to such proposal.

14 The Commission shall provide notice of the filing of such  
15 proposal and afford interested persons 30 days to submit  
16 comments. The Commission, after taking into consider-  
17 ation any submitted comments, shall approve or dis-  
18 approve such proposal not later than 60 days after the  
19 deadline for the submission of comments, except that the  
20 Commission may extend the 60-day period for an addi-  
21 tional 90 days for good cause, and except further that if  
22 the Commission does not act to approve or disapprove a  
23 proposal within the foregoing periods the proposal shall  
24 go into effect subject to its terms, without prejudice to  
25 the authority of the Commission thereafter to suspend or

1 modify the proposal in accordance with the standards and  
2 requirements of this section. Proposals approved by the  
3 Commission shall take effect according to their terms but  
4 not earlier than 30 days after the effective date of the  
5 Commission's order, except as provided in paragraph (3)  
6 of this subsection.

7       “(3)(A) In the exercise of its review responsibilities  
8 under this subsection, the Commission shall give due  
9 weight to the technical expertise of the electric reliability  
10 organization with respect to the content of a new or modi-  
11 fied organization standard, but shall not defer to the orga-  
12 nization with respect to the effect of the organization  
13 standard on competition. The Commission shall approve  
14 a proposed new or modified organization standard if it de-  
15 termines the standard to be just, reasonable, not unduly  
16 discriminatory or preferential, and in the public interest.  
17 The Commission, either upon complaint or upon its own  
18 motion, shall suspend an organization standard, if it de-  
19 termines the standard to be unjust, unreasonable, unduly  
20 discriminatory or preferential or not in the public interest.  
21 Upon suspension of such a standard, the Commission shall  
22 establish an interim standard to apply until a new or  
23 modified standard is approved.

24       “(B) An existing or proposed organization standard  
25 which is disapproved or suspended in whole or in part by

1 the Commission shall be remanded to the electric reli-  
2 ability organization for further consideration.

3       “(C) The Commission, on its own motion or upon  
4 complaint, may direct the electric reliability organization  
5 to develop an organization standard, including modifica-  
6 tion to an existing organization standard, addressing a  
7 specific matter by a date certain if the Commission con-  
8 siders such new or modified organization standard nec-  
9 essary or appropriate to further the purposes of this sec-  
10 tion. The electric reliability organization shall file any such  
11 new or modified organization standard in accordance with  
12 this subsection.

13       “(D) An affiliated regional reliability entity may pro-  
14 pose a variance or entity rule under subsection (h)(3) to  
15 the electric reliability organization. The affiliated regional  
16 reliability entity may request that the electric reliability  
17 organization expedite consideration of the proposal, and  
18 shall file a notice of such request with the Commission,  
19 if expedited consideration is necessary to provide for bulk-  
20 power system reliability. If the electric reliability organiza-  
21 tion fails to adopt the variance or entity rule, either in  
22 whole or in part, the affiliated regional reliability entity  
23 may request that the Commission review such action. If  
24 the Commission determines, after its review of such a re-  
25 quest, that the action of the electric reliability organiza-

1 tion did not conform to the applicable standards and pro-  
2 cedures approved by the Commission, or if the Commis-  
3 sion determines that the variance or entity rule is just,  
4 reasonable, not unduly discriminatory or preferential, and  
5 in the public interest, and that the electric reliability orga-  
6 nization has unreasonably rejected the proposed variance  
7 or entity rule, then the Commission may remand the pro-  
8 posed variance or entity rule for further consideration by  
9 the electric reliability organization or may direct the elec-  
10 tric reliability organization or the affiliated regional reli-  
11 ability entity to develop a variance or entity rule consistent  
12 with that requested by the affiliated regional reliability en-  
13 tity. Any such variance or entity rule proposed by an affili-  
14 ated regional reliability entity shall be submitted to the  
15 electric reliability organization for review and filing with  
16 the Commission in accordance with the procedures speci-  
17 fied in this subsection.

