

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide a complete substitute for the electricity title.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Session

S. 14

To enhance the energy security of the United States,
and for other purposes.

AMENDMENT intended to be proposed by Mr. DOMENICI

Viz:

1 Beginning on page 405, strike line 18 and all that follows through page 467, line 16, and insert the
2 following:

TITLE XI —ELECTRICITY

4 **SEC. 1101. DEFINITIONS.**

5 (a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is
6 amended to read as follows:

7 “(22) ‘electric utility’ means any person or Federal or State agency (including any entity
8 described in section 201(f) that sells electric energy; such term includes the Tennessee Valley Authority
9 and each Federal power marketing agency;”.

10 (b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is
11 amended to read as follows:

12 “(23) ‘transmitting utility’ means an entity, including any entity described in section 201(f), that
13 owns or operates facilities used for the transmission of electric energy—

14 “(A) in interstate commerce; or

1 “(B) for the sale of electric energy at wholesale;”.

2 (c) ADDITIONAL DEFINITIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is
3 amended by adding at the end the following:

4 “(26) ‘unregulated transmitting utility’ means an entity that—

5 “(A) owns or operates facilities used for the transmission of electric energy in interstate
6 commerce, and

7 “(B) is an entity described in section 201(f);

8 “(27) ‘electric cooperative’ means a cooperatively owned electric utility;

9 “(28) ‘Regional Transmission Organization’ or ‘RTO’ means an entity of sufficient regional
10 scope approved by the Commission to exercise operational or functional control of facilities used for the
11 transmission of electric energy in interstate commerce and to ensure non-discriminatory access to such
12 facilities; and

13 “(29) ‘Independent System Operator’ or ‘ISO’ means an entity used for the transmission of
14 electric energy and which has been approved by the Commission to exercise operational or functional
15 control of facilities used for the transmission of electric energy in interstate commerce and to ensure non-
16 discriminatory access to such facilities.”.

17 (d) ADDITIONAL MODIFICATIONS.—

18 (1) Section 201(b)(2) of the Federal Power Act (16 U.S.C. 824(b)(2)) is amended by
19 striking “The” the first time it appears and inserting, “Notwithstanding section 201(f), the”.

20 (2) Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding
21 after “political subdivision of a state,” “an electric cooperative that has financing under the Rural
22 Electrification Act of 1936 (7 U.S.C. 901 et seq.) or sells less than 4,000,000 megawatt hours
23 of electricity per year,”.

24 (e) For the purposes of this title, the term “Commission” means the Federal Energy Regulatory
25 Commission.

26 **Subtitle A—Reliability**

27 **SEC. 1111. ELECTRIC RELIABILITY STANDARDS.**

1 (a) Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end
2 the following:

3 "ELECTRIC RELIABILITY

4 "SEC. 215. (a) For the purposes of this section:

5 "(1) The term 'bulk-power system' means—

6 "(A) facilities and control systems necessary for operating an interconnected
7 electric energy transmission network (or any portion thereof); and

8 "(B) electric energy from generation facilities needed to maintain transmission
9 system reliability.

10 The term does not include facilities used in the local distribution of electric energy.

11 "(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization
12 certified by the Commission under subsection (c), the purpose of which is to establish and
13 enforce reliability standards for the bulk-power system, subject to Commission review.

14 "(3) The term 'reliability standard' means a requirement, approved by the Commission
15 under this section, to provide for reliable operation of the bulk-power system. The term includes
16 requirements for the operation of existing bulk-power system components and the design of
17 planned additions or modifications to such components to the extent necessary to provide for
18 reliable operation of the bulk-power system, but the term does not include any requirement to
19 enlarge such components or to construct new transmission capacity or generation capacity.

20 "(4) The term 'reliable operation' means operating the components of the bulk-power
21 system within equipment and electric system thermal, voltage, and stability limits so that
22 instability, uncontrolled separation, or cascading failures of such system will not occur as a result
23 of a sudden disturbance or unanticipated failure of system components.

24 "(5) The term 'Interconnection' means a geographic area in which the operation of bulk-
25 power system components is synchronized such that the failure of one or more of such
26 components may adversely affect the ability of the operators of other components within the
27 system to maintain reliable operation of the portion of the system within their control.

1 “(6) The term ‘transmission organization’ means an RTO or other transmission
2 organization finally approved by the Commission for the operation of transmission facilities.

3 “(7) The term ‘regional entity’ means an entity having enforcement authority pursuant to
4 subsection (e)(4).

