

Calendar No. 690

106TH CONGRESS
2D SESSION

S. 2886

To provide for retail competition for the sale of electric power, to authorize States to recover transition costs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2000

Mr. GRAMM (for himself and Mr. SCHUMER) introduced the following bill;
which was read the first time

JULY 19, 2000

Read the second time and placed on the calendar

A BILL

To provide for retail competition for the sale of electric power, to authorize States to recover transition costs, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Empowerment and Electricity Deregulation
6 Act of 2000”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER CHOICE AND COMPETITION FOR ELECTRIC
 SUPPLIERS

Sec. 101. Competition for retail electric sales.

Sec. 102. Termination of new contract requirement under section 210 of the
 Public Utility Regulatory Policies Act of 1978.

Sec. 103. Reliability and interstate transmission.

TITLE II—PUBLIC UTILITY HOLDING COMPANIES

Sec. 201. Short title.

Sec. 202. Findings and purposes.

Sec. 203. Definitions.

Sec. 204. Repeal of the Public Utility Holding Company Act of 1935.

Sec. 205. Federal access to books and records.

Sec. 206. State access to books and records.

Sec. 207. Exemption authority.

Sec. 208. Affiliate transactions.

Sec. 209. Applicability.

Sec. 210. Effect on other regulations.

Sec. 211. Enforcement.

Sec. 212. Savings provisions.

Sec. 213. Implementation.

Sec. 214. Transfer of resources.

Sec. 215. Conforming amendment to the Federal Power Act.

Sec. 216. Authorization of appropriations.

Sec. 217. Effective date.

TITLE III—TAX PROVISIONS

Sec. 301. Tax-exempt bond financing of certain electric facilities.

Sec. 302. Modifications to special rules for nuclear decommissioning costs.

Sec. 303. Treatment of certain revenues of electric cooperatives.

3 **TITLE I—CONSUMER CHOICE**
 4 **AND COMPETITION FOR**
 5 **ELECTRIC SUPPLIERS**

6 **SEC. 101. COMPETITION FOR RETAIL ELECTRIC SALES.**

7 (a) AMENDMENT OF PURPA.—Title I of the Public
 8 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601
 9 et seq.) is amended by adding at the end the following:

1 **“Subtitle F—Retail Electric**
2 **Competition**

3 **“SEC. 151. FINDINGS.**

4 “Congress finds that—

5 “(1) the opportunity for all consumers to pur-
6 chase electric energy in interstate commerce from
7 the supplier of choice is essential to a dynamic, fully
8 integrated, and competitive national market for elec-
9 tric energy;

10 “(2) the establishment, maintenance, or en-
11 forcement of exclusive rights to sell electric energy
12 and other State action that unduly discriminates
13 against any consumer that seeks to purchase electric
14 energy in interstate commerce from the supplier of
15 its choice constitutes an unwarranted and unaccept-
16 able discrimination against and burden on interstate
17 commerce;

18 “(3) in today’s technologically driven market-
19 place, there is no justification for the discrimination
20 against and burden imposed on interstate commerce
21 by the granting of exclusive rights to sell electric en-
22 ergy or other State action that unduly discriminates
23 against consumers that seek to purchase electric en-
24 ergy in interstate commerce from the suppliers of
25 their choice;

1 “(4) the electric energy transmission and local
2 distribution facilities of all of the utilities of the
3 United States are essential facilities for the conduct
4 of a competitive interstate retail market in electric
5 energy in which all consumers have the opportunity
6 to purchase electric energy in interstate commerce
7 from the suppliers of their choice; and

8 “(5) in a competitive electricity generation mar-
9 ket, it is in the national interest to encourage the
10 development of energy technologies to promote en-
11 ergy efficiency and ensure energy security.

12 **“SEC. 152. DEFINITIONS.**

13 “In this subtitle:

14 “(1) CONSUMER.—The term ‘consumer’ means
15 a person that purchases or offers to purchase elec-
16 tric energy at retail.

17 “(2) ELECTRIC SUPPLIER.—The term ‘electric
18 supplier’ means a person or entity that produces,
19 generates, manufactures, aggregates, markets, bro-
20 kers, sells, or otherwise supplies electric energy.

21 “(3) LOCAL DISTRIBUTION COMPANY.—The
22 term ‘local distribution company’ means a person
23 that owns, controls, or operates a local distribution
24 facility.

25 “(4) LOCAL DISTRIBUTION FACILITY.—

1 “(A) IN GENERAL.—The term ‘local dis-
2 tribution facility’ means a facility used for the
3 local distribution of electric energy.

4 “(B) INCLUSION.—The term ‘local dis-
5 tribution facility’ includes a facility determined
6 under section 201(b)(1) of the Federal Power
7 Act (16 U.S.C. 824(b)(1)) to be used for the
8 local distribution of electric energy.

9 “(5) LOCAL DISTRIBUTION SERVICE.—

10 “(A) IN GENERAL.—The term ‘local dis-
11 tribution service’ means service that is nec-
12 essary to, or customarily provided in the course
13 of, the delivery of electric energy to a consumer
14 through a local distribution facility.

