

105TH CONGRESS
1ST SESSION

H. R. 296

To privatize the Federal Power Marketing Administrations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. SHADEGG introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To privatize the Federal Power Marketing Administrations,
and for other purposes.

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

3 **TITLE I—ESTABLISHMENT OF**
4 **CORPORATIONS AND TRANS-**
5 **FER OF FACILITIES**

6 **SEC. 101. DEFINITIONS.**

7 For purposes of this title:

8 (1) The term “Department” means the Depart-
9 ment of Energy.

1 (2) The term “Secretary” means the Secretary
2 of Energy.

3 (3) The term “Corporations” means the Cor-
4 porations established under section 102.

5 (4) The term “transition date” means the date
6 established under this title for the transfer of facili-
7 ties to a Corporation.

8 **SEC. 102. ESTABLISHMENT OF CORPORATIONS.**

9 (a) IN GENERAL.—There shall be established 3 cor-
10 porations to be known as the Southeastern Power Cor-
11 poration, the Western Area Power Corporation, and the
12 Southwestern Corporation. Such corporations shall be es-
13 tablished on the transition date. Each Corporation shall
14 be incorporated in any State in which it operates, or any
15 other State chosen by the Secretary of the Treasury.

16 (b) GOVERNMENT CORPORATIONS.—The Corpora-
17 tions shall be treated as wholly owned Government cor-
18 porations subject to chapter 91 of title 31, United States
19 Code (commonly referred to as the Government Corpora-
20 tion Control Act), except as otherwise provided in this
21 title.

22 **SEC. 103. POWERS OF THE CORPORATIONS.**

23 In order to accomplish their purposes, the Corpora-
24 tions each—

1 (1) shall, except as provided in this title or ap-
2 plicable Federal law, have all the powers of a private
3 corporation incorporated under the laws of the State
4 in which it is incorporated;

5 (2) shall operate and maintain the electric
6 power transmission and generation facilities trans-
7 ferred to them under this Act;

8 (3) market the transmission services provided
9 by such transmission facilities; and

10 (4) market the electric power generated by such
11 generation facilities.

12 **SEC. 104. TRANSITION.**

13 (a) **TRANSITION MANAGER.**—Within 30 days after
14 the date of the enactment of this Act the President shall
15 appoint, by and with the advice and consent of the Senate,
16 a Transition Manager for each Corporation. Each shall
17 serve until a quorum of the Board of the Corporation has
18 been elected in accordance with title II.

19 (b) **POWERS.**—Until a quorum of the Board has been
20 elected, the Transition Manager shall exercise the powers
21 and duties of the Board and shall be responsible for taking
22 all actions needed to effect the transfer of facilities to each
23 Corporation on the applicable transition date. The Transi-
24 tion Managers shall operate the facilities in a prudent
25 manner in order to maximize their value.

1 (c) TRANSITION MANAGER'S ACTIONS.—All actions
2 taken by the Transition Manager before the qualification
3 of a quorum of the Board shall be subject to nullification
4 by the President.

5 (d) RESPONSIBILITIES OF SECRETARY.—Before the
6 transition date, the Secretary shall—

7 (1) provide funds, to the extent provided in ap-
8 propriations Acts, to the Transition Manager to pay
9 salaries and expenses;

10 (2) delegate Department employees to assist the
11 Transition Manager in meeting his responsibilities
12 under this section; and

13 (3) assist and cooperate with the Transition
14 Manager in preparing for the transfer of facilities to
15 the Corporations on the transition date.

16 (e) TRANSITION DATE.—The transition date for each
17 Power Administration shall occur within 60 days after the
18 enactment of this Act, or such later date as the Secretary,
19 for good cause, may fix.

20 (f) TRANSFER OF FACILITIES.—On the transition
21 date:

1 (1) All electric power generation facilities and
2 transmission facilities, including all dams, locks, res-
3 ervoirs, related transmission and generation struc-
4 tures, equipment, facilities and real property (includ-
5 ing rights-of-way) and all other items of personal
6 property, including without limitation spare parts,
7 inventories, supplies and materials, and all related
8 contract rights, manufacturers' warranties, permits,
9 licenses, books and records, operator logs and other
10 intangible assets related to or required for the oper-
11 ation of such facilities, that are owned by Federal
12 departments and agencies under the supervision of,
13 or coordination with, the Southeastern Power Ad-
14 ministration shall be transferred to the Southeastern
15 Power Corporation established under this title.

