

105TH CONGRESS
2D SESSION

S. 2287

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

IN THE SENATE OF THE UNITED STATES

JULY 10, 1998

Mr. MURKOWSKI (for himself and Mr. BUMPERS) (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Elec-
5 tricity Competition Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—RETAIL ELECTRIC SERVICE

Sec. 101. Retail competition.

Sec. 102. Authority to impose reciprocity requirements.

Sec. 103. Consumer information.

★(Star Print)

1 **“SEC. 609. RETAIL COMPETITION.**

2 “(a) DEFINITIONS.—For purposes of this section—

3 “(1) ‘distribution utility’ means a person, State
4 agency, or any other entity that owns or operates a
5 local distribution facility used for the sale of electric
6 energy to an electric consumer;

7 “(2) ‘nonregulated distribution utility’ means a
8 distribution utility not subject to the ratemaking au-
9 thority of a State regulatory authority; and

10 “(3) ‘retail stranded costs’ means the amount
11 of net costs incurred or obligations undertaken be-
12 fore the date of enactment of the Comprehensive
13 Electricity Competition Act by a distribution utility
14 that—

15 “(A) were incurred or undertaken by that
16 distribution utility in order to comply with a
17 legal obligation on the utility to provide elec-
18 tricity to electric consumers in its service terri-
19 tory, and

20 “(B) cannot be recovered because of imple-
21 mentation of retail competition under sub-
22 section (b).

23 “(b) RETAIL COMPETITION REQUIREMENT.—Except
24 as provided in subsection (c), not later than January 1,
25 2003, any distribution utility that has the capability to
26 deliver electric energy to an electric consumer over its fa-

1 cilities shall offer open access to those facilities for the
2 sale of electric energy to the consumer and shall do so
3 at rates, terms, and conditions that are not unduly dis-
4 criminatory or preferential, as determined by the appro-
5 priate regulatory authority.

6 “(c) OPT OUT.—(1) A State regulatory authority
7 (with respect to a distribution utility for which it has rate-
8 making authority) may direct a distribution utility not to
9 implement the retail competition requirement described in
10 subsection (b) if the State regulatory authority finds, after
11 notice and opportunity for hearing, that implementation
12 of the retail competition requirement by the distribution
13 utility will have a negative impact on a class of customers
14 of that utility that cannot be mitigated reasonably.

15 “(2) A nonregulated distribution utility may deter-
16 mine not to implement the retail competition requirement
17 described in subsection (b) if it finds, after notice and op-
18 portunity for hearing, that implementation of the retail
19 competition requirement by the distribution utility will
20 have a negative impact on a class of customers of that
21 utility that cannot be mitigated reasonably.

22 “(3) The State regulatory authority (with respect to
23 a distribution utility for which it has ratemaking author-
24 ity) or nonregulated distribution utility shall publish the

1 determination and its basis and shall file a notice with
2 the Commission of its determination by January 1, 2002.

3 “(d) NOTICE OF RETAIL COMPETITION.—A State
4 regulatory authority (with respect to a distribution utility
5 for which it has ratemaking authority) or nonregulated
6 distribution utility shall file with the Commission a notice
7 that the distribution utility has implemented or will imple-
8 ment retail competition consistent with subsection (b).
9 The notice shall describe the implementation of retail com-
10 petition. The notice is effective for purposes of section 118
11 of this Act and sections 212(h), 216, and 217 of the Fed-
12 eral Power Act on the date the notice is filed or the date
13 of implementation of retail competition consistent with
14 subsection (b), whichever is later.

15 “(e) CONSIDERATION OF RECOVERY OF RETAIL
16 STRANDED COSTS.—If a State regulatory authority con-
17 ducts a public proceeding before a distribution utility im-
18 plements retail competition as required under subsection
19 (b), as part of this proceeding, the State regulatory au-
20 thority shall consider the appropriate mechanism under
21 State law to address recovery by a distribution utility for
22 which it has ratemaking authority of retail stranded costs
23 that are legitimate, prudent, and verifiable, if the utility
24 has taken all reasonable steps to mitigate the costs. A
25 charge imposed for purposes of recovering retail stranded

1 costs should be imposed in a manner so as to minimize
 2 to the fullest extent possible any effect on an electric con-
 3 sumer's choice among competing suppliers or products.

4 “(f) ENFORCEMENT.—Any person may bring an ac-
 5 tion in the appropriate State court against a State regu-
 6 latory authority, a distribution utility, or a nonregulated
 7 distribution utility for failure to comply with this section.
 8 Filing an action challenging whether retail competition is
 9 being implemented consistent with subsection (b) makes
 10 a notice of retail competition ineffective for purposes of
 11 section 118 of this Act and sections 212(h), 216, and 217
 12 of the Federal Power Act until final resolution of the ac-
 13 tion. Notwithstanding any other law, a court created
 14 under Article III of the Constitution does not have juris-
 15 diction over an action arising under this section.”.

16 (b) DEFINITION.—Section 3 of PURPA is amended
 17 by adding after paragraph (21) the following new para-
 18 graph:

19 “(22) The term ‘notice of retail competition’
 20 means a notice filed under section 609(d).”.

21 **SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**
 22 **MENTS.**

23 PURPA is amended by adding the following new sec-
 24 tion after section 117:

1 **“SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIRE-**
2 **MENTS.**

3 “(a) STATE REGULATORY AUTHORITY.—If a State
4 regulatory authority files a notice of retail competition
5 with respect to a distribution utility, beginning on the ef-
6 fective date of the notice, the State regulatory authority
7 may prohibit any other distribution utility located in the
8 United States over which it does not have ratemaking au-
9 thority (and any affiliate of such a utility, as defined
10 under the Public Utility Holding Company Act of 1998)
11 from selling electric energy to electric consumers of a dis-
12 tribution facility covered by the notice of retail competi-
13 tion, unless a notice of retail competition has been filed
14 with respect to the other distribution utility.

15 “(b) NONREGULATED DISTRIBUTION UTILITY.—If a
16 nonregulated distribution utility files a notice of retail
17 competition, beginning on the effective date of the notice,
18 it may prohibit any other distribution utility located in the
19 United States (or affiliate of the utility, as defined under
20 the Public Utility Holding Company Act of 1998) from
21 selling electric energy to electric consumers of the non-
22 regulated distribution utility covered by the notice unless
23 a notice of retail competition has been filed with respect
24 to the other distribution utility.

1 “(c) DEFINITIONS.—For purposes of this section,
2 ‘distribution utility’ and ‘nonregulated distribution utility’
3 have the meaning given them in section 609(a).”.

4 **SEC. 103. CONSUMER INFORMATION.**

5 PURPA is amended by adding the following new sec-
6 tion after section 118 as added by section 102 of this Act:

7 **“SEC. 119. CONSUMER INFORMATION DISCLOSURE.**

8 “(a) DISCLOSURE RULES.—Not later than January
9 1, 2000, the Secretary, in consultation with the Commis-
10 sion, the Administrator of the Environmental Protection
11 Agency, and the Federal Trade Commission, shall issue
12 rules prescribing the form, content, placement, and timing
13 of the supplier disclosure required under subsections (b)
14 and (c) of this section. The rules shall be prescribed in
15 accordance with section 553 of title 5, United States Code
16 (the Administrative Procedure Act).

17 “(b) DISCLOSURE TO ELECTRIC CONSUMERS.—An
18 electric utility that offers to sell electric energy to an elec-
19 tric consumer shall provide the electric consumer, to the
20 extent practicable and in accordance with rules issued
21 under subsection (a), a statement containing the following
22 information:

23 “(1) the nature of the service being offered, in-
24 cluding information about interruptibility or curtail-
25 ment of service;

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

3 “(3) a description of all other charges associ-
4 ated with the service being offered including, but not
5 limited to, access charges, exit charges, back-up
6 service charges, stranded cost recovery charges, and
7 customer service charges;

8 “(4) information concerning the type of energy
9 resource used to generate the electric energy and the
10 environmental attributes of the generation (including
11 air emissions characteristics); and

12 “(5) any other information the Secretary deter-
13 mines can be provided feasibly and would be useful
14 to consumers in making purchasing decisions.

15 “(c) DISCLOSURE TO WHOLESALE CUSTOMERS.—In
16 every sale of electric energy for resale, the seller shall pro-
17 vide to the purchaser the information respecting the type
18 of energy resource used to generate the electric energy and
19 the environmental attributes of the generation required by
20 rules established under subsection (a).

21 “(d) FEDERAL TRADE COMMISSION ENFORCE-
22 MENT.—A violation of a rule prescribed under this section
23 shall constitute an unfair or deceptive act or practice in
24 violation of section 5 of the Federal Trade Commission
25 Act (15 U.S.C. 45) and shall be treated as a violation of

1 a rule under section 18 of the Federal Trade Commission
2 Act (15 U.S.C. 57a). All functions and powers of the Fed-
3 eral Trade Commission under the Federal Trade Commis-
4 sion Act are available to the Federal Trade Commission
5 to enforce compliance with this section notwithstanding
6 jurisdictional limitations in the Federal Trade Commission
7 Act.