15 “(B) INCLUSIONS.—The term ‘local dis-
16 tribution service’ includes service required for—

17 “(i) the construction, maintenance,
18 and operation of a local distribution facil-
19 ity; and

20 “(ii) related management, accounting,
21 and other services.

22 “(C) EXCLUSION.—The term ‘local dis-
23 tribution service’ does not include the genera-
24 tion or sale of electric energy.

1 “(6) NONREGULATED LOCAL DISTRIBUTION
 2 COMPANY.—The term ‘nonregulated local distribu-
 3 tion company’ means a local distribution company
 4 that is not a State-regulated local distribution com-
 5 pany.

6 “(7) PERSON.—For the purposes of paragraphs
 7 (2) and (3), the term ‘person’ includes—

8 “(A) the Federal Government;

9 “(B) a State (including a municipality or
 10 any other instrumentality, authority, or political
 11 subdivision of a State); and

12 “(C) any other entity (including an electric
 13 cooperative and a foreign governmental entity).

14 “(8) STATE-REGULATED LOCAL DISTRIBUTION
 15 COMPANY.—The term ‘State-regulated local distribu-
 16 tion company’ means a local distribution company
 17 with respect to which a State regulatory authority
 18 has ratemaking jurisdiction.

19 “(9) STATE REGULATORY AUTHORITY.—The
 20 term ‘State regulatory authority’ means a State
 21 agency that has ratemaking authority with respect
 22 to the provision of local distribution services by any
 23 local distribution company.

24 “(10) STRANDED COST.—The term ‘stranded
 25 cost’ means a cost allocable to the construction or

1 upgrade of an electric generation facility or to pur-
 2 chased electric power that an electric supplier sus-
 3 tained while subject to cost-of-service regulation but
 4 is unable to recover because—

5 “(i) the electric supplier is unable to assess
 6 consumers charges at the rate charged during
 7 calendar year 2000;

8 “(ii) the market value of the generation fa-
 9 cility is less than the depreciated value of the
 10 facility; or

11 “(iii) the electric supplier is unable to miti-
 12 gate costs through the renegotiation of power
 13 supply contracts and other means.

14 **“SEC. 153. RETAIL ELECTRIC COMPETITION.**

15 “(a) REQUIREMENTS.—

16 “(1) IN GENERAL.—Markets for the purchase
 17 of electric energy by consumers in a State shall—

18 “(A) separate (unbundle) all competitive
 19 electric energy supply activities from the trans-
 20 mission and local distribution of electric energy;

21 “(B) allow each consumer in the State to
 22 select from among competing electric suppliers;
 23 and

1 “(C) require each local distribution com-
 2 pany to provide local distribution service under
 3 rates, charges, terms, and conditions that—

4 “(i) are just, reasonable, and not un-
 5 duly discriminatory or preferential; and

6 “(ii) identify, offer, and sell (directly
 7 or for resale) local distribution service sep-
 8 arately from any sales of electric energy.

9 “(2) NONDISCRIMINATION.—In the case of a
 10 local distribution company that is also an electric
 11 supplier, the rates, charges, terms, and conditions
 12 described in paragraph (1)(B) shall be the same as
 13 those applicable to the use of a local distribution fa-
 14 cility by that local distribution company.

15 “(b) STATE-REGULATED LOCAL DISTRIBUTION COM-
 16 PANIES.—

17 “(1) IN GENERAL.—Not later than January 1,
 18 2002, each State legislature and State regulatory
 19 authority shall require each State-regulated local
 20 distribution company in the State to meet the re-
 21 quirements of subsection (a).

22 “(2) FAILURE TO IMPLEMENT.—If a State fails
 23 to implement paragraph (1) by January 1, 2002,
 24 each State-regulated local distribution company in
 25 the State shall comply, by that date, with the re-

1 requirement applicable to nonregulated local distribu-
 2 tion companies under subsection (c).

3 “(c) NONREGULATED LOCAL DISTRIBUTION COMPA-
 4 NIES.—Not later than January 1, 2002, each nonregu-
 5 lated local distribution company shall meet the require-
 6 ments of subsection (a).

7 “(d) RECOVERY OF STRANDED COSTS.—

8 “(1) APPLICABILITY.—This subsection applies
 9 only in a State in which the State legislature has not
 10 enacted, before July 1, 2000, a stranded cost recov-
 11 ery scheme.

12 “(2) AUTHORITY TO IMPOSE CHARGE.—

13 “(A) IN GENERAL.—Until January 1,
 14 2013, a State regulatory authority may require
 15 each local distribution company in the State to
 16 include in charges to its customers a stranded
 17 cost recovery charge for use as described in
 18 paragraph (3).