5 “(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by
6 the Commission under subsection (c), any regional entities, and all users, owners and operators of the
7 bulk-power system, including the entities described in section 201(f), for purposes of approving
8 reliability standards established under this section and enforcing compliance with this section. All users,
9 owners and operators of the bulk-power system shall comply with reliability standards that take effect
10 under this section. The Commission shall issue a final rule to implement the requirements of this section
11 not later than 180 days after the date of enactment of this section.

12 “(c) Following the issuance of a Commission rule under subsection (b), any person may submit
13 an application to the Commission for certification as the Electric Reliability Organization. The
14 Commission may certify one such ERO if the Commission determines that such ERO—

15 “(1) has the ability to develop and enforce, subject to subsection (d)(2), reliability
16 standards that provide for an adequate level of reliability of the bulk-power system; and

17 “(2) has established rules that—

18 “(A) assure its independence of the users and owners and operators of the bulk-
19 power system, while assuring fair stakeholder representation in the selection of its
20 directors and balanced decisionmaking in any ERO committee or subordinate
21 organizational structure;

22 “(B) allocate equitably reasonable dues, fees, and other charges among end
23 users for all activities under this section;

24 “(C) provide fair and impartial procedures for enforcement of reliability
25 standards through the imposition of penalties in accordance with subsection (e)
26 (including limitations on activities, functions, or operations, or other appropriate
27 sanctions);

1 “(D) provide for reasonable notice and opportunity for public comment, due
2 process, openness, and balance of interests in developing reliability standards and
3 otherwise exercising its duties; and

4 “(E) provide for taking, after certification, appropriate steps to gain recognition
5 in Canada and Mexico.

6 “(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it
7 proposes to be made effective under this section with the Commission.

8 “(2) The Commission may approve by rule or order a proposed reliability standard or
9 modification to a reliability standard if it determines that the standard is just, reasonable, not unduly
10 discriminatory or preferential, and in the public interest. The Commission shall give due weight to the
11 technical expertise of the ERO with respect to the content of a proposed standard or modification to a
12 reliability standard and to the technical expertise of a regional entity organized on an Interconnection-
13 wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not
14 defer with respect to the effect of a standard on competition. A proposed standard or modification shall
15 take effect upon approval by the Commission.

16 “(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an
17 Interconnection-wide basis for a reliability standard or modification to a reliability standard to be
18 applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or
19 preferential, and in the public interest.

20 “(4) The Commission shall remand to the ERO for further consideration a proposed reliability
21 standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

22 “(5) The Commission, upon its own motion or upon complaint, may order the ERO to submit to
23 the Commission a proposed reliability standard or a modification to a reliability standard that addresses
24 a specific matter if the Commission considers such a new or modified reliability standard appropriate to
25 carry out this section.

26 “(6) The final rule adopted under subsection (b) shall include fair processes for the identification
27 and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff,

1 rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a
2 transmission organization. Such transmission organization shall continue to comply with such function,
3 rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

4 “(A) the Commission finds a conflict exists between a reliability standard and any such
5 provision;

6 “(B) the Commission orders a change to such provision pursuant to section 206 of this
7 Part; and

8 “(C) the ordered change becomes effective under this Part.

9 If the Commission determines that a reliability standard needs to be changed as a result of such a
10 conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard
11 under paragraph (4) or (5) of this subsection.

12 “(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or
13 operator of the bulk-power system for a violation of a reliability standard approved by the Commission
14 under subsection (d) if the ERO, after notice and an opportunity for a hearing—

15 “(A) finds that the user or owner or operator has violated a reliability standard approved
16 by the Commission under subsection (d); and

17 “(B) files notice and the record of the proceeding with the Commission.

18 “(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after
19 the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty
20 shall be subject to review by the Commission, on its own motion or upon application by the user, owner
21 or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with
22 the Commission. Application to the Commission for review, or the initiation of review by the
23 Commission on its own motion, shall not operate as a stay of such penalty unless the Commission
24 otherwise orders upon its own motion or upon application by the user, owner or operator that is the
25 subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the
26 Commission, after notice and opportunity for hearing (which hearing may consist solely of the record
27 before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside

1 the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand
2 to the ERO for further proceedings. The Commission shall implement expedited procedures for such
3 hearings.

4 “(3) On its own motion or upon complaint, the Commission may order compliance with a
5 reliability standard and may impose a penalty against a user or owner or operator of the bulk-power
6 system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or
7 operator of the bulk-power system has engaged or is about to engage in any acts or practices that
8 constitute or will constitute a violation of a reliability standard.