18       “(E) Notwithstanding any other provision of this sub-  
19 section, a proposed organization standard or amendment  
20 shall take effect according to its terms if the electric reli-  
21 ability organization determines that an emergency exists  
22 requiring that such proposed organization standard or  
23 amendment take effect without notice or comment. The  
24 electric reliability organization shall notify the Commission  
25 immediately following such determination and shall file

1 such emergency organization standard or amendment with  
2 the Commission not later than five days following such  
3 determination and shall include in such filing an expla-  
4 nation of the need for such emergency standard. Subse-  
5 quently, the Commission shall provide notice of the organi-  
6 zation standard or amendment for comment, and shall fol-  
7 low the procedures set out in paragraphs (2) and (3) for  
8 review of the new or modified organization standard. Any  
9 such emergency organization standard that has gone into  
10 effect shall remain in effect unless and until suspended  
11 or disapproved by the Commission. If the Commission de-  
12 termines at any time that the emergency organization  
13 standard or amendment is not necessary, the Commission  
14 may suspend such emergency organization standard or  
15 amendment.

16 “(4) All users of the bulk-power system shall comply  
17 with any organization standard that takes effect under  
18 this section.

19 “(f) COORDINATION WITH CANADA AND MEXICO.—  
20 The electric reliability organization shall take all appro-  
21 priate steps to gain recognition in Canada and Mexico.  
22 The United States shall use its best efforts to enter into  
23 international agreements with the appropriate govern-  
24 ments of Canada and Mexico to provide for effective com-  
25 pliance with organization standards and to provide for the

1 effectiveness of the electric reliability organization in car-  
2 rying out its mission and responsibilities. All actions taken  
3 by the electric reliability organization, any affiliated re-  
4 gional reliability entity, and the Commission shall be con-  
5 sistent with the provisions of such international agree-  
6 ments.

7 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR  
8 FUNDING.—(1) The electric reliability organization shall  
9 file with the Commission any proposed change in its proce-  
10 dures, governance, or funding, or any changes in the affili-  
11 ated regional reliability entity’s procedures, governance or  
12 funding relating to delegated functions, and shall include  
13 with the filing an explanation of the basis and purpose  
14 for the change.

15 “(2) A proposed procedural change shall take effect  
16 90 days after filing with the Commission if the change  
17 constitutes a statement of policy, practice, or interpreta-  
18 tion with respect to the meaning or enforcement of an ex-  
19 isting procedure. Any other proposed procedural change  
20 shall take effect only upon a finding by the Commission,  
21 after notice and opportunity for comments, that the  
22 change is just, reasonable, not unduly discriminatory or  
23 preferential, is in the public interest, and satisfies the re-  
24 quirements of subsection (d)(4).

1       “(3) A proposed change in governance or funding  
2 shall not take effect unless the Commission finds that the  
3 change is just, reasonable, not unduly discriminatory or  
4 preferential, and is in the public interest, and satisfies the  
5 requirements of subsection (d)(4).

6       “(4)(A) The Commission, either upon complaint or  
7 upon its own motion, may suspend a procedure or govern-  
8 ance or funding provision if it determines the procedure  
9 or provision does not meet the requirements of subsection  
10 (d)(4) or is unjust, unreasonable, unduly discriminatory  
11 or preferential, or otherwise not in the public interest.  
12 Upon such suspension the Commission shall establish an  
13 interim procedure or governance or funding provision until  
14 a new or modified procedure or governance or funding pro-  
15 vision meeting the requirements of this subsection takes  
16 effect.

17       “(B) The Commission, upon complaint or upon its  
18 own motion, may require the electric reliability organiza-  
19 tion to amend the procedures, governance or funding if  
20 the Commission determines that the amendment is nec-  
21 essary to meet the requirements of this section. The elec-  
22 tric reliability organization shall file the amendment in ac-  
23 cordance with paragraph (1) of this subsection.

24       “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-  
25 tric reliability organization shall, upon request by an enti-

1 ty, enter into an agreement with such entity for the dele-  
2 gation of authority to implement and enforce compliance  
3 with organization standards in a specified geographic area  
4 if the electric reliability organization finds that the entity  
5 requesting the delegation satisfies the requirements of  
6 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and  
7 if the delegation promotes the effective and efficient imple-  
8 mentation and administration of bulk-power system reli-  
9 ability. The electric reliability organization may enter into  
10 an agreement to delegate to the entity any other authority,  
11 except that the electric reliability organization shall re-  
12 serve the right to set and approve organization standards  
13 for bulk-power system reliability. For purposes of this sub-  
14 section, the New York State Reliability Council shall be  
15 deemed to satisfy the requirements of this paragraph.

