

106TH CONGRESS  
2D SESSION

# H. R. 4971

To amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2000

Mr. HAYWORTH (for himself, Mr. ENGLISH, Mr. MATSUI, Mr. WELLER, Mr. NEAL of Massachusetts, Mr. RAMSTAD, Mrs. THURMAN, Mr. HERGER, Mr. WATKINS, Mrs. JOHNSON of Connecticut, and Mr. SHAW) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry.

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 “Electric Power Indus-  
5 try Tax Modernization Act”.

6 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**  
7 **TRIC FACILITIES.**

8 (a) **RULES APPLICABLE TO ELECTRIC OUTPUT FA-**  
9 **CILITIES.**—Subpart A of part IV of subchapter B of chap-

1 ter 1 of the Internal Revenue Code of 1986 (relating to  
2 tax exemption requirements for State and local bonds) is  
3 amended by inserting after section 141 the following new  
4 section:

5 **“SEC. 141A. ELECTRIC OUTPUT FACILITIES.**

6       “(a) ELECTION TO TERMINATE TAX-EXEMPT BOND  
7 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-  
8 TIES.—

9               “(1) IN GENERAL.—A governmental unit may  
10       make an irrevocable election under this paragraph to  
11       terminate certain tax-exempt financing for electric  
12       output facilities. If the governmental unit makes  
13       such election, then—

14               “(A) except as provided in paragraph (2),  
15       on or after the date of such election the govern-  
16       mental unit may not issue with respect to an  
17       electric output facility any bond the interest on  
18       which is exempt from tax under section 103,  
19       and

20               “(B) notwithstanding paragraph (1) or (2)  
21       of section 141(a) or paragraph (4) or (5) of  
22       section 141(b), no bond that was issued by such  
23       unit with respect to an electric output facility  
24       before the date of enactment of this subsection  
25       (or which is described in paragraph (2)(B), (D),

1 (E) or (F)) the interest on which was exempt  
2 from tax on such date, shall be treated as a pri-  
3 vate activity bond.

4 “(2) EXCEPTIONS.—An election under para-  
5 graph (1) does not apply to any of the following  
6 bonds:

7 “(A) Any qualified bond (as defined in sec-  
8 tion 141(e)).

9 “(B) Any eligible refunding bond (as de-  
10 fined in subsection (e)).

11 “(C) Any bond issued to finance a quali-  
12 fying transmission facility or a qualifying dis-  
13 tribution facility.

14 “(D) Any bond issued to finance equip-  
15 ment or facilities necessary to meet Federal or  
16 State environmental requirements applicable to  
17 an existing generation facility.

18 “(E) Any bond issued to finance repair of  
19 any existing generation facility. Repairs of fa-  
20 cilities may not increase the generation capacity  
21 of the facility by more than 3 percent above the  
22 greater of its nameplate or rated capacity as of  
23 the date of enactment of this section.

24 “(F) Any bond issued to acquire or con-  
25 struct (i) a qualified facility, as defined in sec-

1           tion 45(c)(3), if such facility is placed in service  
2           during a period in which a qualified facility may  
3           be placed in service under such section, or (ii)  
4           any energy property, as defined in section  
5           48(a)(3).

6           “(3) FORM AND EFFECT OF ELECTION.—

7                   “(A) An election under paragraph (1) shall  
8           be made in such a manner as the Secretary pre-  
9           scribes and shall be binding on any successor in  
10          interest to, or any related party with respect to,  
11          the electing governmental unit. For purposes of  
12          this paragraph, a governmental unit shall be  
13          treated as related to another governmental unit  
14          if it is a member of the same controlled group.

15                  “(B) A governmental unit that makes an  
16          election under paragraph (1) shall be treated  
17          for purposes of section 141 as a person that is  
18          not a governmental unit and that is engaged in  
19          a trade or business, with respect to its purchase  
20          of electricity generated by an electric output fa-  
21          cility placed in service after such election, if  
22          such purchase is under a contract executed  
23          after such election.

24                  “(4) DEFINITIONS.—For purposes of this sub-  
25          section:

1           “(A) EXISTING GENERATION FACILITY.—  
2           The term ‘existing generation facility’ means an  
3           electric generation facility in service on the date  
4           of enactment of this subsection or construction  
5           of which commenced prior to June 1, 2000.

6           “(B) QUALIFYING DISTRIBUTION FACIL-  
7           ITY.—The term ‘qualifying distribution facility’  
8           means a distribution facility over which open  
9           access distribution services described in sub-  
10          section (b)(2)(C) are provided.