19 “(B) RATE.—A stranded cost recovery
 20 charge—

21 “(i) shall initially be set at a rate esti-
 22 mated to generate not more than a per-
 23 centage determined by the State (not to
 24 exceed 50 percent) of the amount of

1 stranded costs estimated to be sustained
2 by each supplier in the State; and

3 “(ii) shall be reviewed annually, and
4 subsequently be reduced, to the extent that
5 collections exceed the most recent estimate,
6 or increased to the extent that the estimate
7 exceeds the collections.

8 “(3) STRANDED COST RECOVERY PAYMENTS.—
9 Of amounts collected under paragraph (2) for any
10 billing period, each electric supplier that sustained
11 stranded costs for the billing period shall be entitled
12 to a stranded cost recovery payment equal to—

13 “(A) the amount of stranded costs that the
14 electric supplier sustained; multiplied by

15 “(B) the percentage of stranded cost recov-
16 ery determined by the State under paragraph
17 (2)(B).

18 **“SEC. 154. PROHIBITION OF DISCRIMINATION.**

19 “The calculation, assessment, or imposition of any fee
20 or charge imposed under this Act or any other law shall
21 not unduly discriminate among different classes or cat-
22 egories of electric utilities, local distribution companies,
23 electric energy consumers, or electric suppliers.

1 **“SEC. 155. ENFORCEMENT.**

2 “(a) ADMINISTRATIVE PROCEEDING.—The Commis-
 3 sion may order a State regulatory authority, State regu-
 4 lated local distribution company, or nonregulated local dis-
 5 tribution company to comply with this subtitle if the Com-
 6 mission determines, after notice and an opportunity for
 7 a hearing on the record, that the State regulatory author-
 8 ity, State regulated local distribution company, or non-
 9 regulated local distribution company does not comply with
 10 section 153(a).

11 “(b) JUDICIAL ENFORCEMENT OR REVIEW.—A con-
 12 sumer, State regulatory authority, State regulated local
 13 distribution company, or nonregulated local distribution
 14 company may file a petition appealing a determination
 15 under subsection (a) in the United States court of ap-
 16 peals.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
 18 tents in section 1(b) of the Public Utility Regulatory Poli-
 19 cies Act of 1978 (16 U.S.C. prec. 2601) is amended by
 20 inserting at the end of the items for title I the following:

“Subtitle F—Retail Electric Competition

“Sec. 151. Findings.

“Sec. 152. Definitions.

“Sec. 153. Retail electric competition.

“Sec. 154. Prohibition of discrimination.

“Sec. 155. Enforcement.”.

1 **SEC. 102. TERMINATION OF NEW CONTRACT REQUIREMENT**
2 **UNDER SECTION 210 OF THE PUBLIC UTILITY**
3 **REGULATORY POLICIES ACT OF 1978.**

4 Section 210 of the Public Utility Regulatory Policies
5 Act of 1978 (16 U.S.C. 824a-3) is amended by adding
6 at the end the following:

7 “(m) **TERMINATION OF NEW CONTRACT REQUIRE-**
8 **MENT.—**

9 “(1) **IN GENERAL.—**On or after the date of en-
10 actment of this subsection, no electric utility shall be
11 required to enter into a new contract or obligation
12 to purchase or to sell electric energy or capacity
13 under this section.

14 “(2) **EXISTING RIGHTS AND REMEDIES NOT AF-**
15 **FECTED.—**

16 “(A) **IN GENERAL.—**Nothing in this sub-
17 section affects the rights or remedies of any
18 party with respect to the purchase or sale of
19 electric energy or capacity from or to a facility
20 determined to be a qualifying small power pro-
21 duction facility or a qualifying cogeneration fa-
22 cility under this section under any contract or
23 obligation to purchase or to sell electric energy
24 or capacity in effect on the date of enactment
25 of this subsection, including the right to recover

1 (consistent with section 153) the costs of pur-
2 chasing such electric energy or capacity.

3 “(B) EXCEPTION.—Any contract entered
4 into before, on, or after the date of enactment
5 of this Act by a qualifying small power produc-
6 tion facility or qualifying cogeneration facility
7 that provides for a purchase or sale of electric
8 energy or capacity on or after the date that is
9 5 years after the date of enactment of this sub-
10 section at a rate exceeding 150 percent of
11 wholesale market rates prevailing during cal-
12 endar year 2000 shall become voidable by either
13 party to the contract on the date that is 5 years
14 after the date of enactment of this subsection.

15 “(3) EFFECT OF SUBSECTION.—Nothing in this
16 subsection implies congressional ratification of any
17 interpretation of this Act or any action taken under
18 this Act by any person before the date of enactment
19 of this subsection.”.

20 **SEC. 103. RELIABILITY AND INTERSTATE TRANSMISSION.**

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

24 “(26) RETAIL CUSTOMER.—The term ‘retail
25 customer’ means a person that purchases electric en-

1 energy for use by the person other than for resale to
2 another person.

3 “(27) WHOLESALE CUSTOMER.—The term
4 ‘wholesale customer’ means a person that purchases
5 electric energy for resale to another person.

