

106TH CONGRESS
1ST SESSION

H. R. 2887

To amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1999

Mr. BAKER introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, 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 amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “TVA Customer Protec-
5 tion Act of 1999”.

1 **SEC. 2. INCLUSION IN DEFINITION OF PUBLIC UTILITY.**

2 (a) IN GENERAL.—Section 201(e) of the Federal
3 Power Act (16 U.S.C. 824(e)) is amended by inserting be-
4 fore the period at the end the following: “, and includes
5 the Tennessee Valley Authority”.

6 (b) CONFORMING AMENDMENT.—Section 201(f) of
7 the Federal Power Act (16 U.S.C. 824(f)) is amended by
8 striking “foregoing, or any corporation” and inserting
9 “foregoing (other than the Tennessee Valley Authority) or
10 any corporation”.

11 **SEC. 3. DISPOSITION OF PROPERTY.**

12 Section 203 of the Federal Power Act (16 U.S.C.
13 824b) is amended by adding at the end the following:

14 “(c) TVA EXCEPTION.—This section does not apply
15 to a disposition of the whole or any part of the facilities
16 of the Tennessee Valley Authority if—

17 “(1) the Tennessee Valley Authority discloses to
18 the Commission (on a form, and to the extent, that
19 the Commission shall prescribe by regulation) the
20 sale, lease, or other disposition of any part of its fa-
21 cilities that—

22 “(A) is subject to the jurisdiction of the
23 Commission under this Part; and

24 “(B) has a value of more than \$50,000;
25 and

1 “(2) all proceeds of the sale, lease, or other dis-
2 position under paragraph (1) are applied by the
3 Tennessee Valley Authority to the reduction of debt
4 of the Tennessee Valley Authority.”.

5 **SEC. 4. FOREIGN OPERATIONS; PROTECTIONS.**

6 Section 208 of the Federal Power Act (16 U.S.C.
7 824g) is amended by adding at the end the following:

8 “(c) TENNESSEE VALLEY AUTHORITY.—

9 “(1) LIMIT ON CHARGES.—

10 “(A) NO AUTHORIZATION OR PERMIT.—

11 The Commission shall issue no order under this
12 Act that has the effect of authorizing or permit-
13 ting the Tennessee Valley Authority to make,
14 demand, or receive any rate or charge, or im-
15 pose any rule or regulation pertaining to a rate
16 or charge, that includes any costs incurred by
17 or for the Tennessee Valley Authority in the
18 conduct of any activities or operations outside
19 the United States.

20 “(B) UNLAWFUL RATE.—

21 “(i) IN GENERAL.—Any rate, charge,
22 rule, or regulation described in subpara-
23 graph (A) shall be deemed for the purposes
24 of this Act to be unjust, unreasonable, and
25 unlawful.

1 “(ii) NO LIMITATION ON AUTHOR-
2 ITY.—Clause (i) does not limit the author-
3 ity of the Commission under any other pro-
4 vision of law to regulate and establish just
5 and reasonable rates and charges for the
6 Tennessee Valley Authority.

7 “(2) ANNUAL REPORT.—The Tennessee Valley
8 Authority shall annually—

9 “(A) prepare and file with the Commission,
10 in a form that the Commission shall prescribe
11 by regulation, a report setting forth in detail
12 any activities or operations engaged in outside
13 the United States by or on behalf of the Ten-
14 nessee Valley Authority; and

15 “(B) certify to the Commission that the
16 Tennessee Valley Authority has neither recov-
17 ered nor sought to recover the costs of activities
18 or operations engaged in outside the United
19 States by or on behalf of the Tennessee Valley
20 Authority in any rate, charge, rule, or regula-
21 tion on file with the Commission.”.

22 **SEC. 5. TVA POWER SALES AND PROPERTY VALUATION.**

23 (a) IN GENERAL.—Part II of the Federal Power Act
24 (16 U.S.C. 824 et seq.) is amended by adding at the end
25 the following:

1 **“SEC. 215. TVA POWER SALES.**

2 “(a) IN GENERAL.—The Tennessee Valley Authority
3 shall not sell electric power to a retail customer that will
4 consume the power within the area that, on the date of
5 enactment of this section, is assigned by law as the dis-
6 tributor service area, unless—

7 “(1) the customer (or predecessor in interest to
8 the customer) was purchasing electric power directly
9 from the Tennessee Valley Authority as a retail cus-
10 tomer on that date;

11 “(2) the distributor is purchasing firm power
12 from the Tennessee Valley Authority in an amount
13 that is equal to not more than 50 percent of the
14 total retail sales of the distributor; or

15 “(3) the distributor agrees that the Tennessee
16 Valley Authority may sell power to the customer.