16 (2) All electric power generation facilities and
17 transmission facilities, including all dams, locks, res-
18 ervoirs, related transmission and generation struc-
19 tures, equipment, facilities and real property (includ-
20 ing rights-of-way), and all other items of personal
21 property, including without limitation spare parts,
22 inventories, supplies and materials, and all related
23 contract rights, manufacturers' warranties, permits,
24 licenses, books and records, operator logs and other

1 intangible assets related to or required for the oper-
2 ation of such facilities, that are owned by Federal
3 departments and agencies under the supervision of,
4 or coordination with, the Southwestern Area Power
5 Administration shall be transferred to the South-
6 western Area Power Corporation established under
7 this title.

8 (3) All electric power generation facilities and
9 transmission facilities, including all dams, locks, res-
10 ervoirs, related transmission and generation struc-
11 tures, equipment, facilities and real property (includ-
12 ing rights-of-way), and all other items of personal
13 property, including without limitation spare parts,
14 inventories, supplies and materials, and all related
15 contract rights, manufacturers' warranties, permits,
16 licenses, books and records, operator logs and other
17 intangible assets related to or required for the oper-
18 ation of such facilities, that are owned by Federal
19 departments and agencies under the supervision of,
20 or coordination with, the Western Power Adminis-
21 tration shall be transferred to the Western Power
22 Corporation established under this title.

23 (g) TRANSFER OF FUNDS AND DEBT.—Simulta-
24 neously with the transfer of the facilities referred to in
25 subsection (f)—

1 (1) the outstanding debt obligations attrib-
2 utable to such facilities;

3 (2) all unexpended balances appropriated to any
4 department or agency of the United States for pur-
5 poses of operation and maintenance of such facilities
6 and for the marketing of electric power generated by
7 such facilities and for the provision of transmission
8 services; and

9 (3) all contract rights and obligations and all
10 other legally binding obligations and rights of each
11 Federal Power Marketing Administration, together
12 with all revenues due and payable to the United
13 States with respect to power sales and the provision
14 of transmission services;

15 shall be transferred to the appropriate Corporation. Any
16 judgment entered against a Corporation imposing liability
17 arising out of the operation of a facility transferred to the
18 Corporation before the transition date shall be considered
19 a judgment against and shall be payable solely by the
20 United States.

21 (h) JUDGMENTS BASED ON OPERATIONS AFTER
22 TRANSITION.—Any judgment entered against a Corpora-
23 tion arising from operations of the Corporation on or after

1 the transition date shall be payable solely by the Corpora-
2 tion from its own funds. A Corporation shall not be consid-
3 ered a Federal agency for purposes of chapter 171 of title
4 28, United States Code.

5 (i) TERMINATION OF POWER MARKETING ADMINIS-
6 TRATIONS.—Following the transfer of facilities that are
7 owned by Federal departments and agencies under the su-
8 pervision of, or coordination with each of Federal Power
9 Marketing Administrations, the Secretary shall complete
10 the business of and close out such Administration and
11 transfer the unexpended balances of funds appropriated
12 for the Administration to the Corporation.

13 (j) PREPARATION.—The Secretary is authorized to
14 use funds appropriated to the Department for the Federal
15 Power Marketing Administrations and funds otherwise ap-
16 propriated to other Federal agencies for power generation
17 and related activities in order to prepare facilities for
18 transfer under this title. Such preparation shall provide
19 sufficient title to ensure the beneficial use, enjoyment, and
20 occupancy to the transferee Corporation and shall include
21 identification of all associated laws and regulations to be
22 amended for the purpose of such transfers.

1 (k) ASSISTANCE AND COOPERATION OF OTHER
 2 AGENCIES.—The heads of other affected Federal depart-
 3 ments and agencies shall assist the Secretary in imple-
 4 menting the transfers authorized by this title.

5 **SEC. 105. CAPITAL STRUCTURE OF CORPORATION.**

6 (a) CAPITAL STOCK.—

7 (1) ISSUANCE TO SECRETARY OF THE TREAS-
 8 URY.—On the transition date, and in consideration
 9 for the assets to be transferred on such date to each
 10 Corporation, the Corporation shall issue all of its au-
 11 thorized shares of common stock to the Secretary of
 12 the Treasury. For purposes of this section, the value
 13 of the assets (net of liabilities) to be transferred on
 14 the transition date shall be deemed to be as follows:

Power Administration	Value
Southeastern	\$ 519,000,000
Southwestern	\$ 401,000,000
Western Area	\$2,603,000,000.

15 The Secretary of the Treasury shall hold such stock
 16 for the United States. All rights and duties pertain-
 17 ing to management of the Corporation shall remain
 18 vested in the Transition Manager.