8 “(e) AUTHORITY TO OBTAIN INFORMATION.—Au-
9 thority to obtain information under section 11 of the En-
10 ergy Supply and Environmental Coordination Act of 1974
11 (15 U.S.C. 796) is available to the Secretary to administer
12 this section and to the Federal Trade Commission to en-
13 force this section. In order to carry out its duties under
14 this section, the Federal Trade Commission may use any
15 of its powers under sections 3, 6, 9, and 20 of the Federal
16 Trade Commission Act (15 U.S.C. 43, 46, 49, and 58b-
17 2) without regard to the limitations contained in section
18 20(b) of that Act (15 U.S.C. 57b-2(b)) or any jurisdic-
19 tional limitations contained in that Act.

20 “(f) ENFORCEMENT BY STATES.—(1) When a State
21 determines that the interests of its residents have been
22 or are being threatened or adversely affected because any
23 person is violating or has violated a rule of the Secretary
24 under this section, the State may bring a civil action on

1 behalf of its residents in an appropriate district court of
2 the United States to—

3 “(A) enjoin the violation;

4 “(B) enforce compliance with the rule of the
5 Secretary;

6 “(C) obtain damages, restitution, or other com-
7 pensation on behalf of its residents; or

8 “(D) obtain other relief the court considers ap-
9 propriate.

10 “(2) The State shall serve prior written notice of any
11 civil action under this subsection upon the Federal Trade
12 Commission and provide the Federal Trade Commission
13 with a copy of its complaint, except that if it is not feasible
14 for the State to provide this prior notice, the State shall
15 serve the notice immediately upon instituting the action.
16 Upon receiving a notice respecting a civil action, the Fed-
17 eral Trade Commission may—

18 “(A) intervene in the action, and

19 “(B) upon so intervening, be heard on all mat-
20 ters arising in the action and file petition for appeal.

21 “(3) For purposes of bringing any civil action under
22 this subsection, this section does not prevent a State offi-
23 cial from exercising the powers conferred by State law to
24 conduct investigations, administer oaths or affirmations,

1 or compel the attendance of witnesses or the production
2 of documentary and other evidence.

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

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

16 “(6) This section does not prohibit a State from pro-
17 ceeding in State court on the basis of an alleged violation
18 of a State civil or criminal statute.”.

19 **TITLE II—FACILITATING STATE**
20 **AND REGIONAL REGULATION**

21 **SEC. 201. CLARIFICATION OF STATE AND FEDERAL AU-**
22 **THORITY OVER RETAIL TRANSMISSION SERV-**
23 **ICES.**

24 (a) NONPREEMPTION OF STATE AUTHORITY TO
25 ORDER RETAIL WHEELING AND TO IMPOSE LOCAL DE-

1 LIVERY CHARGES.—Section 201(b) of the Federal Power
 2 Act (referred to in this Act as “the FPA”) is amended
 3 by adding the following new paragraph after paragraph
 4 (2):

5 “(3) This Act does not preempt or otherwise af-
 6 fect any authority under the law of a State or mu-
 7 nicipality to—

8 “(A) require unbundled transmission and
 9 local distribution services for the delivery of
 10 electric energy directly to an ultimate consumer,
 11 but if unbundled transmission is in interstate
 12 commerce, the rate, terms, and conditions of
 13 the transmission are subject to the exclusive ju-
 14 risdiction of the Commission under this part, or

15 “(B) impose a delivery charge on an ulti-
 16 mate consumer’s receipt of electric energy.”.

17 (b) OPEN ACCESS TRANSMISSION AUTHORITY; RE-
 18 TAIL WHEELING IN RETAIL COMPETITION STATES.—

19 (1) APPLICABILITY OF OPEN ACCESS TRANS-
 20 MISSION RULES.—Section 206 of the FPA is amend-
 21 ed by adding the following new subsection after sub-
 22 section (d):

23 “(e) OPEN ACCESS TRANSMISSION SERVICES.—(1)
 24 Under section 205 and this section, the Commission may
 25 require, by rule or order, public utilities and transmitting

1 utilities to provide open access transmission services, sub-
 2 ject to section 212(h), and may authorize recovery of
 3 stranded costs, as defined by the Commission, arising
 4 from any requirement to provide open access transmission
 5 services. This section applies to any rule or order issued
 6 by the Commission before the date of enactment of the
 7 Comprehensive Electricity Competition Act.”.

8 (2) AUTHORITY TO ORDER RETAIL WHEEL-
 9 ING.—Section 212(h) of the FPA is amended—

10 (A) by inserting “(1)” before “No”;

11 (B) by striking “(1)”, “(2)”, “(A)”, and
 12 “(B)” and inserting in their places “(A)”,
 13 “(B)”, “(i)”, and “(ii)” respectively;

14 (C) by striking from redesignated para-
 15 graph (1)(B)(ii) “the date of enactment of this
 16 subsection” and inserting “October 24, 1992,”
 17 in its place; and

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

20 “(2) Notwithstanding paragraph (1), the Com-
 21 mission may issue an order that requires the trans-
 22 mission of electric energy directly or indirectly to an
 23 ultimate consumer if a notice of retail competition
 24 under section 609 of the Public Utility Regulatory
 25 Policies Act of 1978 has been filed and is in effect

1 with respect to the ultimate consumer or if a dis-
2 tribution utility offers open access to its delivery fa-
3 cilities to the ultimate consumer.”.

4 (3) CONFORMING AMENDMENTS—.

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

7 “(23) ‘transmitting utility’ means any entity
8 that owns, controls, or operates electric power trans-
9 mission facilities that are used for the sale of electric
10 energy, notwithstanding section 201(f) of this Act.”.

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

13 “(24) ‘transmission services’ means the trans-
14 mission of electric energy sold or to be sold.”.

15 (C) Section 211(a) of the FPA is amended by
16 striking “for resale”.

17 (D) Section 212(a) of the FPA is amended by
18 striking “wholesale” each time it appears, except the
19 last time.

20 (e) APPLICABILITY OF COMMISSION JURISDICTION
21 TO TRANSMITTING UTILITIES.—Section 206(e) of the
22 FPA as added by subsection (b)(1) of this section is
23 amended by adding the following new paragraphs after
24 paragraph (1):

1 “(2)(A) The Commission has jurisdiction over
2 the rates, terms, and conditions for transmission
3 services provided by a transmitting utility that is not
4 a public utility, subject to section 212(h).

5 “(B) in exercising its authority under this para-
6 graph, the Commission—

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

12 “(ii) with respect to any transmitting util-
13 ity that has outstanding loans made or guaran-
14 teed by the Rural Utilities Service, shall take
15 into account the policies of the Department of
16 Agriculture in implementing the Rural Elec-
17 trification Act of 1936 and shall assure, to the
18 extent practicable, that the utility will be able
19 to meet any loan obligations under that Act;
20 and

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

1 “(C) Notwithstanding any other law, section
2 205, this section, and part III apply to a transmit-
3 ting utility that is not a public utility for purposes
4 of this section.

5 “(3) The Commission may suspend or modify
6 for specified periods application of its rules on non-
7 discriminatory open access to one or more of the fol-
8 lowing entities: the Tennessee Valley Authority, the
9 Bonneville Power Administration, the Southeastern
10 Power Administration, the Southwestern Power Ad-
11 ministration, the Western Area Power Administra-
12 tion, a corporation or association with outstanding
13 debt to the Administrator of the Rural Utility Serv-
14 ice relating to electric utility facilities, or a full-re-
15 quirements wholesale customer of any of these enti-
16 ties, if the Commission finds that the entity will not
17 be able to recover stranded costs.

18 “(4) Any electric utility that owns, directly or
19 indirectly, generation facilities financed in whole or
20 in part with outstanding loans made or guaranteed
21 by the Rural Utilities Service may apply to the Com-
22 mission to impose a charge for the recovery of
23 stranded costs as defined by the Commission. If the
24 Commission determines that the proposed charge is
25 just, reasonable, and not unduly discriminatory or

1 preferential, the Commission may issue an order
 2 providing for the imposition of the charge on trans-
 3 mission service by the applicant or by another trans-
 4 mitting utility or on any electric utility or trans-
 5 action subject to the Commission’s jurisdiction.”.

6 **SEC. 202. INTERSTATE COMPACTS ON REGIONAL TRANS-**
 7 **MISSION PLANNING.**

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

10 **“SEC. 215. INTERSTATE COMPACTS ON REGIONAL TRANS-**
 11 **MISSION PLANNING.**

12 “(a) The consent of Congress is given for an agree-
 13 ment to establish a regional transmission planning agency,
 14 if the Commission determines that the agreement would—

15 “(1) facilitate coordination among the States
 16 within a particular region with regard to the plan-
 17 ning of future transmission, generation, and dis-
 18 tribution facilities,

19 “(2) carry out State electric facility siting re-
 20 sponsibilities more effectively,

21 “(3) meet the other requirements of this section
 22 and rules prescribed by the Commission under this
 23 section, and

24 “(4) otherwise be consistent with the public in-
 25 terest.

1 “(b)(1) If the Commission determines that an agree-
2 ment meets the requirements of subsection (a), the agency
3 established under the agreement has the authority nec-
4 essary or appropriate to carry out the agreement. This au-
5 thority includes authority with respect to matters other-
6 wise within the jurisdiction of the Commission, if expressly
7 provided for in the agreement and approved by the Com-
8 mission.

9 “(2) The Commission’s determination under this sec-
10 tion may be subject to any terms or conditions the Com-
11 mission determines are necessary to ensure that the agree-
12 ment is in the public interest.