11          “(C) QUALIFYING TRANSMISSION FACIL-  
12          ITY.—The term ‘qualifying transmission facil-  
13          ity’ means a local transmission facility over  
14          which open access transmission services de-  
15          scribed in subsection (b)(2)(A), (B), or (E) are  
16          provided.

17          “(b) PERMITTED OPEN ACCESS ACTIVITIES AND  
18          SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE  
19          FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE  
20          RULES.—

21                 “(1) GENERAL RULE.—For purposes of this  
22                 section and section 141, the term ‘private business  
23                 use’ shall not include a permitted open access activ-  
24                 ity or a permitted sales transaction.

1           “(2) PERMITTED OPEN ACCESS ACTIVITIES.—

2           For purposes of this section, the term ‘permitted  
3           open access activity’ means any of the following  
4           transactions or activities with respect to an electric  
5           output facility owned by a governmental unit:

6                   “(A) Providing nondiscriminatory open ac-  
7                   cess transmission service and ancillary  
8                   services—

9                           “(i) pursuant to an open access trans-  
10                           mission tariff filed with and approved by  
11                           FERC, but, in the case of a voluntarily  
12                           filed tariff, only if the governmental unit  
13                           voluntarily files a report described in 18  
14                           CFR 35.34(c) or (h) or successor provision  
15                           (relating to whether or not the issuer will  
16                           join a regional transmission organization)  
17                           not later than the later of the applicable  
18                           date prescribed in such sections or 60 days  
19                           after enactment of this section;

20                           “(ii) under an independent system op-  
21                           erator, regional transmission organization  
22                           or regional transmission group agreement  
23                           approved by FERC; or

24                           “(iii) in the case of an ERCOT utility  
25                           (as defined in section 212 (k) of the Fed-

1           eral Power Act), pursuant to a tariff ap-  
2           proved by the Public Utility Commission of  
3           Texas.

4           “(B) Participation in—

5                   “(i) an independent system operator  
6           agreement,

7                   “(ii) a regional transmission organiza-  
8           tion agreement, or

9                   “(iii) a regional transmission group,  
10          that has been approved by FERC, or by the  
11          Public Utility Commission of Texas in the case  
12          of an ERCOT utility. Such participation may  
13          include transfer of control of transmission fa-  
14          cilities to an organization described in clause  
15          (i), (ii), or (iii).

16               “(C) Delivery on a nondiscriminatory open  
17          access basis of electric energy sold to end-users  
18          served by distribution facilities owned by such  
19          governmental unit.

20               “(D) Delivery on a nondiscriminatory open  
21          access basis of electric energy generated by gen-  
22          eration facilities connected to distribution facili-  
23          ties owned by such governmental unit.

24               “(E) Other transactions providing non-  
25          discriminatory open access transmission or dis-

1           tribution services under Federal, State, or local  
2           open access, retail competition or similar pro-  
3           grams, to the extent provided in regulations  
4           prescribed by the Secretary.

5           “(3) PERMITTED SALES TRANSACTION.—For  
6           purposes of this subsection, the term ‘permitted  
7           sales transaction’ means any of the following sales of  
8           electric energy from existing generation facilities (as  
9           defined in subsection (a)(4)(A)):

10                   “(A) The sale of electricity to an on-system  
11                   purchaser, if the seller provides open access dis-  
12                   tribution service under paragraph (2)(C) and,  
13                   in the case of a seller that owns or operates  
14                   transmission facilities, if such seller provides  
15                   open access transmission under paragraph  
16                   (2)(A), (B), or (E).

17                   “(B) The sale of electricity to a wholesale  
18                   native load purchaser or in a wholesale strand-  
19                   ed cost mitigation sale—

20                           “(i) if the seller provides open access  
21                           transmission service described in para-  
22                           graph (2)(A), (B), or (E), or

23                           “(ii) if the seller owns or operates no  
24                           transmission facilities and transmission  
25                           providers to the seller’s wholesale native

1 load purchasers provide open access trans-  
2 mission service described in paragraph  
3 (2)(A), (B), or (E).

4 “(4) DEFINITIONS AND SPECIAL RULES.—For  
5 purposes of this subsection:

6 “(A) ON-SYSTEM PURCHASER.—The term  
7 ‘on-system purchaser’ from a governmental unit  
8 means a person whose electric facilities or  
9 equipment are directly connected with trans-  
10 mission or distribution facilities that are owned  
11 by such governmental unit, and who—

12 “(i) purchases electric energy from  
13 such governmental unit at retail and either  
14 was within such unit’s distribution area in  
15 the base year or is a person as to whom  
16 the governmental unit has a service obliga-  
17 tion, or

18 “(ii) is a wholesale native load pur-  
19 chaser from such governmental unit.