9 “(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement
10 to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO
11 and enforcing reliability standards under paragraph (1) if—

12 “(A) the regional entity is governed by an independent board, a balanced stakeholder
13 board, or a combination independent and balanced stakeholder board;

14 “(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2);
15 and

16 “(C) the agreement promotes effective and efficient administration of bulk-power system
17 reliability.

18 The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume
19 that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes
20 effective and efficient administration of bulk-power system reliability and should be approved. Such
21 regulation may provide that the Commission may assign the ERO’s authority to enforce reliability
22 standards under paragraph (1) directly to a regional entity consistent with the requirements of this
23 paragraph.

24 “(5) The Commission may take such action as is necessary or appropriate against the ERO or a
25 regional entity to ensure compliance with a reliability standard or any Commission order affecting the
26 ERO or a regional entity.

27 “(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of

1 the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the
2 violation in a timely manner.

3 “(f) The ERO shall file with the Commission for approval any proposed rule or proposed rule
4 change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion
5 or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change
6 shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the
7 change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies
8 the requirements of subsection (c).

9 “(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-
10 power system in North America.

11 “(h) The President is urged to negotiate international agreements with the governments of
12 Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness
13 of the ERO in the United States and Canada or Mexico.

14 “(i)(1) The ERO shall have authority to develop and enforce compliance with reliability
15 standards for only the bulk-power system.

16 “(2) This section does not authorize the ERO or the Commission to order the construction of
17 additional generation or transmission capacity or to set and enforce compliance with standards for
18 adequacy or safety of electric facilities or services.

19 “(3) Nothing in this section shall be construed to preempt any authority of any State to take
20 action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such
21 action is not inconsistent with any reliability standard.

22 “(4) Within 90 days of the application of the ERO or other affected party, and after notice and
23 opportunity for comment, the Commission shall issue a final order determining whether a State action is
24 inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

25 “(5) The Commission, after consultation with the ERO, may stay the effectiveness of any State
26 action, pending the Commission’s issuance of a final order.

27 “(j) The Commission shall establish a regional advisory body on the petition of at least two-thirds

1 of the States within a region that have more than one-half of their electric load served within the region.
2 A regional advisory body shall be composed of one member from each participating State in the region,
3 appointed by the Governor of each State, and may include representatives of agencies, States, and
4 provinces outside the United States. A regional advisory body may provide advice to the ERO, a
5 regional entity, or the Commission regarding the governance of an existing or proposed regional entity
6 within the same region; whether a standard proposed to apply within the region is just, reasonable, not
7 unduly discriminatory or preferential, and in the public interest; whether fees proposed to be assessed
8 within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest,
9 and any other responsibilities requested by the Commission. The Commission may give deference to the
10 advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

11 “(k) The provisions of this section do not apply to Alaska or Hawaii.”.

12 (b) The electric reliability organization certified by the Commission under section 215(c) of the
13 Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e)
14 of the Federal Power Act are not departments, agencies, or instrumentalities of the United States
15 Government.

16 **Subtitle B—Regional Markets**

17 **SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.**

18 The Commission’s proposed rulemaking entitled “Remedying Undue Discrimination through
19 Open Access Transmission Service and Standard Electricity Market Design” (Docket No. RM01-12-
20 000) is remanded to the Commission for reconsideration. No final rule pursuant to the proposed
21 rulemaking, including any rule or order of general applicability within the scope of the proposed
22 rulemaking, may be issued before July 1, 2005. Any final rule issued by the Commission pursuant to the
23 proposed rulemaking, including any rule or order of general applicability within the scope of the
24 proposed rulemaking, shall be preceded by a notice of proposed rulemaking issued after the date of
25 enactment of this Act and an opportunity for public comment.

26 **SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.**

27 It is the sense of Congress that, in order to promote fair, open access to electric transmission

1 service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission
2 grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential
3 transmission practices, and provide for the efficient development of transmission infrastructure needed to
4 meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate
5 commerce should voluntarily become members of independently administered Regional Transmission
6 Organizations (“RTO”) that have operational or functional control of facilities used for the transmission of
7 electric energy in interstate commerce and do not own or have a financial interest in generation facilities
8 used to supply electric energy for sale at wholesale.

9 **SEC. 1123. PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.**

10 Nothing in this Act authorizes the Commission to require a transmitting utility to transfer control
11 or operational control of its transmitting facilities to an RTO or any other Commission-approved
12 organization designated to provide non-discriminatory transmission access.