19 (2) WARRANTS.—Immediately upon the enact-
 20 ment of this Act, the Secretary of the Treasury shall
 21 initiate the process of issuing warrants to the ulti-
 22 mate electric power purchasers enabling the holders

1 to purchase the shares of the Corporation from the
2 Treasury at the time of the public offering under
3 title II at a price equal to the net asset value of the
4 assets to be transferred to the Corporation divided
5 by the number of shares of common stock to be is-
6 sued. Such warrants shall be allocated among the ul-
7 timate electric power purchasers in accordance with
8 a formula under which each ultimate electric power
9 purchaser will receive a warrant allowing the bearer
10 to acquire a number of shares equal to $N \times S$, where
11 N is the total number of shares of the Corporation
12 concerned and S is the electric power share of such
13 ultimate electric power purchaser. In allocating the
14 warrants, the Secretary of the Treasury is permitted
15 to use valid statistical estimation techniques to re-
16 solve issues such as meter inaccuracies, unread me-
17 ters, totalized meters, and other clear billing prob-
18 lems. The issuance of warrants shall be completed
19 within 9 months of enactment of this Act, and ad-
20 ministrative efforts to locate purchasers and issue
21 warrants must be consistent with the above date cer-
22 tain and not result in any delay. The Secretary of
23 the Treasury shall publish in the Federal Register
24 a list of recipients of the warrants, their addresses,

1 and the number of warrants received by each. Recip-
2 ient data and addresses shall be made available to
3 prospective bidders via means which include elec-
4 tronic subscription (at cost) databases.

5 (3) WARRANTS ISSUED TO THE FEDERAL GOV-
6 ERNMENT.—No warrants shall be issued to the Fed-
7 eral Government as an ultimate electric power pur-
8 chaser.

9 (4) RESTRICTION ON TRANSFERS OF STOCK BY
10 UNITED STATES.—The capital stock of a Corpora-
11 tion shall not be sold, transferred, or conveyed by
12 the United States, except to carry out the privatiza-
13 tion of the Corporation under title II.

14 (b) PROHIBITION ON ADDITIONAL FEDERAL ASSIST-
15 ANCE.—Except as otherwise specifically provided in this
16 title, the Corporation shall receive no appropriations,
17 loans, or other financial assistance from the Federal Gov-
18 ernment.

19 (c) SOLE RECOVERY OF UNRECOVERED COSTS.—Re-
20 ceipt by the United States of the proceeds from the sale
21 of stock issued by the Corporation under subsection (a)(1)
22 shall constitute the sole recovery by the United States of
23 previously unrecovered costs that have been incurred by
24 the United States with respect to the facilities transferred
25 to the Corporations under this Act.

1 (d) APPLICATION OF SECURITIES LAWS.—(1) The is-
2 suance of warrants and the sale of stock under this Act,
3 and any other offering or sale of securities by the Corpora-
4 tions created under this Act shall be subject to the Securi-
5 ties Act of 1933 (15 U.S.C. 77a et seq.) and the Securities
6 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

7 (2) The Corporations shall not be considered “electric
8 utility companies” under section 2(a)(3) of the Public
9 Utilities Holding Company Act of 1935 (“PUHCA”) (15
10 U.S.C. 79a et seq.), and, whether or not a subsidiary com-
11 pany, an affiliate, or an associate company of a holding
12 company shall be exempt from all provisions of the Public
13 Utilities Holding Company Act. Further notwithstanding
14 any provision of the Public Utilities Holding Company
15 Act, a registered holding company shall be permitted
16 (without the need to apply for, or receive, approval from
17 the Securities and Exchange Commission) to acquire and
18 hold the securities of one or more corporations.

19 (e) DEFINITIONS.—For purposes of this section:

20 (1) The term “ultimate electric power pur-
21 chaser” means an individual, firm, State, or other
22 non-Federal public or private agency that purchased
23 for ultimate consumption, electric energy generated
24 at facilities transferred, or to be transferred, to a

1 Corporation under this title during the calendar year
2 1995.

3 (2) The term “electric power share” for any ul-
4 timate electric power purchaser means the percent-
5 age of electric power produced by facilities trans-
6 ferred to or to be transferred to a corporation under
7 this Act consumed by such purchaser during the cal-
8 endar year of 1995. In determining the electric
9 power share calculations shall be based on monetary
10 units.

11 **SEC. 106. ENABLING FEDERAL STUDIES.**

12 Section 505 of the Energy and Water Development
13 Appropriations Act of 1993 (Public Law 102–377) is
14 hereby repealed.

15 **TITLE II—PRIVATIZATION OF**
16 **CORPORATIONS**

17 **SEC. 201. DEFINITIONS.**

18 For purposes of this title:

19 (1) The term “Department” means the Depart-
20 ment of the Treasury.

21 (2) The term “Secretary” means the Secretary
22 of the Treasury.

23 (3) The term “Corporations” means the Cor-
24 porations established under title I.

1 (4) The term “transition date” means the date
2 established under title I for the transfer of facilities
3 to a Corporation.

4 (5) The term “co-lead managers” means the in-
5 vestment banking firms retained to serve as co-lead
6 managers of a public offering under this title.