20 “(B) WHOLESALE NATIVE LOAD PUR-  
21 CHASER.—The term ‘wholesale native load pur-  
22 chaser’ means a wholesale purchaser as to  
23 whom the governmental unit had—

24 “(i) a service obligation at wholesale  
25 in the base year, or

1           “(ii) an obligation in the base year  
2           under a requirements contract, or under a  
3           firm sales contract that has been in effect  
4           for (or has an initial term of) 10 years or  
5           more, but only to the extent in either case  
6           such purchaser resells the electricity at re-  
7           tail to persons within the purchaser’s dis-  
8           tribution area.

9           “(C) WHOLESALE STRANDED COST MITI-  
10          GATION SALE.—The term ‘wholesale stranded  
11          cost mitigation sale’ means one or more whole-  
12          sale sales made in accordance with clauses (i),  
13          (ii), and (iii).

14           “(i) A governmental unit’s allowable  
15           sales under this subparagraph during the  
16           recovery period may not exceed the sum of  
17           its annual load losses for each year of the  
18           recovery period.

19           “(ii) The governmental unit’s annual  
20           load loss for each year of the recovery pe-  
21           riod is the amount (if any) by which—

22                   “(I) sales in the base year to  
23                   wholesale native load purchasers that  
24                   do not constitute a private business  
25                   use, exceed

1                   “(II) sales during that year of  
2                   the recovery period to wholesale native  
3                   load purchasers that do not constitute  
4                   a private business use.

5                   “(iii) If actual sales under this sub-  
6                   paragraph during the recovery period are  
7                   less than allowable sales under clause (i),  
8                   the amount not sold (but not more than 10  
9                   percent of the aggregate allowable sales  
10                  under clause (i)) may be carried over and  
11                  sold as wholesale stranded cost mitigation  
12                  sales in the calendar year following the re-  
13                  covery period.

14                  “(D) RECOVERY PERIOD.—The recovery  
15                  period is the 7 year period beginning with the  
16                  start-up year.

17                  “(E) START-UP YEAR.—The start-up year  
18                  is whichever of the following calendar years the  
19                  governmental unit elects:

20                         “(i) The year the governmental unit  
21                         first offers open transmission access.

22                         “(ii) The first year in which at least  
23                         10 percent of the governmental unit’s  
24                         wholesale customers’ aggregate retail na-  
25                         tive load is open to retail competition.

1           “(iii) The year of enactment of this  
2           section, if later than the year described in  
3           clause (i) or (ii).

4           “(F) PERMITTED SALES TRANSACTIONS  
5           UNDER EXISTING CONTRACTS.—A sale to a  
6           wholesale native load purchaser (other than a  
7           person to whom the governmental unit had a  
8           service obligation) under a contract that re-  
9           sulted in private business use in the base year  
10          shall be treated as a permitted sales transaction  
11          only to the extent that sales under the contract  
12          exceed (i) in any year the private business use  
13          that resulted during the base year, or (ii) the  
14          maximum amount of private business use that  
15          could occur (absent the enactment of this sec-  
16          tion) without causing the bonds to be private  
17          activity bonds, whichever is less. This subpara-  
18          graph shall only apply to the extent that the  
19          sale is allocable to bonds issued prior to the  
20          date of enactment of this section (or bonds  
21          issued to refund such bonds).

22          “(G) JOINT ACTION AGENCIES.—A joint  
23          action agency, or a member of (or a wholesale  
24          native load purchaser from) a joint action agen-  
25          cy, that is entitled to make a sale described in

1           subparagraph (A) or (B) in a year may transfer  
2           the entitlement to make that sale to the mem-  
3           ber (or purchaser), or the joint action agency,  
4           respectively.

5           “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-  
6    TRIBUTION FACILITIES NOT TAX EXEMPT.—

7           “(1) GENERAL RULE.—For purposes of this  
8           title, no bond the interest on which is exempt from  
9           taxation under section 103 may be issued on or after  
10          the date of enactment of this subsection if any of the  
11          proceeds of such issue are used to finance (A) any  
12          transmission facility that is not a local transmission  
13          facility, or (B) a start-up utility distribution facility.