13 “(c)(1) The Commission shall prescribe—

14 “(A) criteria for determining whether a regional
15 transmission planning agreement meets subsection
16 (a), and

17 “(B) standards for the administration of a re-
18 gional transmission planning agency established
19 under the agreement.

20 “(2) The criteria shall provide that, in order to meet
21 subsection (a)—

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

1 “(B) a regional transmission planning agency
2 must be composed of one or more members from
3 each State and tribal government that is a party to
4 the agreement,

5 “(C) each participating State and tribal govern-
6 ment must vest in the regional transmission plan-
7 ning agency the authority necessary to carry out the
8 agreement and this section, and

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

16 “(3) The criteria may include any other requirement
17 for meeting subsection (a) that the Commission deter-
18 mines is necessary to ensure that the regional trans-
19 mission planning agency’s organization, practices, and
20 procedures are sufficient to carry out this section and the
21 rules issued under it.

22 “(d) The Commission, after notice and opportunity
23 for comment, may terminate the approval of an agreement
24 under this section at any time if it determines that the
25 regional transmission planning agency fails to comply with

1 this section or Commission prescriptions under subsection
 2 (c) or that the agreement is contrary to the public interest.

3 “(e) Section 313 applies to a rehearing before a re-
 4 gional transmission planning agency and judicial review
 5 of any action of a regional transmission planning agency.
 6 For this purpose, when section 313 refers to ‘Commis-
 7 sion’, substitute ‘regional transmission planning agency’
 8 and when section 313(b) refers to ‘licensee or public util-
 9 ity’, substitute ‘entity.’”.

10 **SEC. 203. BACKUP AUTHORITY TO IMPOSE A CHARGE ON**
 11 **AN ULTIMATE CONSUMER’S RECEIPT OF**
 12 **ELECTRIC ENERGY.**

13 The FPA is amended by adding the following new
 14 section after section 215 as added by section 202 of this
 15 Act:

16 **“SEC. 216. BACKUP AUTHORITY FOR CHARGE ON RECEIPT**
 17 **OF ELECTRIC ENERGY.**

18 “(a) If a State regulatory authority that has provided
 19 notice of retail competition under section 609 of the Public
 20 Utility Regulatory Policies Act of 1978 for a distribution
 21 utility determines that the utility should be authorized or
 22 required to impose a charge on an ultimate consumer’s
 23 receipt of electric energy but the State regulatory author-
 24 ity lacks authority to authorize or require imposition of
 25 such a charge, the State regulatory authority may apply

1 to the Commission for an order providing for the imposi-
2 tion of the charge. If the Commission determines that the
3 imposition of the charge is just, reasonable, and not un-
4 duly discriminatory or preferential; is consistent with the
5 State regulatory authority's policy regarding the imposi-
6 tion of the charge; and is not specifically prohibited by
7 State law, the Commission may issue an order providing
8 for the imposition of the charge.

9 “(b) If a utility that has outstanding loans made or
10 guaranteed by the Rural Utilities Service and that has
11 filed a notice of retail competition under section 609 of
12 the Public Utilities Regulatory Policies Act of 1978 deter-
13 mines that it is appropriate to impose a charge on an ulti-
14 mate consumer's receipt of electric energy, but lacks the
15 authority to impose such a charge under State law, the
16 utility may apply to the Commission for an order provid-
17 ing for the imposition of a charge. If the Commission de-
18 termines that the proposed charge is just, reasonable, and
19 not unduly discriminatory or preferential, the Commission
20 may issue an order providing for the imposition of the
21 charge.”.

22 **SEC. 204. AUTHORITY TO ESTABLISH AND REQUIRE INDE-**
23 **PENDENT SYSTEM OPERATION.**

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

1 “(h) Upon its own motion or upon application or
2 complaint and after notice and an opportunity for a hear-
3 ing, the Commission may order the establishment of an
4 entity for the purpose of independent operation and con-
5 trol of interconnected transmission facilities, may order a
6 transmitting utility to relinquish control over operation of
7 its transmission facilities to an entity established for the
8 purpose of independent operation and control of inter-
9 connected transmission facilities, or may do both, if the
10 Commission finds that—

11 “(1) this action is appropriate to promote com-
12 petitive electricity markets and efficient, economical,
13 and reliable operation of the interstate transmission
14 grid;

15 “(2) the entity established for the purpose of
16 independent operation and control of interconnected
17 transmission facilities will operate the transmission
18 facilities in a manner that assures that ownership of
19 transmission facilities provides no advantage in com-
20 petitive electricity markets; and

21 “(3) any transmitting utility ordered to transfer
22 control of its transmission facilities will receive just
23 and reasonable compensation for the use of its facili-
24 ties.”.

1 **TITLE III—PUBLIC BENEFITS**

2 **SEC. 301. PUBLIC BENEFITS FUND.**

3 PURPA is amended by adding after section 609, as
4 added by section 101 of this Act, the following new sec-
5 tion:

6 **“SEC. 610. PUBLIC BENEFITS FUND.**

7 “(a) DEFINITIONS.—For purposes of this section—

8 “(1) the term ‘Board’ means the Federal-State
9 Joint Board established under subsection (b)(1);

10 “(2) the term ‘eligible public purpose program’
11 means a program that supports one or more of the
12 following—

13 “(A) availability of affordable electricity
14 service to low-income customers;

15 “(B) implementation of energy conserva-
16 tion and energy efficiency measures and energy
17 management practices,

18 “(C) consumer education,

19 “(D) the development and demonstration
20 of an electricity generation technology that the
21 Secretary determines is emerging from research
22 and development, provides environmental bene-
23 fits, and—

24 “(i) has significant national commer-
25 cial potential, or

1 “(ii) provides energy security or gen-
2 eration resource diversity benefits, or

3 “(E) rural assistance subsequent to a de-
4 termination made under subsection (d)(4);

5 “(3) the term ‘fiscal agent’ means the entity
6 designated under subsection (b)(2)(B);

7 “(4) the term ‘Fund’ means the Public Benefits
8 Fund established under subsection (b)(2)(A); and

9 “(5) the term ‘State’ means each of the contig-
10 uous States and the District of Columbia.

11 “(b) FEDERAL-STATE JOINT BOARD.—(1) A Fed-
12 eral-State Joint Board is established whose membership
13 is composed of two officers or employees of the United
14 States Government appointed by the Secretary and five
15 State commissioners appointed by the national organiza-
16 tion of State commissions. The Secretary shall designate
17 the Chair of the Board.

18 “(2) The Board shall—

19 “(A) establish a Public Benefits Fund upon pe-
20 tition of States and tribal governments wishing to
21 participate in the program under this section,

22 “(B) appoint a fiscal agent, from persons nomi-
23 nated by the States and tribal governments petition-
24 ing to establish the Fund, and

1 “(C) administer the Fund as set forth in this
2 section.

3 “(c) FISCAL AGENT.—The fiscal agent appointed by
4 the Board shall collect and disburse the amounts in the
5 Fund as set forth in this section.

6 “(d) SECRETARY.—The Secretary shall prescribe
7 rules for—

8 “(1) the determination of charges under sub-
9 section (e);

10 “(2) the collection of amounts for the Fund, in-
11 cluding provisions for overcollection or undercollec-
12 tion;

13 “(3) distribution of amounts from the Fund;
14 and

15 “(4) the criteria under which the Board deter-
16 mines whether a State or tribal government’s pro-
17 gram is an eligible public purpose program, includ-
18 ing a rural assistance program. A rural assistance
19 program shall be an eligible public purpose program
20 to the extent that the Secretary, in consultation with
21 the Secretary of Agriculture, determines by rule that
22 significant adverse economic effects on rural cus-
23 tomers have occurred or will occur as a result of
24 electricity restructuring that meets the retail com-
25 petition requirements of this Act. After such a dem-

1 onstration is made, the Secretary, in consultation
2 with the Secretary of Agriculture, shall specify by
3 rule the mechanism for distribution of funds to rural
4 assistance programs, amounts to be provided, and
5 variances to the overall requirements to the Public
6 Benefits Fund under this section, if any. For the
7 purposes of funding rural assistance programs, the
8 Secretary shall increase the charge for the Public
9 Benefit Fund as necessary, up to a maximum of .17
10 mills per kilowatt hour. Funding for rural assistance
11 programs under this section shall be provided exclu-
12 sively from this increase in the charge.

13 “(e) PUBLIC BENEFITS CHARGE.—(1) As a condition
14 of existing or future interconnection with facilities of any
15 transmitting utility, each owner of an electric generating
16 facility whose capacity exceeds one megawatt shall pay the
17 transmitting utility a public benefits charge determined
18 under paragraph (2), even if the generation facility and
19 the transmitting facility are under common ownership or
20 are otherwise affiliated. Each importer of electric energy
21 from Canada or Mexico, as a condition of existing or fu-
22 ture interconnection with facilities of any transmitting
23 utility in the United States, shall pay this same charge
24 for imported electric energy. The transmitting utility shall
25 pay the amounts collected to the fiscal agent at the close

1 of each month, and the fiscal agent shall deposit the
2 amounts into the Fund.

3 “(2)(A) The Board shall notify the Commission of
4 the sum of the requests of all States and tribal govern-
5 ments under subsection (f) within 30 days after receiving
6 the requests.