6 “(28) BUNDLED TRANSMISSION SERVICE.—The
7 term ‘bundled transmission service’ means trans-
8 mission service in which electric energy and trans-
9 mission service are not sold separately.

10 “(29) UNBUNDLED TRANSMISSION SERVICE.—
11 The term ‘unbundled transmission service’ means
12 transmission service in which electric energy and
13 transmission service are sold separately.”.

14 (b) DECLARATION OF POLICY; APPLICATION OF
15 PART II OF THE FEDERAL POWER ACT.—Section 201 of
16 the Federal Power Act (16 U.S.C. 824) is amended by
17 striking subsections (a) and (b)(1) and inserting the fol-
18 lowing:

19 “(a) DECLARATION OF POLICY.—Congress declares
20 that—

21 “(1) the business of transmitting and selling
22 electric energy for ultimate distribution to the public
23 is affected with a public interest; and

24 “(2) Federal regulation of matters relating to
25 the transmission of electric energy in interstate com-

1 merce (including transmission service to wholesale
2 customers, unbundled transmission service to retail
3 customers, and bundled transmission service to retail
4 customers) and to the sale of such energy at whole-
5 sale in interstate commerce, is necessary to establish
6 just and reasonable rates and to prevent interference
7 with interstate commerce and threats to the reli-
8 ability of the interstate bulk power grid.

9 “(b) APPLICABILITY OF PART.—

10 “(1) IN GENERAL.—This part applies to—

11 “(A) bundled transmission service in inter-
12 state commerce;

13 “(B) unbundled transmission service in
14 interstate commerce; and

15 “(C) the sale of electric energy at whole-
16 sale in interstate commerce.

17 “(2) JURISDICTION OF THE COMMISSION.—The
18 Commission shall have jurisdiction over all facilities
19 used—

20 “(A) to provide bundled or unbundled
21 transmission of electric energy in interstate
22 commerce;

23 “(B) to make sales of electric energy in
24 which the purchaser intends to resell the elec-
25 tric energy to another person; or

1 “(C) to establish and enforce reliability
2 standards implemented by a regional trans-
3 mission organization for the reliable operation
4 of the bulk power system.

5 “(3) LIMIT ON JURISDICTION.—Except as spe-
6 cifically provided in this part and part III, the Com-
7 mission shall not have jurisdiction over—

8 “(A) facilities used for the generation of
9 electric energy;

10 “(B) facilities used in local distribution or
11 used only for the transmission of electric energy
12 in intrastate commerce; or

13 “(C) facilities for the transmission of elec-
14 tric energy consumed wholly by the trans-
15 mitter.”.

16 **TITLE II—PUBLIC UTILITY** 17 **HOLDING COMPANIES**

18 **SEC. 201. SHORT TITLE.**

19 This title may be cited as the “Public Utility Holding
20 Company Act of 2000”.

21 **SEC. 202. FINDINGS AND PURPOSES.**

22 (a) FINDINGS.—Congress finds that—

23 (1) the Public Utility Holding Company Act of
24 1935 (15 U.S.C. 79a et seq.) was intended to facili-
25 tate the work of Federal and State regulators by

1 placing certain constraints on the activities of hold-
2 ing company systems;

3 (2) developments since 1935, including changes
4 in other regulation and in the electric and gas indus-
5 tries, have called into question the continued rel-
6 evance of the model of regulation established by that
7 Act;

8 (3) there is a continuing need for State regula-
9 tion in order to ensure the rate protection of utility
10 customers; and

11 (4) limited Federal regulation is necessary to
12 supplement the work of State commissions for the
13 continued rate protection of electric and gas utility
14 customers.

15 (b) PURPOSES.—The purposes of this title are—

16 (1) to eliminate unnecessary regulation, yet
17 continue to provide for consumer protection by facili-
18 tating existing rate regulatory authority through im-
19 proved Federal and State commission access to
20 books and records of all companies in a holding com-
21 pany system, to the extent that such information is
22 relevant to rates paid by utility customers, while af-
23 fording companies the flexibility required to compete
24 in the energy markets; and

1 (2) to address protection of electric and gas
2 utility customers by providing for Federal and State
3 access to books and records of all companies in a
4 holding company system that are relevant to utility
5 rates.

6 **SEC. 203. DEFINITIONS.**

7 In this title:

8 (1) AFFILIATE.—The term “affiliate” of a com-
9 pany means any company, 5 percent or more of the
10 outstanding voting securities of which are owned,
11 controlled, or held with power to vote, directly or in-
12 directly, by another company.

13 (2) ASSOCIATE COMPANY.—The term “associate
14 company”, in relation to another company, means a
15 company in the same holding company system as the
16 other company.

17 (3) COMMISSION.—The term “Commission”
18 means the Federal Energy Regulatory Commission.

19 (4) COMPANY.—The term “company” means a
20 corporation, partnership, association, joint stock
21 company, business trust, or any organized group of
22 persons, whether incorporated or not, or a receiver,
23 trustee, or other liquidating agent of any of the fore-
24 going.