14          “(2) EXCEPTIONS.—Paragraph (1) shall not  
15          apply to—

16                 “(A) a qualified bond (as defined in section  
17                 141(e)),

18                 “(B) an eligible refunding bond (as defined  
19                 in subsection (d)(6)), or

20                 “(C) any bond issued to finance—

21                         “(i) any repair of a transmission facil-  
22                         ity in service on the date of enactment of  
23                         this section, so long as the repair does not  
24                         increase the voltage level over its level in  
25                         the base year or increase the thermal load

1 limit of the transmission facility by more  
2 than 3 percent over such limit in the base  
3 year,

4 “(ii) any qualifying upgrade of a  
5 transmission facility in service on the date  
6 of enactment of this section, or

7 “(iii) a transmission facility necessary  
8 to comply with an obligation under a  
9 shared or reciprocal transmission agree-  
10 ment in effect on the date of enactment of  
11 this section.

12 “(3) LOCAL TRANSMISSION FACILITY DEFINI-  
13 TIONS.—For purposes of this subsection—

14 “(A) LOCAL TRANSMISSION FACILITY.—  
15 The term ‘local transmission facility’ means a  
16 transmission facility which is located within the  
17 governmental unit’s distribution area or which  
18 is, or will be, necessary to supply electricity to  
19 serve retail native load or wholesale native load  
20 of one or more governmental units. For pur-  
21 poses of this subparagraph, the distribution  
22 area of a public power authority which was cre-  
23 ated in 1931 by a State statute and which, as  
24 of January 1, 1999, owned at least one-third of  
25 the transmission circuit miles rated at 230 kV

1 or higher in the State, shall be determined  
2 under regulations of the Secretary.

3 “(B) RETAIL NATIVE LOAD.—A govern-  
4 mental unit’s ‘retail native load’ is the electric  
5 load of end-users served by distribution facili-  
6 ties owned by such governmental unit.

7 “(C) WHOLESALe NATIVE LOAD.—A gov-  
8 ernmental unit’s ‘wholesale native load’ is the—

9 “(i) retail native load of such unit’s  
10 wholesale native load purchasers, and

11 “(ii) electric load of purchasers (not  
12 described in clause (i)) under wholesale re-  
13 quirements contracts that (I) do not con-  
14 stitute private business use under the rules  
15 in effect absent this subsection, and (II)  
16 were in effect in the base year.

17 “(D) NECESSARY TO SERVE LOAD.—For  
18 purposes of determining whether a transmission  
19 or distribution facility is, or will be, necessary  
20 to supply electricity to retail native load or  
21 wholesale native load—

22 “(i) electric reliability standards or re-  
23 quirements of national or regional reli-  
24 ability organizations, regional transmission  
25 organizations and the Electric Reliability

1 Council of Texas shall be taken into ac-  
2 count, and

3 “(ii) transmission, siting and con-  
4 struction decisions of regional transmission  
5 organizations or independent system opera-  
6 tors and state and Federal agencies shall  
7 be presumptive evidence regarding whether  
8 transmission facilities are necessary to  
9 serve native load.

10 “(E) QUALIFYING UPGRADE.—The term  
11 ‘qualifying upgrade’ means an improvement or  
12 addition to transmission facilities in service on  
13 the date of enactment of this section that is or-  
14 dered or approved by a regional transmission  
15 organization, by an independent system oper-  
16 ator, or by a state regulatory or siting agency.

17 “(4) START-UP UTILITY DISTRIBUTION FACIL-  
18 ITY DEFINED.—For purposes of this subsection, the  
19 term ‘start-up utility distribution facility’ means any  
20 distribution facility to provide electric service to the  
21 public that is placed in service, (A) by a govern-  
22 mental unit that did not operate an electric utility  
23 on the date of enactment of this section, and (B)  
24 prior to the date on which such governmental unit  
25 operates in a qualified service area (as such term is

1 defined in section 141(d)(3)(B)). A governmental  
2 unit is deemed to have operated an electric utility on  
3 the date of enactment of this section if it operates  
4 electric output facilities that were operated by an-  
5 other governmental unit to provide electric service to  
6 the public on the date of enactment of this section.

7 “(d) DEFINITIONS; SPECIAL RULES.—For purposes  
8 of this section—

9 “(1) BASE YEAR.—The term ‘base year’ means  
10 the year of enactment of this section or, at the elec-  
11 tion of the governmental unit, either of the two cal-  
12 endar years immediately prior to the year of enact-  
13 ment.