7 “(B) The Commission shall calculate the rate for the
8 public benefits charge for each calendar year at an
9 amount, not in excess of 1 mill per kilowatt-hour, equal
10 to the sum of the requests of all States and tribal govern-
11 ments under subsection (f) for programs described in sub-
12 section (a)(2)(A) through (a)(2)(D) divided by the esti-
13 mated kilowatt hours of electric energy to be generated
14 by generators subject to the charge. Every five years the
15 Secretary shall review the charge and shall direct the
16 Commission to revise the charge as appropriate to main-
17 tain a total Fund level relatively close to the target level
18 of approximately \$3 billion per year nationwide, adjusted
19 for inflation. If there are significant receipts from the sale
20 of Renewable Energy Credits under section 611, the Sec-
21 retary shall review the rate for this charge on a more fre-
22 quent basis and may direct the Commission to reduce the
23 charge by some portion of these receipts as long as suffi-
24 cient funds remain to ensure that the Fund level is appro-

1 piate to achieve the environmental goals of this section
2 and section 611 of this Act.

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

6 “(f) STATE AND TRIBAL GOVERNMENT PARTICIPA-
7 TION.—(1) Not later than 90 days before the beginning
8 of each calendar year, each State and tribal government
9 seeking to participate in the Fund shall submit to the
10 Board a request for payments from the Fund for the cal-
11 endar year in an amount not in excess of 50 percent of
12 the State or tribal government’s estimated expenditures
13 for eligible public purpose programs for the year, except
14 as provided under rules issued under subsection (d)(4) for
15 rural assistance programs.

16 “(2) To the extent a State or tribal government gen-
17 erates all or part of its funds for eligible public purpose
18 programs through a wires charge on an ultimate consum-
19 er’s receipt of electric energy, the State or tribal govern-
20 ment shall impose the charge on a non-discriminatory
21 basis on all consumers within the State or tribal govern-
22 ment jurisdiction.

23 “(3) Notwithstanding subsection (a)(5)—

24 “(A) Alaska may participate in the Fund as a
25 State if it certifies to the Board that all generators

1 within Alaska with a nameplate capacity exceeding
2 one megawatt shall pay into the Fund at the rate
3 calculated by the Board during the year in which
4 Alaska seeks matching funds, and

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

11 “(g) DISBURSAL FROM THE FUND.—(1) The Board
12 shall review State and tribal government submissions and
13 determine whether programs designated by the State or
14 tribal government are eligible public purpose programs,
15 using the criteria prescribed under section (d), and wheth-
16 er there is reasonable assurance that spending qualifying
17 as State or tribal government matching funds will occur.

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

23 “(3) To the extent the aggregate amount of funds
24 requested by the States and tribal governments exceeds
25 the maximum aggregate revenues eligible to be collected

1 under subsection (e) and deposited as payment for Renew-
2 able Energy Credits under section 611, the fiscal agent
3 shall reduce each participating State and tribal govern-
4 ment's request proportionately.

5 “(4)(A) The fiscal agent shall disburse amounts for
6 a calendar year from the Fund to a State or tribal govern-
7 ment in twelve equal monthly payments beginning two
8 months after the beginning of the calendar year. Amounts
9 disbursed may not exceed the lesser of the State or tribal
10 government's request for the fiscal year, after any reduc-
11 tion required under paragraph (3), or 50 percent of the
12 State or tribal government's documented expenditures for
13 eligible public purpose programs for a calendar year, ex-
14 cept as provided under rules issued under subsection
15 (d)(4) for rural assistance programs.

16 “(B) The fiscal agent shall make distributions to the
17 State or tribal government or to an entity designated by
18 the State or tribal government to receive payments. The
19 State or tribal government may designate a nonregulated
20 utility as an entity to receive payments under this section.

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

1 “(h) REPORT.—One year before the date of expira-
2 tion of this section, the Secretary shall report to Congress,
3 after consultation with the Board, whether a public bene-
4 fits fund should continue to exist.

5 “(i) SUNSET.—This section expires at midnight on
6 December 31 of the fifteenth year after the year the Com-
7 prehensive Electricity Competition Act is enacted, except
8 with regard to charges and funding for rural assistance
9 programs.”.

10 **SEC. 302. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

11 (a) STANDARD.—PURPA is amended by adding after
12 section 610, as added by section 301 of this Act, the fol-
13 lowing new section:

14 **“SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

15 “(a) MINIMUM RENEWABLE GENERATION REQUIRE-
16 MENT.—(1) For each calendar year beginning with 2000,
17 a retail electric supplier shall submit to the Secretary Re-
18 newable Energy Credits in an amount equal to the re-
19 quired annual percentage, specified in subsection (b), of
20 the total electric energy sold by the retail electric supplier
21 to electric consumers in the calendar year. The retail elec-
22 tric supplier shall make this submission before April 1 of
23 the following calendar year.

1 “(2) For purposes of this section ‘renewable energy’
2 means energy produced by solar, wind, geothermal, or bio-
3 mass.

4 “(3) This section does not preclude a State from re-
5 quiring additional renewable energy generation in that
6 State.

7 “(b) REQUIRED ANNUAL PERCENTAGE.—(1) The
8 Secretary shall determine the required annual percentage
9 that is to be applied to all retail electric suppliers for cal-
10 endar years 2000–2004. This required annual percentage
11 shall be equal to the percent of the total electric energy
12 sold, during the most recent calendar year for which infor-
13 mation is available before the calendar year of the enact-
14 ment of this section, by retail electric suppliers to electric
15 customers in the United States that is renewable energy.

16 “(2) The Secretary shall determine the required an-
17 nual percentage for all retail electric suppliers for calendar
18 years 2005–2009. This percentage shall be above the per-
19 centage in paragraph (1) and below the percentage in
20 paragraph (3) and shall be selected to promote a smooth
21 transition to the level in paragraph (3).

22 “(3) For calendar years 2010–2015, 5.5 percent.

23 “(c) SUBMISSION OF CREDITS.—A retail electric sup-
24 plier may satisfy the requirements of subsection (a)
25 through the submission of—

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

6 “(2) Renewable Energy Credits issued under
7 subsection (d) to any renewable energy generator for
8 renewable energy generated in the calendar year for
9 which Credits are being submitted or a previous cal-
10 endar year and acquired by the retail electric sup-
11 plier, or

12 “(3) any combination of Credits under para-
13 graphs (1) and (2).

14 “(d) ISSUANCE OF CREDITS.—(1) The Secretary
15 shall establish, not later than one year after the date of
16 enactment of this section, a program to issue, monitor the
17 sale or exchange of, and track Renewable Energy Credits.

18 “(2) Under the program, an entity that generates
19 electric energy through the use of renewable energy may
20 apply to the Secretary for the issuance of Renewable En-
21 ergy Credits. The application shall indicate—

22 “(A) the type of energy used to produce the
23 electricity,

24 “(B) the State in which the electric energy was
25 produced, and

1 “(C) any other information the Secretary deter-
2 mines appropriate.

3 “(3) The Secretary shall issue to an entity one Re-
4 newable Energy Credit for each kilowatt-hour of electric
5 energy the entity generates through the use of renewable
6 energy in any State in 2000 and any succeeding year. To
7 be eligible for a Renewable Energy Credit, the unit of elec-
8 tricity generated through the use of renewable energy may
9 be sold or may be used by the generator. If both renewable
10 energy and non-renewable energy are used to generate the
11 electric energy, the Secretary shall issue credits based on
12 the proportion of renewable energy used. The Secretary
13 shall identify Renewable Energy Credits by type of genera-
14 tion and by the State in which the generating facility is
15 located.

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

24 (5) When a generator sells electric energy generated
25 through the use of renewable energy to a retail electric

1 supplier under a contract subject to section 210 of this
2 Act, the retail electric supplier is treated as the generator
3 of the electric energy for the purposes of this section for
4 the duration of the contract.

5 (6) The Secretary shall disqualify an otherwise eligi-
6 ble renewable energy generator from receiving a Renew-
7 able Energy Credit if the generator has elected to partici-
8 pate in net metering under section 612.

9 (7) If a generator using renewable energy receives
10 matching funds under section 610, the Secretary shall re-
11 duce the number of Renewable Energy Credits the genera-
12 tor receives under paragraph (3) so that the aggregate
13 value of those Credits plus the matching funds received
14 under section 601 equals the aggregate value of the Cred-
15 its the generator would have received absent this para-
16 graph. For purposes of this paragraph, the Secretary shall
17 value a Credit at a price that is representative of the price
18 of a Credit in private transactions. In no event shall the
19 Secretary use a price to establish values for purposes of
20 this paragraph that exceeds the cost cap established under
21 subsection (f).

22 “(e) SALE OR EXCHANGE.—A Renewable Energy
23 Credit may be sold or exchanged by the entity to whom
24 issued or by any other entity who acquires the Credit. A
25 Renewable Energy Credit for any year that is not used

1 to satisfy the minimum renewable generation requirement
2 of subsection (a) for that year may be carried forward for
3 use in another year.