13 **SEC. 1124. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.**

14 (a) DEFINITIONS.—For purposes of this section:

15 (1) The term “appropriate Federal regulatory authority” means—

16 (A) with respect to a Federal power marketing agency, the Secretary of Energy,
17 except that the Secretary may designate the Administrator of a Federal power marketing
18 agency to act as the appropriate Federal regulatory authority with respect to the
19 transmission system of that Federal power marketing agency; and

20 (B) with respect to the Tennessee Valley Authority, the Board of Directors of
21 the Tennessee Valley Authority.

22 (2) The term “Federal utility” means a Federal power marketing agency or the
23 Tennessee Valley Authority.

24 (3) The term “transmission system” means electric transmission facilities owned, leased,
25 or contracted for by the United States and operated by a Federal utility.

26 (b) TRANSFER.—

27 (1) The appropriate Federal regulatory authority is authorized to enter into a contract,
28 agreement, or other arrangement transferring control and use of all or part of the Federal utility’s

1 transmission system to a Regional Transmission Organization (“RTO”), as defined in the Federal
2 Power Act. Such contract, agreement or arrangement shall be voluntary and include—

3 (A) performance standards for operation and use of the transmission system that
4 the head of the Federal utility determines necessary or appropriate, including standards
5 that assure recovery of all the Federal utility’s costs and expenses related to the
6 transmission facilities that are the subject of the contract, agreement, or other
7 arrangement; consistency with existing contracts and third-party financing arrangements;
8 and consistency with said Federal utility’s statutory authorities, obligations, and
9 limitations;

10 (B) provisions for monitoring and oversight by the Federal utility of the RTO
11 fulfillment of the terms and conditions of the contract, agreement or other arrangement,
12 including a provision that may provide for the resolution of disputes through arbitration or
13 other means with the RTO or with other participants, notwithstanding the obligations and
14 limitations of any other law regarding arbitration; and

15 (C) a provision that allows the Federal utility to withdraw from the RTO and
16 terminate the contract, agreement, or other arrangement in accordance with its terms.

17 (2) Neither this section, actions taken pursuant to it, nor any other transaction of a
18 Federal utility using an RTO shall serve to confer upon the Commission jurisdiction or authority
19 over the Federal utility’s electric generation assets, electric capacity or energy that the Federal
20 utility is authorized by law to market, or the Federal utility’s power sales activities.

21 (c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

22 (1) Any statutory provision requiring or authorizing a Federal utility to transmit electric
23 power, or to construct, operate, or maintain its transmission system shall not be construed to
24 prohibit a transfer of control and use of its transmission system pursuant to, and subject to all
25 requirements of subsection (b).

26 (2) This subsection shall not be construed to—

27 (A) suspend, or exempt any Federal utility from any provision of existing Federal

1 law, including but not limited to any requirement or direction relating to the use of the
2 Federal utility's transmission system, environmental protection, fish and wildlife
3 protection, flood control, navigation, water delivery, or recreation; or

4 (B) authorize abrogation of any contract or treaty obligation.

5 **SEC. 1125. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.**

6 (a) STATE REGULATORY AUTHORITIES.—Not later than 90 days after the date of enactment of
7 this Act, the Commission shall convene regional discussions with State regulatory authorities, as defined
8 in section 3(21) of the Federal Power Act. The regional discussions should address whether wholesale
9 electric markets in each region are working effectively to provide reliable service to electric consumers in
10 the region at the lowest reasonable cost. Priority should be given to discussions in regions that do not
11 have, as of the date of enactment of this Act, a Regional Transmission Organization (“RTO”) or an
12 Independent System Operator (“ISO”), as defined in the Federal Power Act. The regional discussions
13 shall consider—

14 (1) the need for an RTO or other organizations in the region to provide non-
15 discriminatory transmission access and generation interconnection;

16 (2) a process for regional planning of transmission facilities with State regulatory
17 authority participation and for consideration of multi-state projects;

18 (3) a means for ensuring that costs for all electric consumers, as defined in section 3(5)
19 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of
20 wholesale energy or capacity are reasonable and economically efficient;

21 (4) a means for ensuring that all electric consumers, as defined in section 3(5) of the
22 Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), within the region maintain
23 their ability to use the existing transmission system without incurring unreasonable additional
24 costs in order to expand the transmission system for new customers;

25 (5) whether the integrated transmission and electric power supply system can and should
26 be operated in a manner that schedules and economically prioritizes all available electric
27 generation resources, so as to minimize the costs of electric energy to all consumers (“economic
28 dispatch”) and maintain system reliability;