17 “(b) RETAIL SALES.—Notwithstanding any other
18 provision of law, the rates, terms, and conditions of retail
19 sales of electric power by the Tennessee Valley Authority
20 that are not prohibited by subsection (a) shall be subject
21 to regulation under State law applicable to public utilities
22 in the manner and to the extent that a State commission
23 or other regulatory authority determines to be appro-
24 priate.

25 “(c) ASSURANCE OF ADEQUATE ELECTRIC GENERA-
26 TION CAPACITY.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, after the date of enactment of this
3 section, the Tennessee Valley Authority shall not
4 construct or acquire by any means electric genera-
5 tion capacity, or sell the output of electric generation
6 capacity constructed or acquired after that date, un-
7 less the Commission has issued to the Tennessee
8 Valley Authority a certificate of public convenience
9 and necessity authorizing the construction or acqui-
10 sition of electric generation capacity.

11 “(2) CRITERIA FOR ISSUANCE OF CERTIFI-
12 CATE.—The Commission shall issue a certificate of
13 public convenience and necessity under paragraph
14 (1) only if the Commission finds, after affording an
15 opportunity for an evidentiary hearing, that—

16 “(A) the reserve power margin of the Ten-
17 nessee Valley Authority for the area within
18 which the Tennessee Valley Authority is per-
19 mitted by law to be a source of supply—

20 “(i) is less than 15 percent; and

21 “(ii) is expected to remain less than
22 15 percent for a period of at least 1 year
23 unless new capacity is constructed or ac-
24 quired;

1 “(B) the Energy Information Administra-
2 tion has submitted to the Commission, with re-
3 spect to issuance of the certificate of public con-
4 venience and necessity, a determination that—

5 “(i) there is no commercially reason-
6 able option for the purchase of power from
7 the wholesale power market to meet the
8 needs of the area within which the Ten-
9 nessee Valley Authority is permitted by law
10 to be a source of supply; and

11 “(ii) the proposed construction or ac-
12 quisition is the only commercially reason-
13 able means to meet the firm contractual
14 obligations of the Tennessee Valley Au-
15 thority with respect to the area within
16 which the Tennessee Valley Authority is
17 permitted by law to be a source of supply;

18 “(C) the electric generation capacity or the
19 output of the capacity proposed to be author-
20 ized will not make the Tennessee Valley Au-
21 thority a direct or indirect source of supply in
22 any area with respect to which the Authority is
23 prohibited by law from being, directly or indi-
24 rectly, a source of supply; and

1 “(D) the electric generation capacity pro-
2 posed to be authorized is completely subscribed
3 in advance for use by customers only within the
4 area for which the Tennessee Valley Authority
5 or distributors of the Authority were the pri-
6 mary source of power supply on July 1, 1957.

7 **“SEC. 216. VALUATION OF CERTAIN TVA PROPERTY.**

8 “(a) EVIDENTIARY HEARING.—Not later than 120
9 days after the date of enactment of this section, notwith-
10 standing any other provision of law, the Commission shall
11 commence a hearing on the record for the purpose of de-
12 termining the value of the property owned by the Ten-
13 nessee Valley Authority—

14 “(1) that is used and useful; and

15 “(2) the cost of which was prudently incurred
16 in providing electric service, as of July 1, 1999, to—

17 “(A) the distributors of the Authority; and

18 “(B) the customers that directly purchased
19 power from the Authority.

20 “(b) PROCEDURES AND STANDARDS.—In making the
21 determination under subsection (a), the Commission shall
22 use, to the maximum extent practicable, the procedures
23 and standards that the Commission uses in making simi-
24 lar determinations with respect to public utilities.

1 “(c) TIMING OF FINAL ORDER.—The Commission
2 shall issue a final order with respect to the determination
3 under subsection (a)—

4 “(1) not later than 1 year after the date of
5 commencement of the hearing under subsection (a);
6 or

7 “(2) not later than a date determined by the
8 Commission by an order supported by the record.

9 “(d) TIMING OF ORDER AWARDING RECOVERY OF
10 STRANDED COSTS.—The Commission may issue an order
11 awarding recovery to the Tennessee Valley Authority of
12 costs rendered uneconomic by competition not earlier than
13 the date on which the Commission issues a final order with
14 respect to the determination under subsection (a).”.