16       “(2) The electric reliability organization shall file  
17 with the Commission any agreement entered into under  
18 this subsection and any information the Commission re-  
19 quires with respect to the affiliated regional reliability en-  
20 tity to which authority is to be delegated. The Commission  
21 shall approve the agreement, following public notice and  
22 opportunity for comment, if it finds that the agreement  
23 meets the requirements of paragraph (1), and is just, rea-  
24 sonable, not unduly discriminatory or preferential, and is  
25 in the public interest. A proposed delegation agreement

1 with an affiliated regional reliability entity organized on  
2 an interconnection-wide basis shall be rebuttably pre-  
3 sumed by the Commission to promote the effective and  
4 efficient implementation and administration of bulk-power  
5 system reliability. No delegation by the electric reliability  
6 organization shall be valid unless approved by the Com-  
7 mission.

8       “(3)(A) A delegation agreement entered into under  
9 this subsection shall specify the procedures for an affili-  
10 ated regional reliability entity to propose entity rules or  
11 variances for review by the electric reliability organization.  
12 With respect to any such proposal that would apply on  
13 an interconnection-wide basis, the electric reliability orga-  
14 nization shall presume such proposal valid if made by an  
15 interconnection-wide affiliated regional reliability entity  
16 unless the electric reliability organization makes a written  
17 finding that the proposal—

18               “(i) was not developed in a fair and open proc-  
19 ess that provided an opportunity for all interested  
20 parties to participate;

21               “(ii) has a significant adverse impact on reli-  
22 ability or interstate commerce in other interconnec-  
23 tions;

24               “(iii) fails to provide a level of bulk-power sys-  
25 tem reliability within the interconnection such that

1 it would constitute a serious and substantial threat  
2 to public health, safety, welfare, or national security;  
3 or

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

7 “(B) With respect to any such proposal that would  
8 apply only to part of an interconnection, the electric reli-  
9 ability organization shall find such proposal valid if the  
10 affiliated regional reliability entity or entities making the  
11 proposal demonstrate that it—

12 “(i) was developed in a fair and open process  
13 that provided an opportunity for all interested par-  
14 ties to participate;

15 “(ii) would not have an adverse impact on  
16 interstate commerce that is not necessary for reli-  
17 ability;

18 “(iii) provides a level of bulk-power system reli-  
19 ability adequate to protect public health, safety, wel-  
20 fare, and national security, and would not have a  
21 significant adverse impact on reliability; and

22 “(iv) in the case of a variance, is based on le-  
23 gitimate differences between regions or between sub-  
24 regions within the affiliated regional reliability enti-  
25 ty’s geographic area.

1 The electric reliability organization shall approve or dis-  
2 approve such proposal within 120 days, or the proposal  
3 shall be deemed approved. Following approval of any such  
4 proposal under this paragraph, the electric reliability orga-  
5 nization shall seek Commission approval pursuant to sub-  
6 section (e)(3). Affiliated regional reliability entities may  
7 not make requests for approval directly to the Commission  
8 except pursuant to subsection (e)(3)(D).

9       “(4) If an affiliated regional reliability entity re-  
10 quests, consistent with paragraph (1), that the electric re-  
11 liability organization delegate authority to it, but is unable  
12 within 180 days to reach agreement with the electric reli-  
13 ability organization with respect to such requested delega-  
14 tion, such entity may seek relief from the Commission. If,  
15 following notice and opportunity for comment, the Com-  
16 mission determines that a delegation to the entity would  
17 meet the requirements of subsection (1) above, and that  
18 the delegation would be just, reasonable, not unduly dis-  
19 criminatory or preferential, and in the public interest, and  
20 that the electric reliability organization has unreasonably  
21 withheld such delegation, the Commission may, by order,  
22 direct the electric reliability organization to make such del-  
23 egation.