1 (5) ELECTRIC UTILITY COMPANY.—The term
2 “electric utility company” means a company that
3 owns or operates facilities used for the generation,
4 transmission, or distribution of electric energy for
5 sale.

6 (6) EXEMPT WHOLESALE GENERATOR.—The
7 term “exempt wholesale generator” has the meaning
8 given the term in section 32(a) of the Public Utility
9 Holding Company Act of 1935 (15 U.S.C. 79z–
10 5a(a)), as in effect on the day before the effective
11 date of this title.

12 (7) FOREIGN UTILITY COMPANY.—The term
13 “foreign utility company” has the meaning given the
14 term in section 33(b) of the Public Utility Holding
15 Company Act of 1935 (15 U.S.C. 79z–5b(b)), as in
16 effect on the day before the effective date of this
17 title.

18 (8) GAS UTILITY COMPANY.—The term “gas
19 utility company” means a company that owns or op-
20 erates facilities used for distribution at retail (other
21 than the distribution only in enclosed portable con-
22 tainers or distribution to tenants or employees of the
23 company operating such facilities for their own use
24 and not for resale) of natural or manufactured gas
25 for heat, light, or power.

1 (9) HOLDING COMPANY.—The term “holding
2 company” means—

3 (A) a company that directly or indirectly
4 owns, controls, or holds, with power to vote, 10
5 percent or more of the outstanding voting secu-
6 rities of a public utility company or of a holding
7 company of any public utility company; and

8 (B) a person, determined by the Commis-
9 sion, after notice and opportunity for hearing,
10 to exercise directly or indirectly (either alone or
11 under an arrangement or understanding with
12 one or more persons) such a controlling influ-
13 ence over the management or policies of any
14 public utility company or holding company as to
15 make it necessary or appropriate for the rate
16 protection of utility customers with respect to
17 rates that the person be subject to the obliga-
18 tions, duties, and liabilities imposed by this title
19 on holding companies.

20 (10) HOLDING COMPANY SYSTEM.—The term
21 “holding company system” means a holding com-
22 pany, together with its subsidiary companies.

23 (11) JURISDICTIONAL RATE.—The term “juris-
24 dictional rate” means a rate established by the Com-
25 mission for—

1 (A) the transmission of electric energy in
2 interstate commerce, the sale of electric energy
3 at wholesale in interstate commerce;

4 (B) the transportation of natural gas in
5 interstate commerce; or

6 (C) the sale in interstate commerce of nat-
7 ural gas for resale for ultimate public consump-
8 tion for domestic, commercial, industrial, or any
9 other use.

10 (12) NATURAL GAS COMPANY.—The term “nat-
11 ural gas company” means a person engaged in the
12 transportation of natural gas in interstate commerce
13 or the sale of natural gas in interstate commerce for
14 resale.

15 (13) PERSON.—The term “person” means an
16 individual or company.

17 (14) PUBLIC UTILITY.—The term “public util-
18 ity” means a person that owns or operates a facility
19 used for transmission of electric energy in interstate
20 commerce or sales of electric energy at wholesale in
21 interstate commerce.

22 (15) PUBLIC UTILITY COMPANY.—The term
23 “public utility company” means an electric utility
24 company or a gas utility company.

1 (16) STATE COMMISSION.—The term “State
2 commission” means a commission, board, agency, or
3 officer, by whatever name designated, of a State,
4 municipality, or other political subdivision of a State
5 that, under the laws of the State, has jurisdiction to
6 regulate public utility companies.

7 (17) SUBSIDIARY COMPANY.—The term “sub-
8 sidiary company”, in relation to a holding company,
9 means—

10 (A) a company, 10 percent or more of the
11 outstanding voting securities of which are di-
12 rectly or indirectly owned, controlled, or held
13 with power to vote, by the holding company;
14 and

15 (B) a person, the management or policies
16 of which the Commission, after notice and op-
17 portunity for hearing, determines to be subject
18 to a controlling influence, directly or indirectly,
19 by the holding company (either alone or under
20 an arrangement or understanding with 1 or
21 more other persons) so as to make it necessary
22 for the rate protection of utility customers with
23 respect to rates that the person be subject to
24 the obligations, duties, and liabilities imposed

1 by this title on subsidiary companies of holding
2 companies.

3 (18) VOTING SECURITY.—The term “voting se-
4 curity” means a security presently entitling the
5 owner or holder of the security to vote in the direc-
6 tion or management of the affairs of a company.