7 (6) The term “United States share” means a
8 share of common stock of a Corporation held by the
9 United States Government as provided in title I.

10 (7) The term “public sale” means the sale of
11 stock in a Corporation pursuant to a public offering
12 under this title. If there is more than 1 public offer-
13 ing for a Corporation, such term means the sale pur-
14 suant to the initial public offering.

15 (8) the term “public offering” means an under-
16 written offering to the public of such common stock
17 of a Corporation as the Secretary determines to sell
18 under this title.

19 (9) The term “sale date” means the date on
20 which the initial public offering is closed.

21 **SEC. 202. PREPARATION FOR PUBLIC OFFERING.**

22 (a) PUBLIC OFFERING MANAGERS.—Within 30 days
23 of the enactment of this Act, the Secretary shall through
24 a competitive bidding process retain the services of invest-
25 ment banking firms to serve jointly as co-lead managers

1 of the public offering for each Corporation and to establish
2 a syndicate to underwrite the public offering.

3 (b) DETERMINATION OF ASSETS OF CORPORA-
4 TIONS.—Prior to the public offering the Secretary, in con-
5 sultation with the co-lead managers and the transition
6 managers, shall determine which facilities shall be re-
7 tained by the Corporations upon the sale of the United
8 States shares of such Corporations:

9 (1) When determining which assets will be re-
10 tained by the Corporations, the Secretary shall, tak-
11 ing into account the multiple use nature of some of
12 the facilities, seek to maximize the market capital-
13 ization of the Corporations.

14 (2) The Corporations shall retain all facilities
15 and parts of facilities used exclusively for the gen-
16 eration and transmission of electric energy, including
17 turbines, generators, controls, substations, and pri-
18 mary lines.

19 (3) The Secretary may divest the Corporations
20 of any portion of a facility not used exclusively for
21 the generation and transmission of electricity, in-
22 cluding portions used for navigation, flood control,
23 irrigation, water supply, or recreation. The Secretary

1 may transfer or sell divested assets to other Govern-
2 ment Corporations, consortia of users, the States, or
3 other organizations.

4 (4) Nothing in this Act shall be construed to
5 prohibit the sale or transfer of other facilities of the
6 Corporations, or the purchase of facilities by the
7 Corporations after the sale of the United States
8 shares.

9 (5) The Secretary shall submit a complete list
10 of the divestment decisions to the Congress within
11 one year after the enactment of this Act. The Sec-
12 retary's decisions shall go into effect if no action is
13 taken by the Congress within 30 days of submission.

14 (c) REGISTRATION STATEMENT.—Each Corporation
15 shall prepare and cause to be filed with the Securities and
16 Exchange Commission a registration statement with re-
17 spect to the securities to be offered and sold in accordance
18 with the securities laws and the rules and regulations
19 thereunder in connection with the initial and any subse-
20 quent public offering.

21 **SEC. 203. PUBLIC OFFERING.**

22 (a) STRUCTURE OF PUBLIC OFFERING.—After the
23 registration statement referred to in section 202 is de-
24 clared effective by the Securities and Exchange Commis-
25 sion for any public offering under this title, the Transition

1 Manager for the Corporation concerned, and the co-lead
2 managers, shall—

3 (1) offer the United States shares of such Cor-
4 poration for which warrants were issued under title
5 I for sale to the holders of such warrants at the
6 price as determined under title I; and

7 (2) offer the remaining United States shares of
8 such Corporation for sale in a public offering to the
9 highest bidders.

10 (b) TIME OF SALES.—The sale of all United States
11 shares of each Corporation shall be completed within 18
12 months of the enactment of this Act. Unredeemed war-
13 rants shall no longer be valid after this time.

14 (c) CONSENT OF THE CORPORATION NOT RE-
15 QUIRED.—Any public offering under this section may be
16 made without the consent of the Corporation.

17 (d) INVESTMENT BANKING FIRM REQUIREMENTS.—
18 The level of any investment banking firm’s participation
19 in the public offering shall be consistent with that firm’s
20 financial capabilities.

21 **SEC. 204. FEES.**

22 All costs of the public offering payable by the Sec-
23 retary shall be paid from the proceeds of the public offer-
24 ing.

1 **SEC. 205. BOARDS OF DIRECTORS.**

2 After 60 percent of the interest of the United States
3 in a Corporation has been sold, a Board of Directors shall
4 be elected by the public shareholders of the Corporation.

5 **SEC. 206. STATUS OF THE CORPORATIONS.**

6 After 60 percent of the interest of the United States
7 in a Corporation has been sold, the Corporation shall cease
8 to be an agency, instrumentality, or establishment of the
9 United States, a Government corporation or a Government
10 controlled corporation. It shall have all the powers of a
11 private corporation under the laws of the State in which
12 it is incorporated.

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