15 (b) TRANSITION.—Not later than 180 days after the
16 date of enactment of this Act, the Tennessee Valley Au-
17 thority shall file all rates and charges for the transmission
18 or sale of electric energy and the classifications, practices,
19 and regulations affecting those rates and charges, together
20 with all contracts that in any manner affect or relate to
21 contracts that are required to be filed under Part II of
22 the Federal Power Act (16 U.S.C. 824 et seq.) (as amend-
23 ed by subsection (a)) and that are in effect as of the date
24 of enactment of this Act.

1 **SEC. 6. FILING AND FULL DISCLOSURE OF TVA DOCU-**
2 **MENTS.**

3 Part III of the Federal Power Act (16 U.S.C. 825
4 et seq.) is amended—

5 (1) by redesignating sections 319 through 321
6 as sections 320 through 322, respectively; and

7 (2) by inserting after section 318 the following:

8 **“SEC. 319. FILING AND FULL DISCLOSURE OF TVA DOCU-**
9 **MENTS.**

10 “(a) IN GENERAL.—The Tennessee Valley Authority
11 shall file and disclose the same documents and other infor-
12 mation that other public utilities are required to file under
13 this Act, as the Commission shall require by regulation.

14 “(b) REGULATION.—

15 “(1) TIMING.—The regulation under subsection
16 (a) shall be promulgated not later than 1 year after
17 the date of enactment of this section.

18 “(2) CONSIDERATIONS.—In promulgating the
19 regulation under subsection (a), the Commission
20 shall take into consideration the practices of the
21 Commission with respect to public utilities other
22 than the Tennessee Valley Authority.”.

23 **SEC. 7. APPLICABILITY OF THE ANTITRUST LAWS.**

24 The Tennessee Valley Authority Act of 1933 (16
25 U.S.C. 831 et seq.) is amended by inserting after section
26 16 the following:

1 **“SEC. 17. APPLICABILITY OF THE ANTITRUST LAWS.**

2 “(a) DEFINITION OF ANTITRUST LAWS.—In this sec-
3 tion, the term ‘antitrust laws’ means—

4 “(1) an antitrust law (within the meaning of
5 section (1) of the Clayton Act (15 U.S.C. 12));

6 “(2) the Act of June 19, 1936 (commonly
7 known as the ‘Robinson Patman Act’) (49 Stat.
8 1526, chapter 323; 15 U.S.C. 13 et seq.); and

9 “(3) section 5 of the Federal Trade Commis-
10 sion Act (15 U.S.C. 45), to the extent that the sec-
11 tion relates to unfair methods of competition.

12 “(b) APPLICABILITY.—Nothing in this Act modifies,
13 impairs, or supersedes the antitrust laws.

14 “(c) ANTITRUST LAWS.—

15 “(1) TVA DEEMED A PERSON.—The Tennessee
16 Valley Authority shall be deemed to be a person, and
17 not government, for purposes of the antitrust laws.

18 “(2) APPLICABILITY.—Notwithstanding any
19 other provision of law, the antitrust laws (including
20 the availability of any remedy for a violation of an
21 antitrust law) shall apply to the Tennessee Valley
22 Authority notwithstanding any determination that
23 the Tennessee Valley Authority is a corporate agen-
24 cy or instrumentality of the United States or is oth-
25 erwise engaged in governmental functions.”.

1 **SEC. 8. SAVINGS PROVISION.**

2 (a) DEFINITION OF TVA DISTRIBUTOR.—In this sec-
3 tion, the term “TVA distributor” means a cooperative or-
4 ganization or publicly owned electric power system that,
5 on January 2, 1998, purchased electric power at wholesale
6 from the Tennessee Valley Authority under an all-require-
7 ments power contract.

8 (b) EFFECT OF ACT.—Nothing in this Act or any
9 amendment made by this Act—

10 (1) subjects any TVA distributor to regulation
11 by the Federal Energy Regulatory Commission; or

12 (2) abrogates or affects any law in effect on the
13 date of enactment of this Act that applies to a TVA
14 distributor.