14 “(2) DISTRIBUTION AREA.—The term ‘distribu-  
15 tion area’ means the area in which a governmental  
16 unit owns distribution facilities.

17 “(3) ELECTRIC OUTPUT FACILITY.—The term  
18 ‘electric output facility’ means an output facility  
19 that is an electric generation, transmission, or dis-  
20 tribution facility.

21 “(4) DISTRIBUTION FACILITY.—The term ‘dis-  
22 tribution facility’ means an electric output facility  
23 that is not a generation or transmission facility.

24 “(5) TRANSMISSION FACILITY.—The term  
25 ‘transmission facility’ means an electric output facil-

1       ity (other than a generation facility) that operates at  
2       an electric voltage of 69kV or greater, except that  
3       the owner of the facility may elect to treat any out-  
4       put facility that is a transmission facility for pur-  
5       poses of the Federal Power Act as a transmission fa-  
6       cility for purposes of this section.

7               “(6) ELIGIBLE REFUNDING BOND.—The term  
8       ‘eligible refunding bond’ means State or local bonds  
9       issued after an election described in subsection (a)  
10      that directly or indirectly refund tax exempt bonds  
11      (other than a qualified bond) issued before such  
12      election, if the weighted average maturity of the re-  
13      funding bonds does not exceed the remaining weight-  
14      ed average maturity of the bonds issued before the  
15      election. In applying such term for purposes of sub-  
16      section (c)(2)(B), the date of election shall be  
17      deemed to be the date of enactment of this section.

18              “(7) FERC.—The term ‘FERC’ means the  
19      Federal Energy Regulatory Commission.

20              “(8) GOVERNMENT-OWNED FACILITY.—An elec-  
21      tric output facility shall be treated as ‘owned by a  
22      governmental unit’ if it is an electric output facility  
23      that either is—

24                      “(A) owned or leased by such govern-  
25                      mental unit, or

1           “(B) a transmission facility in which the  
2           governmental unit acquired prior to the base  
3           year long-term firm capacity for the purposes of  
4           serving customers to which the unit had at that  
5           time either (i) a service obligation or (ii) an ob-  
6           ligation under a requirements contract.

7           “(9) REPAIR.—The term ‘repair’ shall include  
8           replacement of components of an electric output fa-  
9           cility, but shall not include replacement of the facil-  
10          ity.

11          “(10) SERVICE OBLIGATION.—The term ‘service  
12          obligation’ means an obligation under State or Fed-  
13          eral law (exclusive of an obligation arising solely  
14          from a contract entered into with such person) to  
15          provide electric distribution services or electric sales  
16          service, as provided in such law.

17          “(e) SAVINGS CLAUSE.—Subsection (b) does not af-  
18          fect the applicability of section 141 to (or the Secretary’s  
19          authority to prescribe, amend, or rescind regulations re-  
20          specting) any transaction that is not a permitted open ac-  
21          cess transaction or permitted sales transaction.”

22          (b) REPEAL OF EXCEPTION FOR CERTAIN NON-  
23          GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-  
24          tion 141(d)(5) of such Code is amended by inserting “(ex-

1 cept in the case of an electric output facility that is a dis-  
2 tribution facility),” after “this section”.

3 (c) EFFECTIVE DATE, APPLICABILITY.—

4 (1) EFFECTIVE DATE.—The amendments made  
5 by this section take effect on the date of enactment  
6 of this Act, except that a governmental unit may  
7 elect to apply section 141A(b)(1) and (2), as added  
8 by subsection (a), with respect to permitted open ac-  
9 cess activities entered into on or after April 14,  
10 1996.

11 (2) CERTAIN EXISTING AGREEMENTS.—The  
12 amendment made by subsection (b) (relating to re-  
13 peal of the exception for certain nongovernmental  
14 output facilities) does not apply to any acquisition of  
15 facilities made pursuant to an agreement that was  
16 entered into before the date of enactment of this  
17 Act.

18 (3) APPLICABILITY.—References in the Act to  
19 sections of the Internal Revenue Code of 1986, shall  
20 be deemed to include references to comparable sec-  
21 tions of the Internal Revenue Code of 1954.