24       “(5)(A) The Commission may, upon its own motion  
25 or upon complaint, and with notice to the appropriate af-

1 filiated regional reliability entity or entities, direct the  
2 electric reliability organization to propose a modification  
3 to an agreement entered into under this subsection if the  
4 Commission determines that—

5           “(i) the affiliated regional reliability entity no  
6           longer has the capacity to carry out effectively or ef-  
7           ficiently its implementation or enforcement respon-  
8           sibilities under that agreement, has failed to meet its  
9           obligations under that agreement, or has violated  
10          any provision of this section,

11           “(ii) the rules, practices, or procedures of the  
12          affiliated regional reliability entity no longer provide  
13          for fair and impartial discharge of its implementa-  
14          tion or enforcement responsibilities under the agree-  
15          ment,

16           “(iii) the geographic boundary of a regional  
17          transmission organization approved by the Commis-  
18          sion is not wholly within the boundary of an affili-  
19          ated regional reliability entity and such difference is  
20          inconsistent with the effective and efficient imple-  
21          mentation and administration of bulk-power system  
22          reliability, or

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

1           “(B) Following an order of the Commission issued  
2 under subparagraph (A), the Commission may suspend  
3 the affected agreement if the electric reliability organiza-  
4 tion or the affiliated regional reliability entity does not  
5 propose an appropriate and timely modification. If the  
6 agreement is suspended, the electric reliability organiza-  
7 tion shall assume the previously delegated responsibilities.  
8 The Commission shall allow the electric reliability organi-  
9 zation and the affiliated regional reliability entity an op-  
10 portunity to appeal the suspension. Any such appeal shall  
11 not stay the suspension unless directed by the Commission  
12 or a reviewing court.

13           “(i) ORGANIZATION MEMBERSHIP.—Every system  
14 operator shall be required to be a member of the electric  
15 reliability organization and shall be required also to be a  
16 member of any affiliated regional reliability entity oper-  
17 ating under an agreement effective pursuant to subsection  
18 (h) applicable to the region in which the system operator  
19 operates or is responsible for operation of bulk-power sys-  
20 tem facilities.

21           “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)  
22 Consistent with the range of actions approved by the Com-  
23 mission under subsection (d)(4)(H), the electric reliability  
24 organization may impose a penalty, limit activities, func-  
25 tions, or operations, or take such other disciplinary actions

1 the electric reliability organization finds appropriate  
2 against a user of the bulk-power system if the electric reli-  
3 ability organization, after notice and opportunity for inter-  
4 ested parties to be heard, issues a finding in writing that  
5 the user of the bulk-power system has violated an organi-  
6 zation standard approved by the Commission. The electric  
7 reliability organization shall immediately notify the Com-  
8 mission of any disciplinary action imposed with respect to  
9 an act or failure to act of a user of the bulk-power system  
10 that affected or threatened to affect bulk-power system fa-  
11 cilities located in the United States. The sanctioned party  
12 shall have the right to seek suspension, modification, or  
13 rescission of such disciplinary action by the Commission.  
14 If the electric reliability organization finds it necessary to  
15 prevent a serious threat to reliability, the organization  
16 may seek injunctive relief in the United States district  
17 court for the district in which the affected facilities are  
18 located.

19       “(2) A disciplinary action taken under paragraph (1)  
20 may take effect no earlier than 30 days after the electric  
21 reliability organization files with the Commission its writ-  
22 ten finding and record of proceedings before the electric  
23 reliability organization and the Commission posts the or-  
24 ganization’s written finding, unless the Commission, on its  
25 own motion or upon petition by the user of the bulk-power

1 system which is the subject of the action, suspends the  
2 action. The action shall remain in effect or remain sus-  
3 pended until the Commission, after notice and opportunity  
4 for hearing, affirms, sets aside, modifies, or reinstates the  
5 action, but the Commission shall conduct such hearing  
6 under procedures established to ensure expedited consider-  
7 ation of the action taken.

8       “(3) The Commission, on its own motion or upon  
9 complaint of any person, may order compliance with an  
10 organization standard and may impose a penalty, limit ac-  
11 tivities, functions, or operations, or take such other dis-  
12 ciplinary action as the Commission finds appropriate,  
13 against a user of the bulk-power system with respect to  
14 actions affecting or threatening to affect bulk-power sys-  
15 tem facilities located in the United States if the Commis-  
16 sion finds, after notice and opportunity for a hearing, that  
17 the user of the bulk-power system has violated or threat-  
18 ens to violate an organization standard.

19       “(4) The Commission may take such action as is nec-  
20 essary against the electric reliability organization or an af-  
21 filiated regional reliability entity to assure compliance with  
22 an organization standard, or any Commission order affect-  
23 ing the electric reliability organization or an affiliated re-  
24 gional reliability entity.