4 “(f) RENEWABLE ENERGY CREDIT COST CAP.—Be-
5 ginning January 1, 2000, the Secretary shall offer Renew-
6 able Energy Credit for sale. The Secretary shall charge
7 1.5 cents for each Renewable Energy Credit sold during
8 calendar year 2000, and on January 1 of each following
9 year, the Secretary shall adjust for inflation, based on the
10 Consumer Price Index, the price charged per Credit for
11 that calendar year. The Secretary shall deposit in the Pub-
12 lic Benefits Fund established under section 610 the
13 amount received from a sale under this subsection. That
14 amount shall be used for the same purposes as other
15 amounts in the Public Benefits Fund.

16 “(g) ENFORCEMENT.—The Secretary may bring an
17 action in the appropriate United States district court to
18 impose a civil penalty on a retail electric supplier that does
19 not comply with subsection (a). A retail electric supplier
20 who does not submit the required number of Renewable
21 Energy Credits under subsection (a) is subject to a civil
22 penalty of not more than three times the value of the Re-
23 newable Energy Credits not submitted. For purposes of
24 this subsection, the value of a Renewable Energy Credit

1 is the price of a Credit determined under subsection (f)
2 for the year the Credits were not submitted.

3 “(h) INFORMATION COLLECTION.—The Secretary
4 may collect the information necessary to verify and
5 audit—

6 “(1) the annual electric energy generation and
7 renewable energy generation of any entity applying
8 for Renewable Energy Credits under this section.

9 “(2) the validity of Renewable Energy Credits
10 submitted by a retail electric supplier to the Sec-
11 retary, and

12 “(3) the quantity of electricity sales of all retail
13 electric suppliers.

14 “(i) SUNSET.—This section expires December 31,
15 2015.”.

16 (b) DEFINITION.—Section 3 of PURPA is amended
17 by adding after paragraph (22) as added by section 101
18 of this Act the following new paragraph:

19 “(23) The term ‘retail electric supplier’ means
20 a person, State agency, or Federal agency that sells
21 electric energy to an electric consumer.”.

22 **SEC. 303. NET METERING.**

23 PURPA is amended by adding the following new sec-
24 tion after section 611 as added by section 302 of this Act:

1 **“SEC. 612. NET METERING FOR RENEWABLE ENERGY.**

2 “(a) DEFINITIONS.—For purposes of this section—

3 “(1) The term ‘eligible on-site generating facil-
4 ity’ means a facility on the site of an electric con-
5 sumer with a peak generating capacity of 20 kilo-
6 watts or less that is fueled solely by a renewable en-
7 ergy resource.

8 “(2) The term ‘renewable energy resource’
9 means solar energy, wind, geothermal, or biomass.

10 “(3) The term ‘net metering service’ means
11 service to an electric consumer under which elec-
12 tricity generated by that consumer from an eligible
13 on-site generating facility and delivered to the dis-
14 tribution system through the same meter through
15 which purchased electricity is received may be used
16 to offset electricity provided by the retail electric
17 supplier to the electric consumer during the applica-
18 ble billing period so that an electric consumer is
19 billed only for the net electricity consumed during
20 the billing period, but in no event shall the net be
21 less than zero during the applicable billing period.

22 “(b) REQUIRMENT TO PROVIDE NET METERING
23 SERVICE.—Each retail electric supplier shall make avail-
24 able upon request net metering service to any retail elec-
25 tric consumer whom the supplier currently serves or solie-
26 its for service.

1 “(c) REQUIREMENT TO PROVIDE INTERCONNEC-
2 TION.—A distribution utility, as defined in section 609,
3 shall permit the interconnection to its distribution system
4 of an on-site generating facility if the facility meets the
5 safety and power quality standards established by the
6 Commission.

7 “(d) RULES.—The Commission shall prescribe safety
8 and power quality standards and rules necessary to carry
9 out this section. These standards and rules apply to any
10 interconnections of an on-site generating facility with a
11 distribution system, regardless of the size of the facility
12 or the type of fuel used by the facility.

13 “(e) STATE AUTHORITY.—This section does not pre-
14 clude a State from imposing additional requirements con-
15 sistent with the requirements in this section. A State may
16 impose a cap limiting the amount of net metering available
17 in the State.”.

18 **SEC. 304. REFORM OF SECTION 210 OF PURPA.**

19 Section 210 of PURPA is amended by adding the fol-
20 lowing new subsection after subsection (l):

21 “(m) REPEAL OF MANDATORY PURCHASE REQUIRE-
22 MENT.—After the date of enactment of the Comprehensive
23 Electricity Competition Act, an electric utility shall not be
24 required to enter into a new contract or obligation to pur-
25 chase electric energy under this section.”.

1 **TITLE IV—REGULATION OF**
2 **MERGERS AND CORPORATE**
3 **STRUCTURE**

4 **SEC. 401. REFORM OF HOLDING COMPANY REGULATION**
5 **UNDER PUHCA.**

6 Effective 18 months after the enactment of this Act,
7 the Public Utility Holding Company Act of 1935 is re-
8 pealed and the following is enacted in its place.

9 **“SECTION 1. SHORT TITLE.**

10 “This Act may be cited as the ‘Public Utility Holding
11 Company Act of 1998’.

12 **“SEC. 2. DEFINITIONS.**

13 “For purposes of this Act—

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 company
20 means any company in the same holding company
21 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 section 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 Act;

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 indi-
24 rectly owns, controls, or holds, with power to
25 vote, 10 percent or more of the outstanding vot-

1 ing securities of a public utility company or of
2 a holding company of any public utility com-
3 pany; and

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

16 “(9) the term ‘holding company system’ means
17 a holding company, together with its subsidiary com-
18 panies;

19 “(10) the term ‘jurisdictional rates’ means
20 rates established by the Commission for the trans-
21 mission of electric energy, the sale of electric energy
22 at wholesale in interstate commerce, the transpor-
23 tation of natural gas, and the sale in interstate com-
24 merce of natural gas for resale for ultimate public

1 consumption 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 person
10 who owns or operates facilities used for transmission
11 of electric energy or sales of electric energy at whole-
12 sale in interstate commerce;

13 “(14) the term ‘public utility company’ means
14 an electric utility company or a gas utility company;

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

21 “(16) the term ‘subsidiary company’ of a hold-
22 ing company means—

23 “(A) any company, 10 percent or more of
24 the outstanding voting securities of which are
25 directly or indirectly owned, controlled, or held

1 with power to vote, by such holding company;
2 and

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

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

19 **“SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS.**

20 “(a) IN GENERAL.—Each holding company and each
21 associate company thereof shall maintain, and shall make
22 available to the Commission, such books, accounts,
23 records, memoranda, and other records as the Commission
24 deems to be relevant to costs incurred by a public utility
25 or natural gas company that is an associate company of

1 such holding company and necessary or appropriate for
2 the protection of utility customers with respect to jurisdic-
3 tional rates for the transmission of electric energy, the sale
4 of electric energy at wholesale in interstate commerce, the
5 transportation of natural gas in interstate commerce, and
6 the sale in interstate commerce of natural gas for resale
7 for ultimate public consumption for domestic, commercial,
8 industrial, or any other use.

9 “(b) AFFILIATE COMPANIES.—Each affiliate of a
10 holding company or of any subsidiary company of a hold-
11 ing company shall maintain, and make available to the
12 Commission, such books, accounts, memoranda, and other
13 records with respect to any transaction with another affili-
14 ate, as the Commission deems relevant to costs incurred
15 by a public utility or natural gas company that is an asso-
16 ciate company of such holding company and necessary or
17 appropriate for the protection of utility customers with re-
18 spect to jurisdictional rates.

19 “(c) HOLDING COMPANY SYSTEMS.— The Commis-
20 sion may examine the books, accounts, memoranda, and
21 other records of any company in a holding company sys-
22 tem, or any affiliate thereof, as the Commission deems rel-
23 evant to costs incurred by a public utility or natural gas
24 company within such holding company system and nec-

1 essary or appropriate for the protection of utility cus-
2 tomers 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. 4. 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, the holding
14 company or any associate company or affiliate thereof,
15 other than such public utility company, wherever located,
16 shall produce for inspection such books, accounts, memo-
17 randa, and other records that—

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

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

22 “(3) are necessary for the effective discharge of
23 the responsibilities of the State commission with re-
24 spect to such proceeding.

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

5 “(c) CONFIDENTIALITY OF INFORMATION.—The pro-
6 duction of books, accounts, memoranda, and other records
7 under subsection (a) shall be subject to such terms and
8 conditions as may be necessary and appropriate to safe-
9 guard against unwarranted disclosure to the public of any
10 trade secrets or sensitive commercial information.

11 “(d) EFFECT ON STATE LAW.—Nothing in this sec-
12 tion shall preempt applicable State law concerning the pro-
13 vision of books, records, or any other information, or in
14 any way limit the rights of any State to obtain books,
15 records, or any other information under any other Federal
16 law, contract, or otherwise.

17 “(e) COURT JURISDICTION.—Any United States dis-
18 trict court located in the State in which the State commis-
19 sion referred to in subsection (a) is located shall have ju-
20 risdiction to enforce compliance with this section.

21 **“SEC. 5. EXEMPTION AUTHORITY.**

22 “(a) RULEMAKING.—Not later than 90 days after the
23 effective date of this Act, the Commission shall promul-
24 gate a final rule to exempt from the requirements of sec-

1 tion 3 any person that is a holding company, solely with
2 respect to one or more—

3 “(1) qualifying facilities under the Public Util-
4 ity Regulatory Policies Act of 1978;

5 “(2) exempt wholesale generators; or

6 “(3) foreign utility companies.