1 (6) a means to provide transparent price signals to promote proper location and
2 utilization of generation and the efficient expansion of transmission in a manner that does not
3 result in collection of transmission rents that do not relieve congestion;

4 (7) eliminating in a reasonable manner, consistent with applicable State and Federal law,
5 multiple, cumulative charges for transmission service across successive locations within a region
6 (“pancaked rates”);

7 (8) resolution of seams issues with neighboring regions and inter-regional coordination;

8 (9) a means of providing information electronically to potential users of the transmission
9 system;

10 (10) implementation of a market monitor for the region with State regulatory authority
11 and Commission oversight and establishment of rules and procedures that ensure that State
12 regulatory authorities are provided access to market information and that provides for expedited
13 consideration by the Commission of any complaints concerning exercise of market power and
14 the operation of wholesale markets;

15 (11) a process by which to phase-in any proposed RTO or other organization
16 designated to provide non-discriminatory transmission access, including the formulation of
17 transmission pricing methodologies, so as to best meet the needs of a region, and, if relevant,
18 shall take into account the special circumstances that may be found in the Western
19 Interconnection related to the existence of transmission congestion, the existence of significant
20 hydroelectric capacity, the participation of unregulated transmitting utilities, and the distances
21 between generation and load;

22 (12) the need to submit regional studies, within one year of enactment of this Act, to the
23 Commission outlining possible methodologies that will ensure that the amount of energy
24 produced in any region will be equal to at least 50 percent of the amount of energy consumed in
25 that region by 2013;

26 (13) the potential value of developing a uniform system-wide average rate for
27 transmission pricing as a way to enhance the efficiency and reliability of the transmission grid;

1 and

2 (14) a timetable to meet the objectives of this section.

3 (b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall
4 report to Congress on the progress made in addressing the issues in subsection (a) of this section in
5 discussions with the States.

6 (c) SAVINGS.—Nothing in this section shall affect any discussions between the Commission and
7 State or other retail regulatory authorities that are on-going prior to enactment of this Act.

8 **Subtitle C—Improving Transmission Access and Protecting** 9 **Service Obligations**

10 **SEC. 1131. SERVICE OBLIGATION SECURITY AND PARITY.**

11 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the
12 following:

13 “SERVICE OBLIGATION SECURITY AND PARITY

14 “SEC. 216. (a)(1) Any load-serving entity that, as of the date of enactment of this section—

15 “(A) owns generation facilities, markets the output of federal generation facilities, or
16 holds rights under one or more wholesale contracts to purchase electric energy, for the purpose
17 of meeting a service obligation, and

18 “(B) by reason of ownership of transmission facilities, or one or more contracts or
19 service agreements for firm transmission service, holds firm transmission rights for delivery of the
20 output of such generation facilities or such purchased energy to meet such service obligation,
21 is entitled to use such firm transmission rights, or, at its election, equivalent tradeable or financial
22 transmission rights, in order to deliver such output or purchased energy, or the output of other generating
23 facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its
24 service obligation.

25 “(2) To the extent that all or a portion of the service obligation covered by such firm transmission
26 rights or equivalent tradeable or financial transmission rights is transferred to another load-serving entity,
27 the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent

1 tradeable or financial transmission rights associated with the transferred service obligation. Subsequent
2 transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the
3 same rights.

4 “(3) The Commission shall exercise its authority under this Act in a manner that facilitates the
5 planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to
6 satisfy their service obligations.

7 “(b) Nothing in this section shall affect any methodology, approved by the Commission prior to
8 the date of enactment of this section, for the allocation of transmission rights by an RTO or ISO that has
9 been authorized by the Commission to allocate transmission rights.

10 “(c) Nothing in this Act shall relieve a load-serving entity from any obligation under State or local
11 law to build transmission or distribution facilities adequate to meet its service obligations.

12 “(d) Nothing in this section shall provide a basis for abrogating any contract or service
13 agreement for firm transmission service or rights in effect as of the date of the enactment of this
14 subsection.

15 “(e) For purposes of this section:

16 “(1) The term ‘distribution utility’ means an electric utility that has a service obligation to
17 end-users or to a State utility or electric cooperative that, directly or indirectly, through one or
18 more additional State utilities or electric cooperatives, provides electric service to end-users.

19 “(2) The term ‘load-serving entity’ means a distribution utility or an electric utility that has
20 a service obligation.