1           “(k) RELIABILITY REPORTS.—The electric reliability  
2 organization shall conduct periodic assessments of the reli-  
3 ability and adequacy of the interconnected bulk-power sys-  
4 tem in North America and shall report annually to the  
5 Secretary of Energy and the Commission its findings and  
6 recommendations for monitoring or improving system reli-  
7 ability and adequacy.

8           “(l) ASSESSMENT AND RECOVERY OF CERTAIN  
9 COSTS.—The reasonable costs of the electric reliability or-  
10 ganization, and the reasonable costs of each affiliated re-  
11 gional reliability entity that are related to implementation  
12 and enforcement of organization standards or other re-  
13 quirements contained in a delegation agreement approved  
14 under subsection (h), shall be assessed by the electric reli-  
15 ability organization and each affiliated regional reliability  
16 entity, respectively, taking into account the relationship of  
17 costs to each region and based on an allocation that re-  
18 flects an equitable sharing of the costs among all end-  
19 users. The Commission shall provide by rule for the review  
20 of such costs and allocations, pursuant to the standards  
21 in this subsection and subsection (d)(4)(F).

22           “(m) APPLICATION OF ANTITRUST LAWS.—

23           “(1) IN GENERAL.—To the extent undertaken  
24 to develop, or implement, or enforce an organization  
25 standard, each of the following activities shall not, in

1 any action under the antitrust laws, be deemed ille-  
2 gal per se:

3 “(A) Activities undertaken by the electric  
4 reliability organization under this section or af-  
5 filiated regional reliability entity operating  
6 under an agreement in effect under subsection  
7 (h).

8 “(B) Activities of a member of the electric  
9 reliability organization or affiliated regional re-  
10 liability entity in pursuit of organization objec-  
11 tives under this section undertaken in good  
12 faith under the rules of the organization.

13 Primary jurisdiction, and immunities and other af-  
14 firmative defenses, shall be available to the extent  
15 otherwise applicable.

16 “(2) RULE OF REASON.—In any action under  
17 the antitrust laws, an activity described in para-  
18 graph (1) shall be judged on the basis of its reason-  
19 ableness, taking into account all relevant factors af-  
20 fecting competition and reliability.

21 “(3) DEFINITION.—For purposes of this sub-  
22 section, the term ‘antitrust laws’ has the meaning  
23 given such term in subsection (a) of the first section  
24 of the Clayton Act (15 U.S.C. 12(a)), except that  
25 such term includes section 5 of the Federal Trade

1 Commission Act (15 U.S.C. 45) to the extent that  
2 such section 5 applies to unfair methods of competi-  
3 tion.

4 “(n) SAVINGS CLAUSE.—Nothing in this section shall  
5 be construed to preempt the authority of a State or a po-  
6 litical subdivision of a State to ensure the reliability of  
7 local distribution facilities within the State except where  
8 the exercise of such authority unreasonably impairs the  
9 reliability of the bulk-power system.

10 “(o) REGIONAL ADVISORY BODIES.—The Commis-  
11 sion shall establish a regional advisory body on the petition  
12 of two-thirds of the Governors of a region. A regional advi-  
13 sory body shall be composed of one member from each  
14 participating State in the region, appointed by the Gov-  
15 ernor of each State, and may include representatives of  
16 agencies, States, and provinces outside the United States,  
17 upon execution of an international agreement or agree-  
18 ments described in subsection (f). A regional advisory body  
19 may provide recommendations to the electric reliability or-  
20 ganization, an affiliated regional reliability entity, or the  
21 Commission regarding the governance of an existing or  
22 proposed affiliated regional reliability entity within the  
23 same region, whether an organization standard, entity  
24 rule, or variance proposed to apply within the region is  
25 just, reasonable, not unduly discriminatory or preferential,

1 and in the public interest, and whether fees proposed to  
2 be assessed within the region are just, reasonable, not un-  
3 duly discriminatory or preferential, in the public interest,  
4 and consistent with the requirements of subsection (l).  
5 The Commission may give deference to the recommenda-  
6 tions of any such regional advisory body if that body is  
7 organized on an interconnection-wide basis.”.