7 “(b) OTHER AUTHORITY.—If, upon application or
8 upon its own motion, the Commission finds that the books,
9 records, accounts, memoranda, and other records of any
10 person are not relevant to the jurisdictional rates of a pub-
11 lic utility or natural gas company, or if the Commission
12 finds that any class of transactions is not relevant to the
13 jurisdictional rates of a public utility or natural gas com-
14 pany, the Commission shall exempt such person or trans-
15 action from the requirements of section 3.

16 **“SEC. 6. AFFILIATE TRANSACTIONS.**

17 “Nothing in this Act shall preclude the Commission
18 or a State commission from exercising its jurisdiction
19 under otherwise applicable law to determine whether a
20 public utility company, public utility, or natural gas com-
21 pany may recover in rates any costs of an activity per-
22 formed by an associate company, or any costs of goods
23 or services acquired by such public utility company from
24 an associate company.

1 **“SEC. 7. APPLICABILITY.**

2 “No provision of this Act shall apply to, or be deemed
3 to include—

4 “(1) the United States;

5 “(2) a State or any political subdivision of a
6 State;

7 “(3) any foreign governmental authority not op-
8 erating in the United States;

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

12 “(5) any officer, agent, or employee of any en-
13 tity referred to in paragraph (1), (2), or (3) acting
14 as such in the course of official duty.

15 **“SEC. 8. EFFECT ON OTHER REGULATIONS.**

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

19 **“SEC. 9. ENFORCEMENT.**

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

24 **“SEC. 10. SAVINGS PROVISIONS.**

25 “(a) IN GENERAL.—Nothing in this Act prohibits a
26 person from engaging in or continuing to engage in activi-

1 ties or transactions in which it is legally engaged or au-
2 thorized to engage on the effective date of this Act.

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

9 **“SEC. 11. IMPLEMENTATION.**

10 “Not later than 18 months after the date of enact-
11 ment of the Comprehensive Electricity Competition Act,
12 the Commission shall—

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

16 “(2) submit to the Congress detailed rec-
17 ommendations on technical and conforming amend-
18 ments to Federal law necessary to carry out this Act
19 and the amendments made by this Act.

20 **“SEC. 12. TRANSFER OF RESOURCES.**

21 “All books and records that relate primarily to the
22 functions transferred to the Commission under this Act
23 shall be transferred from the Securities and Exchange
24 Commission to the Commission.

1 **“SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

4 **“SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL
5 POWER ACT.**

6 “Section 318 of the Federal Power Act (16 U.S.C.
7 825q) is repealed.”.

8 **SEC. 402. ELECTRIC COMPANY MERGERS.**

9 Section 203(a) of the FPA is amended by—

10 (1) striking “public utility” each time it ap-
11 pears and inserting in its place “person or electric
12 utility company”;

13 (2) inserting after the first sentence the follow-
14 ing: “Except as the Commission otherwise provides,
15 a holding company in a holding company system
16 that includes an electric utility company shall not,
17 directly or indirectly, purchase, acquire, or take any
18 security of an electric utility company or of a hold-
19 ing company in a holding company system that in-
20 cludes an electric utility company, without first se-
21 curing an order of the Commission authorizing it to
22 do so.”;

23 (3) striking “hearing” in the last sentence and
24 inserting “oral or written presentation of views”;
25 and

1 (4) adding at the end the following: “For pur-
2 poses of this subsection, the terms ‘electric utility
3 company,’ ‘holding company’, and ‘holding company
4 system’ have the meaning given them in section 2 of
5 the Public Utility Holding Company Act of 1998.
6 Notwithstanding section 201(b)(1), generation facili-
7 ties are subject to the jurisdiction of the Commission
8 for purposes of this section, except as the Commis-
9 sion otherwise may provide.”.

10 **SEC. 403. REMEDIAL MEASURES FOR MARKET POWER.**

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

14 **“SEC. 217. REMEDIAL MEASURES FOR MARKET POWER.**

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

16 (1) ‘market power’ means the ability of an elec-
17 tric utility profitably to maintain prices above com-
18 petitive levels for a significant period of time, and

19 “(2) ‘notice of retail competition’ has the mean-
20 ing provided under section 3(22) of the Public Util-
21 ity Regulatory Policies Act of 1978.

22 “(b) COMMISSION JURISDICTIONAL SALES.—(1) If
23 the Commission determines that there are markets in
24 which a public utility that owns or controls generation fa-
25 cilities has market power in sales of electric energy for

1 resale in interstate commerce, the Commission shall order
2 that utility to submit a plan for taking necessary actions
3 to remedy its market power, which may include, but is
4 not limited to, conditions respecting operation or dispatch
5 of generation, independent operation of transmission fa-
6 cilities, or divestiture of ownership of one or more genera-
7 tion facilities.

8 “(2) In consultation with the Attorney General and
9 the Federal Trade Commission, the Commission shall re-
10 view the plan to determine if its implementation would
11 adequately mitigate the adverse competitive effects of
12 market power. The Commission may approve the plan
13 with or without modification. The plan takes effect upon
14 approval by the Commission. Notwithstanding any State
15 law, regulation, or order to the contrary and notwithstand-
16 ing any other provision of this Act or any other law, the
17 Commission has jurisdiction to order divestiture or other
18 transfer of control of generation assets pursuant to the
19 plan.

20 “(c) STATE JURISDICTIONAL SALES.—(1) If a State
21 commission that has filed a notice of retail competition
22 has reason to believe that an electric utility doing business
23 in the State has market power, the State commission may
24 apply for an order under this section.

1 “(2) If, after receipt of such an application and after
2 notice and opportunity for a hearing, the Commission de-
3 termines that the electric utility has market power in the
4 sales of electric energy sold at retail in the State, this mar-
5 ket power would adversely affect competition in the State,
6 and the State commission lacks authority to effectively
7 remedy such market power, the Commission may order the
8 electric utility to submit a plan for taking necessary ac-
9 tions to remedy the electric utility’s market power. These
10 actions may include conditions respecting operation or dis-
11 patch of generation, competitive procurement of all gen-
12 eration capacity or energy, independent operation of trans-
13 mission facilities, or divestiture of ownership of one or
14 more generation facilities of the electric utility.

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

19 “(4) Notwithstanding any State law, regulation, or
20 order to the contrary and notwithstanding any other provi-
21 sion of this act or any other law, the Commission has ju-
22 risdiction to order divestiture or other transfer of control
23 of generation assets pursuant to the plan.”.

1 **TITLE V—ELECTRIC**
2 **RELIABILITY**

3 **SEC. 501. ELECTRIC RELIABILITY ORGANIZATION AND**
4 **OVERSIGHT.**

5 (a) The FPA is amended by adding the following new
6 section after section 217 as added by section 403 of this
7 Act:

8 **“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND**
9 **OVERSIGHT.**

10 “(a) DEFINITION.—As used in this section:

11 “(1) The term ‘bulk-power system’ means all
12 facilities and control systems necessary for operating
13 the interconnected transmission grids, including
14 high-voltage transmission lines; substations; control
15 centers; communications, data, and operations plan-
16 ning facilities; and generating units necessary to
17 maintain transmission system reliability.

18 “(2) The term ‘electric reliability organization’
19 or ‘organization’ means the organization registered
20 by the Commission under subsection (d)(4).

21 “(3) The term ‘system operator’ means any en-
22 tity that operates or is responsible for the operation
23 of the bulk-power system, including control area op-
24 erators, independent system operators, transmission

1 companies, transmission system operators, and re-
2 gional security coordinators.

3 “(4) The term ‘user of the bulk-power system’
4 means any entity that sells, purchases, or transmits
5 electric power over the bulk-power system; owns, op-
6 erates or maintains facilities of the bulk-power sys-
7 tem; or is a system operator.

8 “(b) COMMISSION AUTHORITY.—(1) The Commission
9 has jurisdiction over the electric reliability organization,
10 all system operators, and all users of the bulk-power sys-
11 tem for purposes of approving and enforcing compliance
12 with standards in the United States.

13 “(2) The Commission may register an electric reliability
14 organization and approve and oversee the activities in the
15 United States of that electric reliability organization.

16 “(c) COMPLIANCE WITH EXISTING RELIABILITY
17 STANDARDS.—A user of the bulk-power system shall com-
18 ply with standards established by the North American
19 Electric Reliability Council and the regional reliability
20 councils that exist on the date of enactment of the Com-
21 prehensive Electricity Competition Act, consistent with
22 any agreement entered into under subsection (f). Each
23 standard remains in effect unless modified under this sub-
24 section or superseded by standards approved under sub-
25 section (e). The Commission, upon its own motion or upon

1 request and consistent with any agreements entered into
2 pursuant to subsection (f), may modify or suspend the ap-
3 plication of a standard and may enforce a standard exer-
4 cising the same authority that the electric reliability orga-
5 nization may exercise under subsection (k). The North
6 American Electric Reliability Council and the regional reli-
7 ability councils may monitor compliance with these stand-
8 ards.

9 “(d) ORGANIZATION REGISTRATION AND ESTABLISH-
10 MENT OF STANDARDS.—(1) Not later than 90 days after
11 the date of enactment of this section, the Commission
12 shall issue proposed rules specifying the procedures and
13 requirements for an organization to apply for registration
14 and file existing reliability standards. The Commission
15 shall provide adequate opportunity for comment on the
16 proposed rules. The Commission shall issue final rules
17 under this subsection within 180 days after the date of
18 enactment of this section.