21 “(3) The term ‘service obligation’ means a requirement applicable to, or the exercise of
22 authority granted to, an electric utility under Federal, State or local law or under long-term
23 contracts to provide electric service to end-users or to a distribution utility.

24 “(4) The term ‘State utility’ means a State or any political subdivision of a State, or any
25 agency, authority, or instrumentality of any one or more of the foregoing, or a corporation which
26 is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry
27 on the business of developing, transmitting, utilizing or distributing power.

1 “(5) A transmitting utility that is a water district or water agency to which section 201(f)
2 applies and that has a right under state law to provide water shall be treated as a load-serving
3 entity. Such water district or water agency’s right to provide water should be treated as a
4 service obligation.

5 “(f) Nothing in the section shall apply to an entity located in an area referred to in section
6 212(k)(2)(A).

7 “(g) This section does not authorize the Commission to take any action not otherwise within its
8 jurisdiction under other provisions of this Act.”

9 **SEC. 1132. OPEN NON-DISCRIMINATORY ACCESS.**

10 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section
11 211 (16 U.S.C. 824j) the following:

12 “OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

13 “SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an
14 unregulated transmitting utility to provide transmission services—

15 “(1) at rates that are comparable to those that the unregulated transmitting utility charges
16 itself; and

17 “(2) on terms and conditions (not relating to rates) that are comparable to those under
18 which such unregulated transmitting utility provides transmission services to itself and that are not
19 unduly discriminatory or preferential.

20 “(b) The Commission shall exempt from any rule or order under this section any unregulated
21 transmitting utility that—

22 “(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

23 “(2) does not own or operate any transmission facilities that are necessary for operating
24 an interconnected transmission system (or any portion thereof); or

25 “(3) meets other criteria the Commission determines to be in the public interest.

26 “(c) The requirements of subsection (a) shall not apply to facilities used in local distribution.

27 “(d) If an unregulated transmitting utility exempted pursuant to subsection (b) no longer meets
28 any of the criteria for exemption, the exemption shall expire.

1 “(e) The rate changing procedures applicable to public utilities under subsections (c) and (d) of
2 section 205 are applicable to unregulated transmitting utilities for purposes of this section.

3 “(f) In exercising its authority under paragraph (1) of subsection (a), the Commission may
4 remand transmission rates to an unregulated transmitting utility for review and revision where necessary
5 to meet the requirements of subsection (a).

6 “(g) The provision of transmission services under subsection (a) does not preclude a request for
7 transmission services under section 211.

8 “(h) The Commission may not require a State or municipality to take action under this section
9 that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986
10 (26 U.S.C. 141).

11 “(i) Nothing in this Act authorizes the Commission to require an unregulated transmitting utility to
12 transfer control or operational control of its transmitting facilities to an RTO or any other Commission-
13 approved organization designated to provide non-discriminatory transmission access.”.

14 **SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

15 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the
16 following:

17 “PARTICIPANT FUNDING

18 “SEC. 217. (a) IN GENERAL. – Not later than 180 days after the date of enactment of this
19 section, the Commission shall promulgate final regulations establishing transmission pricing policies
20 applicable to all public utilities associated with the construction of new interstate transmission facilities
21 and expansion, modification, or upgrading of existing interstate transmission facilities (“transmission
22 expansion”).

23 “(b) CONTENTS. – Consistent with section 205, the regulation under subsection (a) shall, to
24 the maximum extent practicable –

25 “(1) promote economic capital investment in efficient transmission systems;

26 “(2) encourage the construction and use of transmission facilities and generation facilities
27 that reduce risk and provide just and reasonable rates to consumers;

28 “(3) encourage improved operation of generation and transmission facilities and

1 deployment of transmission technologies designed to increase capacity and efficiency of existing
2 networks; and

3 “(4) ensure that the costs of any transmission expansion are assigned or allocated in a
4 fair manner, meaning that those who benefit from the transmission expansion pay an appropriate
5 share of the associated costs.

6 “(c) PLAN.—

7 “(1) IN GENERAL. – An RTO may submit to the Commission a plan containing the criteria for
8 determining the person or persons who will be required to pay for any transmission expansion. Nothing
9 herein diminishes or alters the rights of individual members of an RTO or under the Act.

10 “(2) REQUIREMENTS. – The Commission shall approve a plan submitted under
11 paragraph (1) if the Commission determines that the plan --

12 “(A) meets all the requirements of this Act and is consistent with the regulation
13 promulgated under subsection (a);

14 “(B) specifies the method or methods by which costs may be allocated or
15 assigned. Such methods may include, but are not limited to:

16 “(i) directly assigned;

17 “(ii) participant funded; or

18 “(iii) rolled into regional or sub-regional rates; and

19 “(C) ensures that the party or parties who pay for facilities necessary for the
20 transmission expansion receive appropriate compensation for those facilities, considering
21 among other factors the economic benefits associated with the transmission expansion.