8 **TITLE IV—PROMOTING**  
9 **COMPETITION**  
10 **Subtitle A—Public Utility Holding**  
11 **Company Act of 1935**

12 **SEC. 401. DEFINITIONS.**

13 For purposes of this subtitle:

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

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

22 (3) The term “Commission” means the Federal  
23 Energy Regulatory Commission.

24 (4) The term “company” means a corporation,  
25 partnership, association, joint stock company, busi-

1       ness trust, or any organized group of persons,  
2       whether incorporated or not, or a receiver, trustee,  
3       or other liquidating agent of any of the foregoing.

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

8           (6) The terms “exempt wholesale generator”  
9       and “foreign utility company” have the same mean-  
10      ings as in sections 32 and 33, respectively, of the  
11      Public Utility Holding Company Act of 1935, as  
12      those sections existed on the day before the effective  
13      date of this subtitle.

14          (7) The term “gas utility company” means any  
15      company that owns or operates facilities used for  
16      distribution at retail (other than the distribution  
17      only in enclosed portable containers or distribution  
18      to tenants or employees of the company operating  
19      such facilities for their own use and not for resale)  
20      of natural or manufactured gas for heat, light, or  
21      power.

22          (8) The term “holding company” means—

23            (A) any company that directly or indirectly  
24            owns, controls, or holds, with power to vote, 10  
25            percent or more of the outstanding voting secu-

1           rities of a public utility company or of a holding  
2           company of any public utility company; and

3                   (B) any person, determined by the Com-  
4           mission, after notice and opportunity for hear-  
5           ing, to exercise directly or indirectly (either  
6           alone or pursuant to an arrangement or under-  
7           standing with one or more persons) such a con-  
8           trolling influence over the management or poli-  
9           cies of any public utility company or holding  
10          company as to make it necessary or appropriate  
11          for the protection of utility customers with re-  
12          spect to rates that such person be subject to the  
13          obligations, duties, and liabilities imposed by  
14          this subtitle upon holding companies.

15               (9) The term “holding company system” means  
16          a holding company, together with its subsidiary com-  
17          panies.

18               (10) The term “jurisdictional rates” means  
19          rates established by the Commission for the trans-  
20          mission of electric energy in interstate commerce,  
21          the sale of electric energy at wholesale in interstate  
22          commerce, the transportation of natural gas in inter-  
23          state commerce, and the sale in interstate commerce  
24          of natural gas for resale for ultimate public con-

1       sumption for domestic, commercial, industrial, or  
2       any other use.

3           (11) The term “natural gas company” means a  
4       person engaged in the transportation of natural gas  
5       in interstate commerce or the sale of such gas in  
6       interstate commerce for resale.

7           (12) The term “person” means an individual or  
8       company.

9           (13) The term “public utility” means any per-  
10      son who owns or operates facilities used for trans-  
11      mission of electric energy in interstate commerce or  
12      sales of electric energy at wholesale in interstate  
13      commerce.

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

16          (15) The term “State commission” means any  
17      commission, board, agency, or officer, by whatever  
18      name designated, of a State, municipality, or other  
19      political subdivision of a State that, under the laws  
20      of such State, has jurisdiction to regulate public util-  
21      ity companies.

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

24            (A) any company, 10 percent or more of  
25      the outstanding voting securities of which are

1 directly or indirectly owned, controlled, or held  
2 with power to vote, by such holding company;  
3 and

4 (B) any person, the management or poli-  
5 cies of which the Commission, after notice and  
6 opportunity for hearing, determines to be sub-  
7 ject to a controlling influence, directly or indi-  
8 rectly, by such holding company (either alone or  
9 pursuant to an arrangement or understanding  
10 with one or more other persons) so as to make  
11 it necessary for the protection of utility cus-  
12 tomers with respect to rates that such person  
13 be subject to the obligations, duties, and liabil-  
14 ities imposed by this subtitle upon subsidiary  
15 companies of holding companies.

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

20 **SEC. 402. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
21 **PANY ACT OF 1935.**

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

1 **SEC. 403. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each  
3 associate company thereof shall maintain, and shall make  
4 available to the Commission, such books, accounts, memo-  
5 randa, and other records as the Commission determines  
6 are necessary to identify costs incurred by a public utility  
7 or natural gas company that is an associate company of  
8 such holding company and necessary or appropriate for  
9 the protection of utility customers with respect to jurisdic-  
10 tional rates.