22 **SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.**

23 (a) SALES OR DISPOSITIONS TO IMPLEMENT FED-  
24 ERAL ENERGY REGULATORY COMMISSION OR STATE  
25 ELECTRIC RESTRUCTURING POLICY.—

1           (1) IN GENERAL.—Section 1033 of the Internal  
2           Revenue Code of 1986 is amended by redesignating  
3           subsection (k) as subsection (l) and by inserting  
4           after subsection (j) the following new subsection:

5           “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-  
6           ERAL ENERGY REGULATORY COMMISSION OR STATE  
7           ELECTRIC RESTRUCTURING POLICY.—

8           “(1) IN GENERAL.—For purposes of this sub-  
9           title, if a taxpayer elects the application of this sub-  
10          section to a qualifying electric transmission trans-  
11          action and the proceeds received from such trans-  
12          action are invested in exempt utility property, such  
13          transaction shall be treated as an involuntary con-  
14          version to which this section applies.

15          “(2) EXTENSION OF REPLACEMENT PERIOD.—  
16          In the case of any involuntary conversion described  
17          in paragraph (1), subsection (a)(2)(B) shall be ap-  
18          plied by striking ‘2 years’ and inserting ‘4 years’.

19          “(3) QUALIFYING ELECTRIC TRANSMISSION  
20          TRANSACTION.—For purposes of this subsection, the  
21          term ‘qualifying electric transmission transaction’  
22          means any sale or other disposition of property used  
23          in the trade or business of electric transmission, or  
24          an ownership interest in a person whose primary  
25          trade or business consists of providing electric trans-

1 mission services, to another person that is an inde-  
2 pendent transmission company.

3 “(4) INDEPENDENT TRANSMISSION COM-  
4 PANY.—For purposes of this subsection, the term  
5 ‘independent transmission company’ means—

6 “(A) a regional transmission organization  
7 approved by the Federal Energy Regulatory  
8 Commission,

9 “(B) a person (i) who the Federal Energy  
10 Regulatory Commission determines in its au-  
11 thorization of the transaction under section 203  
12 of the Federal Power Act is not a ‘market par-  
13 ticipant’ within the meaning of such Commis-  
14 sion’s rules applicable to regional transmission  
15 organizations, and (ii) whose transmission fa-  
16 cilities to which the election under this sub-  
17 section applies are placed under the operational  
18 control of a Federal Energy Regulatory Com-  
19 mission-approved regional transmission organi-  
20 zation within the period specified in such order,  
21 but not later than the close of the replacement  
22 period, or

23 “(C) in the case of facilities subject to the  
24 exclusive jurisdiction of the Public Utility Com-  
25 mission of Texas, a person that is approved by

1           that commission as consistent with Texas State  
2           law regarding an independent transmission or-  
3           ganization.

4           “(5) EXEMPT UTILITY PROPERTY.—For pur-  
5           poses of this subsection, the term ‘exempt utility  
6           property’ means—

7                   “(A) property used in the trade or business  
8                   of generating, transmitting, distributing, or sell-  
9                   ing electricity or producing, transmitting, dis-  
10                  tributing, or selling natural gas, or

11                  “(B) stock in a person whose primary  
12                  trade or business consists of generating, trans-  
13                  mitting, distributing, or selling electricity or  
14                  producing, transmitting, distributing, or selling  
15                  natural gas.

16           “(6) SPECIAL RULES FOR CONSOLIDATED  
17           GROUPS.—

18                   “(A) INVESTMENT BY QUALIFYING GROUP  
19                   MEMBERS.—This subsection shall apply to a  
20                   qualifying electric transmission transaction en-  
21                   gaged in by a taxpayer if the proceeds are in-  
22                   vested in exempt utility property by a qualifying  
23                   group member. A ‘qualifying group member’ is  
24                   any member of a consolidated group within the  
25                   meaning of section 1502 and the regulations

1 promulgated thereunder of which the taxpayer  
2 is also a member.

3 “(B) COORDINATION WITH CONSOLIDATED  
4 RETURN PROVISIONS.—A sale or other disposi-  
5 tion of electric transmission property or an  
6 ownership interest in a qualifying electric trans-  
7 mission transaction, where an election is made  
8 under this subsection, shall not result in the  
9 recognition of income or gain under the consoli-  
10 dated return provisions of subtitle A, chapter 6,  
11 subchapter A hereof. The Secretary shall pre-  
12 scribe such regulations as may be necessary to  
13 provide for the treatment of any exempt utility  
14 property received in a qualifying electric trans-  
15 mission transaction as successor assets subject  
16 to the application of such consolidated return  
17 provisions.

18 “(7) ELECTION.—Any election made by a tax-  
19 payer under this subsection shall be made by a  
20 statement to that effect in the return for the taxable  
21 year in which the qualifying electric transmission  
22 transaction takes place in such form and manner as  
23 the Secretary shall prescribe, and such election shall  
24 be binding for that taxable year and all subsequent  
25 taxable years.”