22 “(3) DEFERENCE – In exercising its jurisdiction under this section, the Commission
23 shall give substantial deference to the comments filed with the Commission by State regulatory
24 authorities, other appropriate State officials, and stakeholders of the RTO.

25 “(4) EFFECT OF SECTION. – Nothing in this section shall affect an RTO’s allocation
26 methodology for transmission expansion approved by the Commission prior to the date of
27 enactment of this section.”.

1 generating facility shall measure the quantity of electric energy produced by the on-site facility
2 and the quantity of electric energy consumed by the owner or operator of an on-site generating
3 facility during a billing period in accordance with reasonable metering practices.

4 “(3) If the quantity of electric energy sold by the electric utility to an on-site generating
5 facility exceeds the quantity of electric energy supplied by the on-site generating facility to the
6 electric utility during the billing period, the electric utility may bill the owner or operator for the
7 net quantity of electric energy sold, in accordance with reasonable metering practices.

8 “(4) If the quantity of electric energy supplied by the on-site generating facility to the
9 electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site
10 generating facility during the billing period—

11 “(A) the electric utility may bill the owner or operator of the on-site generating
12 facility for the appropriate charges for the billing period in accordance with paragraph
13 (2); and

14 “(B) the owner or operator of the on-site generating facility shall be credited for
15 the excess kilowatt-hours generated during the billing period, with the kilowatt-hour
16 credit appearing on the bill for the following billing period.

17 “(5) An eligible on-site generating facility and net metering system used by an electric
18 consumer shall meet all applicable safety, performance, reliability, and interconnection standards
19 established by the National Electrical Code, the Institute of Electrical and Electronics Engineers,
20 and Underwriters Laboratories.

21 “(6) The Commission, after consultation with State regulatory authorities and unregulated
22 electric utilities and after notice and opportunity for comment, may adopt, by rule, additional
23 control and testing requirements for on-site generating facilities and net metering systems that the
24 Commission determines are necessary to protect public safety and system reliability.

25 “(7) For purposes of this subsection—

26 “(A) The term ‘eligible on-site generating facility’ means a facility on the site of a
27 residential electric consumer with a maximum generating capacity of 10 kilowatts or less

1 that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a
2 commercial electric consumer with a maximum generating capacity of 500 kilowatts or
3 less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency
4 system.

5 “(B) The term ‘renewable energy resource’ means solar, wind, biomass, or
6 geothermal energy.

7 “(C) The term ‘high efficiency system’ means fuel cells or combined heat and
8 power.

9 “(D) The term ‘net metering service’ means service to an electric consumer
10 under which electric energy generated by that electric consumer from an eligible on-site
11 generating facility and delivered to the local distribution facilities may be used to offset
12 electric energy provided by the electric utility to the electric consumer during the
13 applicable billing period.”.

14 **SEC. 1142. SMART METERING.**

15 (a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16
16 U.S.C. 2621(d)) is amended by adding at the end the following:

17 “(12) TIME-BASED METERING AND COMMUNICATIONS.—

18 “(A) Each electric utility shall offer each of its customer classes, and provide
19 individual customers upon customer request, a time-based rate schedule under which the
20 rate charged by the electric utility varies during different time periods and reflects the
21 variance in the costs of generating and purchasing electricity at the wholesale level. The
22 time-based rate schedule shall enable the electric consumer to manage energy use and
23 cost through advanced metering and communications technology.

24 “(B) The types of time-based rate schedules that may be offered under the
25 schedule referred to in subparagraph (A) include, among others—

26 “(i) time-of-use pricing whereby electricity prices are set for a specific
27 time period on an advance or forward basis, typically not changing more often
28 than twice a year. Prices paid for energy consumed during these periods shall be

1 pre-established and known to consumers in advance of such consumption,
2 allowing them to vary their demand and usage in response to such prices and
3 manage their energy costs by shifting usage to a lower cost period or reducing
4 their consumption overall;

5 “(ii) critical peak pricing whereby time-of-use prices are in effect except
6 for certain peak days, when prices may reflect the costs of generating and
7 purchasing electricity at the wholesale level and when consumers may receive
8 additional discounts for reducing peak period energy consumption; and

9 “(iii) real-time pricing whereby electricity prices are set for a specific
10 time period on an advanced or forward basis and may change as often as hourly.