11 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
12 ing company or of any subsidiary company of a holding  
13 company shall maintain, and make available to the Com-  
14 mission, such books, accounts, memoranda, and other  
15 records with respect to any transaction with another affil-  
16 iate, as the Commission determines are necessary to iden-  
17 tify costs incurred by a public utility or natural gas com-  
18 pany that is an associate company of such holding com-  
19 pany and necessary or appropriate for the protection of  
20 utility customers with respect to jurisdictional rates.

21 (c) HOLDING COMPANY SYSTEMS.—The Commission  
22 may examine the books, accounts, memoranda, and other  
23 records of any company in a holding company system, or  
24 any affiliate thereof, as the Commission determines are  
25 necessary to identify costs incurred by a public utility or  
26 natural gas company within such holding company system

1 and necessary or appropriate for the protection of utility  
2 customers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-  
4 ployee of the Commission shall divulge any fact or infor-  
5 mation that may come to his or her knowledge during the  
6 course of examination of books, accounts, memoranda, or  
7 other records as provided in this section, except as may  
8 be directed by the Commission or by a court of competent  
9 jurisdiction.

10 **SEC. 404. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a  
12 State commission having jurisdiction to regulate a public  
13 utility company in a holding company system, and subject  
14 to such terms and conditions as may be necessary and ap-  
15 propriate to safeguard against unwarranted disclosure to  
16 the public of any trade secrets or sensitive commercial in-  
17 formation, a holding company or its associate company or  
18 affiliate thereof, wherever located, shall produce for in-  
19 spection books, accounts, memoranda, and other records  
20 that—

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

23 (2) the State commission determines are nec-  
24 essary to identify costs incurred by such public util-  
25 ity company; and

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

4           (b) EFFECT ON STATE LAW.—Nothing in this section  
5           shall preempt applicable State law concerning the provi-  
6           sion of books, accounts, memoranda, or other records, or  
7           in any way limit the rights of any State to obtain books,  
8           accounts, memoranda, or other records under Federal law,  
9           contract, or otherwise.

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

14          **SEC. 405. EXEMPTION AUTHORITY.**

15          (a) RULEMAKING.—Not later than 90 days after the  
16          date of enactment of this Act, the Commission shall pro-  
17          mulgate a final rule to exempt from the requirements of  
18          section 403 any person that is a holding company, solely  
19          with respect to one or more—

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

22                 (2) exempt wholesale generators; or

23                 (3) foreign utility companies.

24          (b) OTHER AUTHORITY.—If, upon application or  
25          upon its own motion, the Commission finds that the books,

1 accounts, memoranda, and other records of any person are  
2 not relevant to the jurisdictional rates of a public utility  
3 company or natural gas company, or if the Commission  
4 finds that any class of transactions is not relevant to the  
5 jurisdictional rates of a public utility company, the Com-  
6 mission shall exempt such person or transaction from the  
7 requirements of section 403.

8 **SEC. 406. AFFILIATE TRANSACTIONS.**

9 Nothing in this subtitle shall preclude the Commis-  
10 sion or a State commission from exercising its jurisdiction  
11 under otherwise applicable law to determine whether a  
12 public utility company, public utility, or natural gas com-  
13 pany may recover in rates any costs of an activity per-  
14 formed by an associate company, or any costs of goods  
15 or services acquired by such public utility company, public  
16 utility, or natural gas company from an associate com-  
17 pany.

18 **SEC. 407. APPLICABILITY.**

19 No provision of this subtitle shall apply to, or be  
20 deemed to include—

21 (1) the United States;

22 (2) a State or any political subdivision of a  
23 State;

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

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

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

7 **SEC. 408. EFFECT ON OTHER REGULATIONS.**

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

11 **SEC. 409. ENFORCEMENT.**

12 The Commission shall have the same powers as set  
13 forth in sections 306 through 317 of the Federal Power  
14 Act (16 U.S.C. 825e–825p) to enforce the provisions of  
15 this subtitle.

16 **SEC. 410. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this subtitle prohibits  
18 a person from engaging in or continuing to engage in ac-  
19 tivities or transactions in which it is legally engaged or  
20 authorized to engage on the date of enactment of this Act,  
21 if that person continues to comply with the terms of any  
22 such authorization, whether by rule or by order.