1           (2) SAVINGS CLAUSE.—Nothing in section  
2           1033(k) of the Internal Revenue Code of 1986, as  
3           added by subsection (a), affects Federal or State  
4           regulatory policy respecting the extent to which any  
5           acquisition premium paid in connection with the  
6           purchase of an asset in a qualifying electric trans-  
7           mission transaction can be recovered in rates.

8           (3) EFFECTIVE DATE.—The amendments made  
9           by this subsection shall apply to transactions occur-  
10          ring after the date of enactment of this Act.

11          (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-  
12          ERAL ENERGY REGULATORY COMMISSION OR STATE  
13          ELECTRIC RESTRUCTURING POLICY.

14           (1) IN GENERAL.—Section 355(e)(4) of the In-  
15          ternal Revenue Code of 1986 is amended by redesign-  
16          ating subparagraphs (C), (D), and (E) as subpara-  
17          graphs (D), (E), and (F), respectively, and by in-  
18          serting after subparagraph (B) the following new  
19          subparagraph:

20                   “(C) DISTRIBUTIONS OF STOCK TO IMPLE-  
21                   MENT FEDERAL ENERGY REGULATORY COMMIS-  
22                   SION OR STATE ELECTRIC RESTRUCTURING  
23                   POLICY.—

24                           “(i) Paragraph (1) shall not apply to  
25                           any distribution that is a qualifying elec-

1           tric transmission transaction. For purposes  
2           of this subparagraph, a ‘qualifying electric  
3           transmission transaction’ means any dis-  
4           tribution of stock in a corporation whose  
5           primary trade or business consists of pro-  
6           viding electric transmission services, where  
7           such stock is later acquired (or where the  
8           assets of such corporation are later ac-  
9           quired) by another person that is an inde-  
10          pendent transmission company.

11           “(ii) INDEPENDENT TRANSMISSION  
12          COMPANY.—For purposes of this sub-  
13          section, the term ‘independent trans-  
14          mission company’ means—

15                   “(I) a regional transmission or-  
16                   ganization approved by the Federal  
17                   Energy Regulatory Commission,

18                   “(II) a person (x) who the Fed-  
19                   eral Energy Regulatory Commission  
20                   determines in its authorization of the  
21                   transaction under section 203 of the  
22                   Federal Power Act is not a ‘market  
23                   participant’ within the meaning of  
24                   such Commission’s rules applicable to  
25                   regional transmission organizations,

1 and (y) whose transmission facilities  
2 transferred as a part of such quali-  
3 fying electric transmission transaction  
4 are placed under the operational con-  
5 trol of a Federal Energy Regulatory  
6 Commission-approved regional trans-  
7 mission organization within the period  
8 specified in such order, but later than  
9 the close of the replacement period (as  
10 defined in section 1033(k)(2)), or

11 “(III) in the case of facilities  
12 subject to the exclusive jurisdiction of  
13 the Public Utility Commission of  
14 Texas, a person that is approved by  
15 that commission as consistent with  
16 Texas State law regarding an inde-  
17 pendent transmission organization.”

18 (2) EFFECTIVE DATE.—The amendments made  
19 by this subsection shall apply to distributions occur-  
20 ring after the date of enactment of this Act.

1 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**  
2 **TIES EXCLUDED FROM GROSS INCOME AS**  
3 **CONTRIBUTIONS TO CAPITAL.**

4 (a) IN GENERAL.—Subsection (c) of section 118 of  
5 the Internal Revenue Code of 1986 (relating to special  
6 rules for water and sewage disposal utilities) is amended—

7 (1) in the heading, by striking “WATER AND  
8 SEWAGE DISPOSAL” and inserting “CERTAIN”.

9 (2) in paragraph (1)—

10 (A) in the lead-in for paragraph (1), by  
11 striking “water or,” and inserting “electric en-  
12 ergy, water, or”, and

13 (B) in subparagraph (B), by striking  
14 “water or” and inserting “electric energy (but  
15 not including assets used in the generation of  
16 electricity), water, or”,

17 (3) in paragraph (2)(A)(ii), by striking “water  
18 or” and inserting “electric energy (but not including  
19 assets used in the generation of electricity), water,  
20 or”, and

21 (4) in paragraph (3)—

22 (A) in subparagraph (A), by inserting  
23 “such term shall include amounts paid as cus-  
24 tomer connection fees (including amounts paid  
25 to connect the customer’s line to an electric line

1 or a main water or sewer line) and” after “ex-  
2 cept that”, and

3 (B) in subparagraph (C), by striking  
4 “water or” and inserting “electric energy,  
5 water, or”.