19 “(2) Following the issuance of final Commission rules
20 under paragraph (1), an electric reliability organization
21 may apply for registration with the Commission. The orga-
22 nization shall include in its application its governance,
23 procedures, and funding mechanism, and shall file the
24 standards in effect under subsection (c).

1 “(3) The Commission shall provide public notice of
2 the application and the standards filed under this sub-
3 section and afford interested parties an opportunity to
4 comment on the application and filing.

5 “(4) The Commission shall register the organization
6 if the Commission determines that the organization—

7 “(A) has the ability to provide for an adequate
8 level of reliability of the bulk-power system;

9 “(B) permits voluntary membership to any
10 users of the bulk-power system or interested cus-
11 tomer class or public interest group;

12 “(C) assures fair representation of its members
13 in the selection of its directors and fair management
14 of its affairs, taking into account the need for effi-
15 ciency and effectiveness in decisionmaking and oper-
16 ations and the requirements for technical com-
17 petency in the development of standards and the ex-
18 ercise of oversight of the reliability system, and
19 assures that no single class of market participants
20 has the ability to control the organization’s dis-
21 charge of its responsibilities;

22 “(D) assesses reasonable dues, fees, or other
23 charges necessary to support the organization and
24 the purposes of this section and has a funding mech-
25 anism that is fair and not unduly discriminatory;

1 “(E) establishes procedures for standards devel-
2 opment that provide reasonable notice and oppor-
3 tunity for public comment, taking into account the
4 need for efficiency and effectiveness in decision-
5 making and operations and the requirements for
6 technical competency in the development of stand-
7 ards;

8 “(F) establishes fair and impartial procedures
9 for enforcement of standards, including penalties;
10 limitation of activity, function, or operations; or
11 other appropriate sanctions;

12 “(G) establishes procedures for notice and op-
13 portunity for public observation of all meetings, ex-
14 cept that the procedures for public observation may
15 include alternative procedures for emergencies or for
16 the discussion of information the directors determine
17 should take place in closed session, including the dis-
18 cussion of information with respect to proposed en-
19 forcement or disciplinary action; and

20 “(H) addresses other matters that the Commis-
21 sion considers necessary or appropriate.

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

1 prove only the application it concludes will best ensure a
2 reliable bulk-power system.

3 “(e) REVIEW AND CHANGES OR MODIFICATIONS TO
4 STANDARDS.—(1) The Commission shall review the stand-
5 ards submitted under subsection (d)(2), concurrent with
6 its review of the application under subsection (d), and each
7 standard remains effective if the Commission determines
8 that it is just, reasonable, and not unduly discriminatory
9 or preferential; is in the public interest; and provides for
10 an adequate level of reliability of the bulk-power system.

11 “(2) With respect to a standard that the Commission
12 determines should not remain effective under paragraph
13 (1), the Commission shall refer that standard to the elec-
14 tric reliability organization for development of a new or
15 modified standard under the organization’s procedures as
16 approved by the Commission.

17 “(3)(A) The electric reliability organization shall file
18 with the Commission any new standard developed under
19 paragraph (2) or a new standard or modification of a
20 standard effective under paragraph (1) for review and ap-
21 proval. A new standard or modification does not take ef-
22 fect unless the Commission determines, after notice and
23 opportunity for comment, that the standard or modifica-
24 tion is just, reasonable, and not unduly discriminatory or
25 preferential; is in the public interest; and provides for an

1 adequate level of reliability of the bulk-power system, tak-
2 ing into account the purposes of this section to assure reli-
3 ability of the bulk-power system and giving due weight to
4 the technical competency of the registered electric reliabil-
5 ity organization, and is consistent with any agreement en-
6 tered into pursuant to subsection (f).

7 “(B) Any standard or modification that does not be-
8 come effective under this paragraph shall be referred to
9 the electric reliability organization for development of a
10 new or modified standard under the organization’s proce-
11 dures as approved by the Commission.

12 “(C) The Commission, on its own motion, may re-
13 quire that the electric reliability organization develop a
14 new or revised standard if the Commission considers a new
15 or revised standard necessary or appropriate to further the
16 purposes of this section. The organization shall file the
17 new or revised standard in accordance with this para-
18 graph.

19 “(D) On its own motion or at the request of the elec-
20 tric reliability organization, the Commission may develop
21 and, consistent with any agreement under subsection (f),
22 require immediate implementation by the organization of
23 a new or modified standard if it determines that imme-
24 diate implementation is required to avoid a significant dis-
25 ruption of reliability that would affect public safety or wel-

1 fare. If immediate implementation is required, the Com-
2 mission shall not delay implementation for notice and com-
3 ment but shall publish the standard for notice and com-
4 ment in a timely manner.

5 “(4) A user of the bulk power system shall comply
6 with any new or modified standard that takes effect under
7 paragraph (1) or (3).

8 “(f) COORDINATION WITH CANADA AND MEXICO.—
9 The United States may enter into international agree-
10 ments with the governments of Canada and Mexico to pro-
11 vide for effective compliance with standards and to provide
12 for the effectiveness of the electric reliability organization
13 in carrying out its mission and responsibilities.

14 “(g) CHANGES IN ORGANIZATION PROCEDURES,
15 GOVERNANCE, OR FUNDING.—(1) The electric reliability
16 organization shall file with the Commission any proposed
17 change in its procedures, governance, or funding and ac-
18 companying the filing with an explanation of the basis and
19 purpose for the change.

20 “(2)(A) A proposed procedural change may take ef-
21 fect 90 days after filing with the Commission if the
22 change—

23 “(i) constitutes a statement of policy, practice,
24 or interpretation with respect to the meaning, ad-

1 ministration, or enforcement of an existing proce-
2 dure; or

3 “(ii) is concerned solely with administration of
4 the organization.

5 A proposed procedural change that does not qualify under
6 clause (i) or (ii) takes effect only upon a finding by the
7 Commission that the change is just, reasonable, not pref-
8 erential, and in the public interest.

9 “(B) The Commission, by order, either upon com-
10 plaint or upon its own motion, may suspend an existing
11 procedure or procedural change if it determines the pro-
12 cedure or the proposed change is unjust, unreasonable, un-
13 duly discriminatory or preferential, or is otherwise not in
14 the public interest.

15 “(3) A change in the organization’s governance or
16 funding does not take effect unless the Commission finds
17 that the change is consistent with any agreement under
18 subsection (f) and is just, reasonable, not unduly discrimi-
19 natory or preferential, and in the public interest.

20 “(4) The Commission may require that the electric
21 reliability organization amend its procedures, governance,
22 or funding if the Commission considers the amendment
23 necessary or appropriate to ensure the fair administration
24 of the organization, conform the organization to the re-
25 quirements of this section, or further the purposes of this

1 section, consistent with any agreement entered into under
2 subsection (f). The organization shall file the amendment
3 in accordance with paragraph (1).

4 “(h) ORGANIZATION DELEGATIONS OF AUTHOR-
5 ITY.—(1) The organization may enter into an agreement
6 under which it may delegate some or all of its authority
7 to any person.

8 “(2) The organization shall file with the Commission
9 any agreement entered into under this subsection and any
10 information the Commission requires with respect to the
11 person to whom authority is to be delegated. The Commis-
12 sion may approve the agreement, following public notice
13 and an opportunity for comment, if it finds that the agree-
14 ment is consistent with the requirements of this section.
15 The agreement shall not take effect without Commission
16 approval.

17 “(3)(A) The Commission may direct a modification
18 to or suspend an agreement entered into under this sub-
19 section if it determines that—

20 “(i) the person to whom authority is delegated
21 no longer has the capacity to carry out effectively or
22 efficiently the person’s implementation responsibil-
23 ities under that agreement, or

24 “(ii) the rules, practices, or procedures of the
25 person to whom authority is delegated no longer pro-

1 vide for fair and impartial discharge of the person’s
2 implementation responsibilities under the agreement.

3 “(B) If the agreement is suspended, the electric reli-
4 ability organization shall assume the previously delegated
5 responsibilities.

6 “(i) ORGANIZATION MEMBERSHIP.—Every system
7 operator shall be a member of the electric reliability orga-
8 nization. The organization rules shall provide for vol-
9 untary membership to other users of the bulk-power sys-
10 tem and any interested customer class or public interest
11 group. A person required to become a member of the orga-
12 nization who fails to do so is subject to sections 314 and
13 316A of this Act upon notification from the organization
14 to the Commission.

15 “(j) FAILURE TO APPLY FOR REGISTRATION.—(1) If
16 an organization fails to apply for registration with the
17 Commission within six months after the issuance date of
18 final Commission rules for such a filing, or the Commis-
19 sion does not register an agreement within twelve months
20 after the issuance date of final Commission rules for such
21 filing, the Commission shall convene a process to register
22 an electric reliability organization.

23 “(2) Until an electric reliability organization is reg-
24 istered, the Commission has the same authority to enforce

1 existing or modified standards that the electric reliability
2 organization has under subsection (k).