15 **SEC. 9. PROVISION OF CONSTRUCTION EQUIPMENT, CON-**
16 **TRACTING, AND ENGINEERING SERVICES.**

17 Section 4 of the Tennessee Valley Authority Act of
18 1933 (16 U.S.C. 831c) is amended by adding at the end
19 the following:

20 “(m) PROVISION OF CONSTRUCTION EQUIPMENT,
21 CONTRACTING, AND ENGINEERING SERVICES.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of this Act, except as provided in this sub-
24 section, the Corporation shall not have power to—

25 “(A) rent or sell construction equipment;

1 “(B) provide a construction equipment
2 maintenance or repair service;

3 “(C) perform contract construction work;
4 or

5 “(D) provide a construction engineering
6 service;

7 to any private or public entity.

8 “(2) ELECTRICAL CONTRACTORS.—The Cor-
9 poration may provide equipment or a service de-
10 scribed in subparagraph (1) to a private contractor
11 that is engaged in electrical utility work on an elec-
12 trical utility project of the Corporation.

13 “(3) CUSTOMERS, DISTRIBUTORS, AND GOVERN-
14 MENTAL ENTITIES.—The Corporation may provide
15 equipment or a service described in subparagraph
16 (1) to—

17 “(A) a power customer served directly by
18 the Corporation;

19 “(B) a distributor of Corporation power; or

20 “(C) a Federal, State, or local government
21 entity;

22 that is engaged in work specifically related to an
23 electrical utility project of the Corporation.

24 “(4) USED CONSTRUCTION EQUIPMENT.—

1 “(A) DEFINITION OF USED CONSTRUCTION
2 EQUIPMENT.—In this paragraph, the term
3 ‘used construction equipment’ means construc-
4 tion equipment that has been in service for
5 more than 2,500 hours.

6 “(B) DISPOSITION.—The Corporation may
7 dispose of used construction equipment by
8 means of a public auction conducted by a pri-
9 vate entity that is independent of the Corpora-
10 tion.

11 “(C) DEBT REDUCTION.—The Corporation
12 shall apply all proceeds of a disposition of used
13 construction equipment under subparagraph
14 (B) to the reduction of debt of the Corpora-
15 tion.”.

16 **SEC. 10. MISCELLANEOUS AMENDMENTS TO TENNESSEE**
17 **VALLEY AUTHORITY ACT TO PROVIDE COM-**
18 **PETITIVE EQUALITY.**

19 (a) Section 15d(a) the first paragraph of the TVA
20 Act (16 U.S.C. 831n-4), is hereby repealed and replaced
21 as follows:

22 **“Bonds for Financing Power Program**

23 “(a) AUTHORIZATION; AMOUNT, USE OF PROCEEDS;
24 RESTRICTION ON CONTRACTS FOR SALE OR DELIVERY OF
25 POWER; EXCHANGE POWER ARRANGEMENTS; PAYMENT

1 OF PRINCIPAL AND INTEREST; BOND CONTRACTS.—The
2 Corporation is authorized to issue and sell bonds, notes,
3 and other evidences of indebtedness (hereinafter collec-
4 tively referred to as “bonds”) in an amount not exceeding
5 \$27,000,000,000 outstanding as of January 1, 2001, to
6 assist in financing its power program and to refund such
7 bonds: *Provided*, That such authorization shall be reduced
8 in annual increments of \$1,000,000,000, such that TVA
9 shall be authorized to issue and sell bonds, in an amount
10 up to and not exceeding \$17,000,000,000 on and after
11 January 1, 2011: *Provided further*, That the Corporation
12 shall certify to the Committee on Transportation and In-
13 frastructure by January 1 of each year that the Corpora-
14 tion’s cumulative indebtedness is less than the bond au-
15 thorization designated herein. The Corporation may, in
16 performing functions authorized by this chapter, use the
17 proceeds of such bonds for the operation and maintenance
18 of any plant or other facility used or to be used for the
19 generation or transmission of electric power; as may be
20 required in connection with the lease, lease-purchase, or
21 any contract for the power output of any such plant or
22 other facility. Unless otherwise specifically authorized by
23 Act of Congress the Corporation shall make no contracts
24 for the sale or delivery of power which would have the ef-
25 fect of making the Corporation or its distributors, directly

1 or indirectly, a source of power supply outside the area
2 for which the Corporation or its distributors were the pri-
3 mary source of power supply on July 1, 1957, and such
4 additional area extending not more than five miles around
5 the periphery of such area as may be necessary to care
6 for the growth of the Corporation and its distributors
7 within said area.”.

8 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated to the Fed-
10 eral Energy Regulatory Commission such sums as are nec-
11 essary to carry out this Act and the amendments made
12 by this Act.

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