6 (b) EFFECTIVE DATE.—The amendments made by  
7 subsection (a) shall apply to amounts received after the  
8 date of enactment of this Act.

9 **SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING**  
10 **FUNDS.**

11 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID  
12 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—  
13 Subsection (b) of section 468A of the Internal Revenue  
14 Code of 1986 is amended to read as follows:

15 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

16 “(1) IN GENERAL.—The amount which a tax-  
17 payer may pay into the Fund for any taxable year  
18 during the funding period shall not exceed the level  
19 funding amount determined pursuant to subsection  
20 (d), except—

21 “(A) where the taxpayer is permitted by  
22 Federal or State law or regulation (including  
23 authorization by a public service commission) to  
24 charge customers a greater amount for nuclear  
25 decommissioning costs, in which case the tax-

1           payer may pay into the Fund such greater  
2           amount, or

3                   “(B) in connection with the transfer of a  
4           nuclear powerplant, where the transferor or  
5           transferee (or both) is required pursuant to the  
6           terms of the transfer to contribute a greater  
7           amount for nuclear decommissioning costs, in  
8           which case the transferor or transferee (or  
9           both) may pay into the Fund such greater  
10          amount.

11                   “(2) CONTRIBUTIONS AFTER FUNDING PE-  
12          RIOD.—Notwithstanding any other provision of this  
13          section, a taxpayer may make deductible payments  
14          to the Fund in any taxable year between the end of  
15          the funding period and the termination of the license  
16          issued by the Nuclear Regulatory Commission for  
17          the nuclear powerplant to which the Fund relates  
18          provided such payments do not cause the assets of  
19          the Fund to exceed the nuclear decommissioning  
20          costs allocable to the taxpayer’s current or former  
21          interest in the nuclear powerplant to which the Fund  
22          relates. The foregoing limitation shall be applied by  
23          taking into account a reasonable rate of inflation for  
24          the nuclear decommissioning costs and a reasonable

1 after-tax rate of return on the assets of the Fund  
2 until such assets are anticipated to be expended.”

3 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING  
4 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)  
5 of such Code is amended to read as follows:

6 “(2) DEDUCTION OF NUCLEAR DECOMMISS-  
7 SIONING COSTS.—In addition to any deduction under  
8 subsection (a), nuclear decommissioning costs paid  
9 or incurred by the taxpayer during any taxable year  
10 shall constitute ordinary and necessary expenses in  
11 carrying on a trade or business under section 162.”

12 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of  
13 section 468A of such Code is amended to read as follows:

14 “(d) LEVEL FUNDING AMOUNTS.—

15 “(1) ANNUAL AMOUNTS.—For purposes of this  
16 section, the level funding amount for any taxable  
17 year shall equal the annual amount required to be  
18 contributed to the Fund in each year remaining in  
19 the funding period in order for the Fund to accumu-  
20 late the nuclear decommissioning costs allocable to  
21 the taxpayer’s current or former interest in the nu-  
22 clear powerplant to which the Fund relates. The an-  
23 nual amount described in the foregoing sentence  
24 shall be calculated by taking into account a reason-  
25 able rate of inflation for the nuclear decommiss-

1 sioning costs and a reasonable after-tax rate of re-  
2 turn on the assets of the Fund until such assets are  
3 anticipated to be expended.

4 “(2) FUNDING PERIOD.—The funding period  
5 for a Fund shall end on the last day of the last tax-  
6 able year of the expected operating life of the nu-  
7 clear powerplant.

8 “(3) NUCLEAR DECOMMISSIONING COSTS.—For  
9 purposes of this section, the term ‘nuclear decom-  
10 missioning costs’ shall mean all costs to be incurred  
11 in connection with entombing, decontaminating, dis-  
12 mantling, removing, and disposing of a nuclear pow-  
13 erplant, and shall include all associated preparation,  
14 security, fuel storage, and radiation monitoring  
15 costs. The taxpayer may identify such costs by ref-  
16 erence either to a site-specific engineering study or  
17 to the financial assurance amount calculated pursu-  
18 ant to section 50.75 of title 10 of the Code of Fed-  
19 eral Regulations. The term shall include all such  
20 costs which, outside of the decommissioning context,  
21 might otherwise be capital expenditures.”

22 (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to amounts paid after June 30,  
24 2000, in taxable years ending after such date.

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