7 **SEC. 204. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
8 **PANY ACT OF 1935.**

9 The Public Utility Holding Company Act of 1935 (15
10 U.S.C. 79a et seq.) is repealed.

11 **SEC. 205. FEDERAL ACCESS TO BOOKS AND RECORDS.**

12 (a) IN GENERAL.—Each holding company and each
13 associate company of a holding company shall maintain,
14 and shall make available to the Commission, such books,
15 accounts, memoranda, and other records as the Commis-
16 sion deems to be relevant to costs incurred by a public
17 utility or natural gas company that is an associate com-
18 pany of the holding company and necessary or appropriate
19 for the protection of utility customers with respect to ju-
20 risdictional rates for the transmission of electric energy
21 in interstate commerce, the sale of electric energy at
22 wholesale in interstate commerce, the transportation of
23 natural gas in interstate commerce, and the sale in inter-
24 state commerce of natural gas for resale for ultimate pub-

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

3 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
4 ing company or of any subsidiary company of a holding
5 company shall maintain, and make available to the Com-
6 mission, such books, accounts, memoranda, and other
7 records with respect to any transaction with another affil-
8 iate, as the Commission deems to be relevant to costs in-
9 curred by a public utility or natural gas company that is
10 an associate company of the holding company and nec-
11 essary or appropriate for the protection of utility cus-
12 tomers with respect to jurisdictional rates.

13 (c) HOLDING COMPANY SYSTEMS.—The Commission
14 may examine the books, accounts, memoranda, and other
15 records of any company in a holding company system, or
16 any affiliate of a holding company, as the Commission
17 deems to be relevant to costs incurred by a public utility
18 or natural gas company within the holding company sys-
19 tem and necessary or appropriate for the protection of
20 utility customers with respect to jurisdictional rates.

21 (d) CONFIDENTIALITY.—No member, officer, or em-
22 ployee of the Commission shall divulge any fact or infor-
23 mation that may come to his or her knowledge during the
24 course of examination of books, accounts, memoranda, or
25 other records as provided in this section, except as may

1 be directed by the Commission or by a court of competent
2 jurisdiction.

3 **SEC. 206. STATE ACCESS TO BOOKS AND RECORDS.**

4 (a) IN GENERAL.—On the written request of a State
5 commission having jurisdiction to regulate a public utility
6 company in a holding company system, the holding com-
7 pany or any associate company or affiliate of the holding
8 company, other than the public utility company, wherever
9 located, shall produce for inspection books, accounts,
10 memoranda, and other records that—

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

13 (2) the State commission deems are relevant to
14 costs incurred by the public utility company; and

15 (3) are necessary for the effective discharge of
16 the responsibilities of the State commission with re-
17 spect to the proceeding.

18 (b) LIMITATION.—Subsection (a) does not apply to
19 any person that is a holding company solely by reason of
20 ownership of one or more qualifying facilities under the
21 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
22 2601 et seq.).

23 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
24 duction of books, accounts, memoranda, and other records
25 under subsection (a) shall be subject to such terms and

1 conditions as may be necessary and appropriate to safe-
2 guard against unwarranted disclosure to the public of any
3 trade secrets or sensitive commercial information.

4 (d) EFFECT ON STATE LAW.—Nothing in this sec-
5 tion shall preempt applicable State law concerning the pro-
6 vision of books, records, or any other information, or in
7 any way limit the rights of any State to obtain books,
8 records, or any other information under any other Federal
9 law, contract, or otherwise.

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

14 **SEC. 207. EXEMPTION AUTHORITY.**

15 (a) RULEMAKING.—Not later than 90 days after the
16 effective date of this title, the Commission shall promul-
17 gate a final rule to exempt from the requirements of sec-
18 tion 205 any person that is a holding company, solely with
19 respect to one or more—

20 (1) qualifying facilities under the Public Utility
21 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
22 seq.);

23 (2) exempt wholesale generators; or

24 (3) foreign utility companies.

1 (b) OTHER AUTHORITY.—If, on application or on its
2 own motion, the Commission finds that the books, records,
3 accounts, memoranda, and other records of any person are
4 not relevant to the jurisdictional rates of a public utility
5 or natural gas company, or if the Commission finds that
6 any class of transactions is not relevant to the jurisdic-
7 tional rates of a public utility or natural gas company,
8 the Commission shall exempt the person or transaction
9 from the requirements of section 205.

10 **SEC. 208. AFFILIATE TRANSACTIONS.**

11 Nothing in this title precludes the Commission or a
12 State commission from exercising its jurisdiction under
13 otherwise applicable law to determine whether a public
14 utility company, public utility, or natural gas company
15 may recover in rates any costs of an activity performed
16 by an associate company, or any costs of goods or services
17 acquired by the public utility company from an associate
18 company.

19 **SEC. 209. APPLICABILITY.**

20 Nothing in this title applies to or includes—

- 21 (1) the United States;
- 22 (2) a State or any political subdivision of a
23 State;
- 24 (3) any foreign governmental authority not op-
25 erating in the United States;

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

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

7 **SEC. 210. EFFECT ON OTHER REGULATIONS.**

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

11 **SEC. 211. ENFORCEMENT.**

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

15 **SEC. 212. SAVINGS PROVISIONS.**

16 (a) IN GENERAL.—Nothing in this title prohibits a
17 person from engaging in or continuing to engage in activi-
18 ties or transactions in which it is legally engaged or au-
19 thorized to engage on the effective date of this title.