23 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—  
24 Nothing in this subtitle limits the authority of the Com-  
25 mission under the Federal Power Act (16 U.S.C. 791a and

1 following) (including section 301 of that Act) or the Nat-  
2 ural Gas Act (15 U.S.C. 717 and following) (including sec-  
3 tion 8 of that Act).

4 **SEC. 411. IMPLEMENTATION.**

5 Not later than 12 months after the date of enactment  
6 of this Act, the Commission shall—

7 (1) promulgate such regulations as may be nec-  
8 essary or appropriate to implement this subtitle; and

9 (2) submit to the Congress detailed rec-  
10 ommendations on technical and conforming amend-  
11 ments to Federal law necessary to carry out this  
12 subtitle and the amendments made by this subtitle.

13 **SEC. 412. TRANSFER OF RESOURCES.**

14 All books and records that relate primarily to the  
15 functions transferred to the Commission under this sub-  
16 title shall be transferred from the Securities and Exchange  
17 Commission to the Commission.

18 **SEC. 413. EFFECTIVE DATE.**

19 This subtitle shall take effect 12 months after the  
20 date of enactment of this Act.

21 **SEC. 414. CONFORMING AMENDMENT TO THE FEDERAL**  
22 **POWER ACT.**

23 Section 318 of the Federal Power Act (16 U.S.C.  
24 825q) is repealed.

1                   **Subtitle B—Public Utility**  
2                   **Regulatory Policies Act of 1978**

3 **SEC. 521. PROSPECTIVE REPEAL.**

4           (a) NEW CONTRACTS.—After the date of enactment  
5 of this Act, no electric utility shall be required to enter  
6 into a new contract or obligation to purchase or to sell  
7 electric energy or capacity pursuant to section 210 of the  
8 Public Utility Regulatory Policies Act of 1978.

9           (b) EXISTING RIGHTS AND REMEDIES NOT AF-  
10 FECTED.—Nothing in this section affects the rights or  
11 remedies of any party with respect to the purchase or sale  
12 of electric energy or capacity from or to a facility deter-  
13 mined to be a qualifying small power production facility  
14 or a qualifying cogeneration facility under section 210 of  
15 the Public Utility Regulatory Policies Act of 1978 pursu-  
16 ant to any contract or obligation to purchase or to sell  
17 electric energy or capacity in effect on the date of the en-  
18 actment of this Act, including the right to recover the  
19 costs of purchasing such electric energy or capacity.

20           (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-  
21 ing in this subtitle may be deemed or construed as imply-  
22 ing congressional ratification of any interpretation of, or  
23 any action taken pursuant to, the Public Utility Regu-  
24 latory Policies Act of 1978.

1 **SEC. 522. RECOVERY OF COSTS.**

2 In order to assure recovery by electric utilities pur-  
3 chasing electric energy or capacity from a qualifying facil-  
4 ity pursuant to any legally enforceable obligation entered  
5 into or imposed pursuant to section 210 of the Public Util-  
6 ity Regulatory Policies Act of 1978 prior to the date of  
7 enactment of this Act of all costs associated with such pur-  
8 chases, the Federal Energy Regulatory Commission shall  
9 promulgate and enforce such regulations as may be re-  
10 quired to assure that no utility shall be required directly  
11 or indirectly to absorb the costs associated with such pur-  
12 chases from a qualifying facility after the date of the en-  
13 actment of this Act. Such regulations shall be treated as  
14 a rule enforceable under the Federal Power Act (16  
15 U.S.C. 791a-825r).

16 **SEC. 523. DEFINITIONS.**

17 For purposes of this subtitle:

18 (1) The term “electric utility” means any per-  
19 son, State agency, or Federal agency, which sells  
20 electric energy.

21 (2) The term “qualifying small power produc-  
22 tion facility” has the same meaning as provided in  
23 section 3(17)(C) of the Federal Power Act.

24 (3) The term “qualifying cogeneration facility”  
25 has the same meaning as provided in section  
26 3(18)(A) of the Federal Power Act.

1           (4) The term “qualifying facility” means either  
2           a qualifying small power production facility or a  
3           qualifying cogeneration facility.