3 “(k) DISCIPLINARY ACTION AND PENALTIES.—(1)
4 Consistent with the range of actions approved by the Com-
5 mission under subsection (d)(4)(F), the electric reliability
6 organization may impose a penalty, take injunctive action,
7 or impose other disciplinary action the organization finds
8 appropriate against a user of the bulk-power system lo-
9 cated in the United States if the organization finds, after
10 notice and opportunity for a hearing, that the user has
11 violated an organization procedure or standard.

12 “(2) An action taken under subparagraph (1) takes
13 effect 30 days after the finding unless the Commission,
14 on its own motion or upon application by the user of the
15 bulk-power system who was the subject of the action, sus-
16 pends the action. The action shall remain in effect or re-
17 main suspended until the Commission, after notice and op-
18 portunity for comment, sets aside, modifies, or reinstates
19 the action.

20 “(3) The Commission, on its own motion, may impose
21 a penalty, issue an injunction, or impose other disciplinary
22 action the Commission finds appropriate against a user
23 of the bulk power system located in the United States if
24 the Commission finds, after notice and opportunity for a

1 hearing, that the user has violated a procedure or stand-
2 ard of the electric reliability organization.

3 “(l) ADEQUACY, RELIABILITY, AND REPORTS.—The
4 electric reliability organization shall conduct periodic as-
5 sessments of the reliability and adequacy of the inter-
6 connected bulk-power system in North America and shall
7 report annually to the Commission its findings and rec-
8 ommendations for monitoring or improving system reli-
9 ability or adequacy.”.

10 (b) Sections 316 and 316A of the FPA are amended
11 by striking “or 214” each place it appears and inserting
12 “214, or 218”.

13 **SEC. 502. STATUTORY PRESUMPTION.**

14 (a) FEDERAL POWER ACT.—Any reliability standard
15 developed by the reliability organization, and any actions
16 taken in good faith to comply with a reliability standard
17 under section 218 of the FPA, are rebuttably presumed
18 just and reasonable and not unduly discriminatory or pref-
19 erential for purposes of that Act.

20 (b) ANTITRUST LAWS.—Notwithstanding section 703
21 of this Act, the following activities are rebuttably pre-
22 sumed to be in compliance with the antitrust laws of the
23 United States:

24 (1) activities undertaken by the electric reliabil-
25 ity organization under section 218 of the FPA or

1 delegated person operating under an agreement in
2 effect under section 218(h) of the FPA, and

3 (2) activities of a member of the electric reli-
4 ability organization in pursuit of organization objec-
5 tives under section 218 of the FPA undertaken in
6 good faith under the rules of the organization.

7 **TITLE VI—ENVIRONMENTAL** 8 **PROTECTION**

9 **SEC. 601. NITROGEN OXIDES CAP AND TRADE PROGRAM.**

10 (a) PURPOSE.—The purpose of this section is to fa-
11 cilitate the implementation of a regional strategy for re-
12 ducing ambient concentrations of ozone through regional
13 reductions in emissions of NO_x.

14 (b) DEFINITIONS.—For purposes of this section—

15 (1) the term “Administrator” means the Ad-
16 ministrator of the Environmental Protection Agency,

17 (2) the term “NO_x” means oxides of nitrogen,

18 (3) the term “NO_x allowance” means an au-
19 thorization to emit a specified amount of NO_x into
20 the atmosphere, and

21 (4) the term “NO_x allowance cap and trade
22 program” means a program under which, in accord-
23 ance with regulations issued by the Administrator,
24 the Administrator establishes the maximum number
25 of NO_x allowances that may be allocated for speci-

1 fied control periods, allocates or authorizes a State
2 to allocate NO_x allowances, allows the transfer of
3 NO_x allowances for use in States subject to such a
4 program, requires monitoring and reporting of NO_x
5 emissions that meet the requirements of section 412
6 of the Clean Air Act, and prohibits, and requires
7 penalties and offsets for, any emissions of NO_x in
8 excess of the number of NO_x allowances held.

9 (c) PROGRAM IMPLEMENTATION.—(1) If the Admin-
10 istrator determines under section 110(a)(2)(D) of the
11 Clean Air Act that any source or other type of emissions
12 activity in a State emits NO_x in amounts that will contrib-
13 ute significantly to nonattainment in, or interfere with
14 maintenance by, any other State with respect to any na-
15 tional ambient air quality standard for ozone, the Admin-
16 istrator shall establish by regulation, within 12 months of
17 the determination for primary standards and as expedi-
18 tiously as practicable for secondary standards, and shall
19 administer a NO_x allowance cap and trade program in
20 all States in which such a source or other type of emissions
21 activity is located.

22 (2) Any NO_x allowance cap and trade program shall
23 contribute to providing for emissions reductions that miti-
24 gate adequately the contribution or interference and shall
25 be taken into account by the Administrator in determining

1 compliance with section 110(a)(2)(D) of the Clean Air
2 Act.

3 (3) For purposes of sections 113, 114, 304, and 307
4 of the Clean Air Act, regulations promulgated under this
5 section shall be treated as regulations promulgated under
6 title IV of the Clean Air Act (entitled Acid Deposition
7 Control). A requirement of regulations promulgated under
8 this section is considered an “emission standard” or
9 “emission limitation” within the meaning of section 302
10 of the Clean Air Act and an “emission standard or limita-
11 tion under this Act” within the meaning of section 304
12 of the Clean Air Act.

13 **TITLE VII—OTHER REGULATORY** 14 **PROVISIONS**

15 **SEC. 701. TREATMENT OF NUCLEAR DECOMMISSIONING** 16 **COSTS IN BANKRUPTCY**

17 Section 523 of title 11, United States Code (section
18 523 of the Bankruptcy Code of 1978), is amended by add-
19 ing the following new subsection after subsection (e):

20 “(f) Obligations to comply with, and claims resulting
21 from compliance with, Nuclear Regulatory Commission
22 regulations or orders governing the decontamination and
23 decommissioning of nuclear power reactors licensed under
24 section 103 or 104 b. of the Atomic Energy Act of 1954
25 (42 U.S.C. 2133 and 2134(b)) shall be given priority and

1 shall not be rejected, avoided, or discharged under title
 2 11 of the United States Code or in any liquidation, reorga-
 3 nization, receivership, or other insolvency proceeding
 4 under State or Federal law.”.

5 **SEC. 702. STUDY OF IMPACTS OF COMPETITION IN ELEC-**
 6 **TRICITY MARKETS BY THE ENERGY INFOR-**
 7 **MATION ADMINISTRATION.**

8 Section 205 of the Department of Energy Organiza-
 9 tion Act (42 U.S.C. 7135) is amended by adding after sub-
 10 section (l) the following new subsection:

11 “(m)(1) The Administrator shall collect and publish
 12 information regarding the impact of wholesale and retail
 13 competition on the electric power industry. The Adminis-
 14 trator shall prescribe forms for collecting this information.
 15 Information to be collected may include, but is not limited
 16 to—

17 “(A) the ownership and control of electric gen-
 18 eration, transmission, distribution, and related facili-
 19 ties;

20 “(B) electricity consumption and demand;

21 “(C) the transmission, distribution, and delivery
 22 of electric services;

23 “(D) the price of competitive electric services;

24 “(E) the costs, revenues, and rates of regulated
 25 electric services;

1 “(F) the reliability of the electric generation
2 and transmission system, including the availability
3 of adequate generation and transmission capacity to
4 meet load requirements, generation and transmission
5 capacity additions and retirements, and fuel suppli-
6 ers and stocks for electric generation;

7 “(G) electric energy efficiency programs and
8 services and their impacts on energy consumption;

9 “(H) the development and use of renewable
10 electric energy resources; and

11 “(I) research, development and demonstration
12 activities to improve the nation’s electric system.

13 “(2) In carrying out the purposes of this subsection,
14 the Administrator shall take into account reporting bur-
15 dens and the protection of proprietary information as re-
16 quired by law.”.

17 **SEC. 703. ANTITRUST SAVINGS CLAUSE.**

18 This Act and the amendments made by this Act shall
19 not be construed to modify, impair, or supersede the oper-
20 ation of the antitrust laws. For purposes of this section,
21 “antitrust laws” has the meaning given it in subsection
22 (a) of the first section of the Clayton Act (15 U.S.C.
23 12(a)), except that it includes section 5 of the Federal
24 Trade Commission Act (15 U.S.C. 45), to the extent that
25 section 5 applies to unfair methods of competition.

1 **SEC. 704. ELIMINATION OF ANTITRUST REVIEW BY THE NU-**
2 **CLEAR REGULATORY COMMISSION.**

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

6 “d. Subsection 105 c. does not apply to an application
7 for a license to construct or operate a utilization or pro-
8 duction facility under sections 103 or 104 b. following the
9 date of enactment of this subsection. This Act does not
10 affect the Commission’s authority to enforce antitrust con-
11 ditions included in licenses issued under sections 103 or
12 104 b. before the date of enactment of this subsection.

13 **SEC. 705. ENVIRONMENTAL LAWS SAVINGS CLAUSE.**

14 Nothing in this Act alters or affects environmental
15 requirements imposed by Federal or State law, including,
16 but not limited to, the Clean Air Act (42 U.S.C. 7401
17 et seq.); the Federal Water Pollution Control Act (33
18 U.S.C. 1251 et seq.); the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C.
21 791a et seq.); and the Endangered Species Act (16 U.S.C.
22 1531 et seq.).

○