20 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—

21 Nothing in this title limits the authority of the Commis-
22 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
23 (including section 301 of that Act) or the Natural Gas
24 Act (15 U.S.C. 717 et seq.) (including section 8 of that
25 Act).

1 **SEC. 213. IMPLEMENTATION.**

2 Not later than 18 months after the date of enactment
3 of this Act, the Commission shall—

4 (1) promulgate such regulations as may be nec-
5 essary or appropriate to implement this title (other
6 than section 206); and

7 (2) submit to Congress detailed recommenda-
8 tions on technical and conforming amendments to
9 Federal law necessary to carry out this title and the
10 amendments made by this title.

11 **SEC. 214. TRANSFER OF RESOURCES.**

12 All books and records that relate primarily to the
13 functions transferred to the Commission under this title
14 shall be transferred from the Securities and Exchange
15 Commission to the Commission.

16 **SEC. 215. CONFORMING AMENDMENT TO THE FEDERAL**
17 **POWER ACT.**

18 Section 318 of the Federal Power Act (16 U.S.C.
19 825q) is repealed.

20 **SEC. 216. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums
22 as are necessary to carry out this title.

23 **SEC. 217. EFFECTIVE DATE.**

24 This title takes effect on the date that is 18 months
25 after the date of enactment of this Act.

1 **TITLE III—TAX PROVISIONS**

2 **SEC. 301. TAX-EXEMPT BOND FINANCING OF CERTAIN** 3 **ELECTRIC FACILITIES.**

4 (a) PERMITTED OPEN ACCESS TRANSACTIONS NOT
 5 A PRIVATE BUSINESS USE.—Section 141(b)(6) of the In-
 6 ternal Revenue Code of 1986 (defining private business
 7 use) is amended by adding at the end the following:

8 “(C) PERMITTED OPEN ACCESS TRANS-
 9 ACTIONS NOT A PRIVATE BUSINESS USE.—

10 “(i) IN GENERAL.—For purposes of
 11 this subsection, the term ‘private business
 12 use’ shall not include a permitted open ac-
 13 cess transaction.

14 “(ii) PERMITTED OPEN ACCESS
 15 TRANSACTION DEFINED.—For purposes of
 16 clause (i), the term ‘permitted open access
 17 transaction’ means any of the following
 18 transactions or activities with respect to an
 19 electric output facility (as defined in sub-
 20 section (f)(4)(A)) owned by a governmental
 21 unit:

22 “(I) Providing open access trans-
 23 mission services and ancillary services
 24 that meet the reciprocity requirements
 25 of Federal Energy Regulatory Com-

1 mission Order No. 888, or that are
2 ordered by the Federal Energy Regu-
3 latory Commission, or that are pro-
4 vided in accordance with a trans-
5 mission tariff of an independent sys-
6 tem operator approved by such Com-
7 mission, or are consistent with state
8 administered laws, rules or orders
9 providing for open transmission ac-
10 cess.

11 “(II) Participation in an inde-
12 pendent system operator agreement
13 (which may include transferring con-
14 trol of transmission facilities to an
15 independent system operator), in a re-
16 gional transmission group, or in a
17 power exchange agreement approved
18 by such Commission.

19 “(III) Delivery on an open access
20 basis of electric energy sold by other
21 entities to end-users served by such
22 governmental unit’s distribution facili-
23 ties.

24 “(iii) GOVERNMENT-OWNED FACIL-
25 ITY.—For purposes of this subparagraph,

1 an electric output facility (as defined in
 2 subsection (f)(4)(A)) shall be treated as
 3 owned by a governmental unit only if the
 4 facility is owned by such governmental unit
 5 for the purposes of serving 1 or more cus-
 6 tomers to which such governmental unit
 7 had a service obligation on July 1, 2000.”.

8 (b) ELECTION TO TERMINATE TAX EXEMPT FI-
 9 NCING.—Section 141 of the Internal Revenue Code of
 10 1986 (relating to private activity bond; qualified bond) is
 11 amended by adding at the end the following:

12 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
 13 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
 14 TIES.—

15 “(1) IN GENERAL.—An issuer may make an ir-
 16 revocable election under this paragraph to terminate
 17 certain tax-exempt financing for electric output fa-
 18 cilities. If the issuer makes such election, then—

19 “(A) except as provided in paragraph (2),
 20 no bond the interest on which is exempt from
 21 tax under section 103 may be issued on or after
 22 the date of such election with respect to an elec-
 23 tric output facility; and

24 “(B) notwithstanding paragraph (1) or (2)
 25 of subsection (a) or paragraph (5) of subsection

1 (b), with respect to an electric output facility no
2 bond that was issued before the date of enact-
3 ment of this subsection, the interest on which
4 was exempt from tax on such date, shall be
5 treated as a private activity bond, for so long
6 as such facility continues to be owned by a gov-
7 ernmental unit.

8 “(2) EXCEPTIONS.—

9 “(A) IN GENERAL.—An election under
10 paragraph (1) does not apply to—

11 “(i) any bond issued to finance a
12 qualifying T&D facility, or

13 “(ii) any bond issued to finance equip-
14 ment necessary to meet Federal or state
15 environmental requirements applicable to
16 electric output facilities in service on the
17 date of enactment of this subsection.

18 “(B) INCREASE IN CAPACITY.—For pur-
19 poses of subparagraph (A)(ii), equipment may
20 not increase by more than a de minimus degree
21 the capacity of the facility beyond its original
22 design.

23 “(3) FORM AND EFFECT OF ELECTIONS.—An
24 election under paragraph (1) shall be made in such
25 a manner as the Secretary prescribes and shall be

1 binding on any successor in interest to the electing
2 issuer.

3 “(4) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) ELECTRIC OUTPUT FACILITY.—The
6 term ‘electric output facility’ means an output
7 facility that is an electric generation, trans-
8 mission, or distribution facility.

9 “(B) QUALIFYING T&D FACILITY.—The
10 term ‘qualifying T&D facility’ means—

11 “(i) transmission facilities over which
12 services described in subsection
13 (b)(6)(C)(ii)(I) are provided, or

14 “(ii) distribution facilities over which
15 services described in subsection
16 (b)(6)(C)(ii)(III) are provided.”.

17 (c) APPLICATION WITH OTHER LAWS.—Nothing in
18 this section, or the amendments made by this section, shall
19 be interpreted as affecting the requirement of a municipal
20 facility to provide open access under section 153 of the
21 Public Utilities Regulatory Policies Act of 1978 (as added
22 by section 101(a)).

23 (d) EFFECTIVE DATE AND TRANSITION RULES.—

24 (1) EFFECTIVE DATE.—The amendments made
25 by this section take effect on the date of enactment

1 of this Act, except that a governmental unit may
 2 elect to apply section 141(b)(6)(C) of the Internal
 3 Revenue Code of 1986, as added by subsection (a),
 4 with respect to permitted open access transactions
 5 on or after July 9, 1996.

6 (2) **TRANSITION RULE FOR PRIVATE BUSINESS**
 7 **USE.**—Any activity that was not a private business
 8 use prior to the effective date of the amendment
 9 made by subsection (a) shall not be deemed to be a
 10 private business use by reason of the enactment of
 11 such amendment.

12 **SEC. 302. MODIFICATIONS TO SPECIAL RULES FOR NU-**
 13 **CLEAR DECOMMISSIONING COSTS.**

14 (a) **REPEAL OF LIMITATION ON DEPOSITS INTO**
 15 **FUND BASED ON COST OF SERVICE.**—Subsection (b) of
 16 section 468A of the Internal Revenue Code of 1986 (relat-
 17 ing to special rules for nuclear decommissioning costs) is
 18 amended to read as follows:

19 “(b) **LIMITATION ON AMOUNTS PAID INTO FUND.**—
 20 The amount which a taxpayer may pay into the Fund for
 21 any taxable year shall not exceed the ruling amount appli-
 22 cable to such taxable year.”.

23 (b) **CLARIFICATION OF TREATMENT OF FUND**
 24 **TRANSFERS.**—Section 468A(e) of the Internal Revenue
 25 Code of 1986 (relating to Nuclear Decommissioning Re-

1 serve Fund) is amended by adding at the end the fol-
 2 lowing:

3 “(8) TREATMENT OF FUND TRANSFERS.—If, in
 4 connection with the transfer of the taxpayer’s inter-
 5 est in a nuclear powerplant, the taxpayer transfers
 6 the Fund with respect to such powerplant to the
 7 transferee of such interest and the transferee elects
 8 to continue the application of this section to such
 9 Fund—

10 “(A) the transfer of such Fund shall not
 11 cause such Fund to be disqualified from the ap-
 12 plication of this section, and

13 “(B) no amount shall be treated as distrib-
 14 uted from such Fund, or be includible in gross
 15 income, by reason of such transfer.”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to taxable years beginning after
 18 December 31, 2000.

19 **SEC. 303. TREATMENT OF CERTAIN REVENUES OF ELEC-**
 20 **TRIC COOPERATIVES.**

21 (a) IN GENERAL.—Section 501(c)(12)(C) of the In-
 22 ternal Revenue Code of 1986 (relating to list of exempt
 23 organizations) is amended—

24 (1) in clause (i), by striking “or” at the end;

1 (2) in clause (ii), by striking the period at the
2 end and inserting “, or”;

3 (3) by adding at the end the following:

4 “(iii) from revenues received from
5 nonmembers solely as a result of con-
6 forming transmission and distribution op-
7 erations to meet provisions of an applicable
8 Federal or State plan designed to provide
9 customer choice in electric power supply.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to amounts received after Decem-
12 ber 31, 2000.

Calendar No. 690

106TH CONGRESS
2D SESSION

S. 2886

A BILL

To provide for retail competition for the sale of electric power, to authorize States to recover transition costs, and for other purposes.

JULY 19, 2000

Read the second time and placed on the calendar