11 “(C) Each electric utility subject to subparagraph (A) shall provide each
12 customer requesting a time-based rate with a time-based meter capable of enabling the
13 utility and customer to offer and receive such rate, respectively.

14 “(D) For purposes of implementing this paragraph, any reference contained in
15 this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978
16 shall be deemed to be a reference to the date of enactment of this paragraph.

17 “(E) In a State that permits third-party marketers to sell electric energy to retail
18 electric consumers, such consumers shall be entitled to receive that same time-based
19 metering and communications device and service as a retail electric consumer of the
20 electric utility.

21 “(F) Notwithstanding subsections (b) and (c) of section 112, each State
22 regulatory authority shall, not later than 12 months after the date of enactment of this
23 paragraph conduct an investigation in accordance with section 115(I) and issue a
24 decision whether it is appropriate to implement the standards set out in subparagraphs
25 (A) and (C).”.

26 (b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section
27 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the

1 at the end the following:

2 “(j) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall
3 conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to
4 provide and install time-based meters and communications devices for each of their customers which
5 enable such customers to participate in time-based pricing rate schedules and other demand response
6 programs.”.

7 (c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility
8 Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking “and” at the end of
9 paragraph (3), striking the period at the end of paragraph (4) and inserting “; and”, and by adding the
10 following at the end thereof:

11 “(5) technologies, techniques, and rate-making methods related to advanced metering
12 and communications and the use of these technologies, techniques and methods in demand
13 response programs.”.

14 (d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978
15 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

16 “(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

17 “(1) educating consumers on the availability, advantages, and benefits of advanced
18 metering and communications technologies, including the funding of demonstration or pilot
19 projects;

20 “(2) working with States, utilities, other energy providers and advanced metering and
21 communications experts to identify and address barriers to the adoption of demand response
22 programs; and

23 “(3) not later than 180 days after the date of enactment of the Energy Policy Act of
24 2003, providing the Congress with a report that identifies and quantifies the national benefits of
25 demand response and makes a recommendation on achieving specific levels of such benefits by
26 January 1, 2005.

27 “(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

1 “(1) It is the policy of the United States to encourage States to coordinate, on a regional
2 basis, State energy policies to provide reliable and affordable demand response services to the
3 public.

4 “(2) The Secretary of Energy shall provide technical assistance to States and regional
5 organizations formed by two or more States to assist them in—

6 “(A) identifying the areas with the greatest demand response potential;

7 “(B) identifying and resolving problems in transmission and distribution networks,
8 including through the use of demand response; and

9 “(C) developing plans and programs to use demand response to respond to
10 peak demand or emergency needs.

11 “(3) Not later than 1 year after the date of enactment of the Energy Policy Act of 2003,
12 the Commission shall prepare and publish an annual report, by appropriate region, that assesses
13 demand response resources, including those available from all consumer classes, and which
14 identifies and reviews—

15 “(A) saturation and penetration rate of advanced meters and communications
16 technologies, devices and systems;

17 “(B) existing demand response programs and time-based rate programs;

18 “(C) the annual resource contribution of demand resources;

19 “(D) the potential for demand response as a quantifiable, reliable resource for
20 regional planning purposes; and

21 “(E) steps taken to ensure that, in regional transmission planning and operations,
22 demand resources are provided equitable treatment as a quantifiable, reliable resource
23 relative to the resource obligations of any load-serving entity, transmission provider, or
24 transmitting party.

25 “(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the
26 United States that time-based pricing and other forms of demand response, whereby electricity
27 customers are provided with electricity price signals and the ability to benefit by responding to them,

1 shall be encouraged, and the deployment of such technology and devices that enable electricity
2 customers to participate in such pricing and demand response systems shall be facilitated.”.

3 **SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.**

4 (a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of
5 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

6 “(6) Each electric utility shall provide distributed generation, combined heat and power,
7 and district heating and cooling systems competitive access to the local distribution grid and
8 competitive pricing of service, and shall use simplified standard contracts for the interconnection
9 of generating facilities that have a power production capacity of 250 kilowatts or less.

10 “(7) No electric utility may refuse to interconnect a generating facility with the distribution
11 facilities of the electric utility if the owner or operator of the generating facility complies with
12 technical standards adopted by the State regulatory authority and agrees to pay the costs
13 established by such State regulatory authority.

14 “(8) Each electric utility shall develop a plan to minimize dependence on one fuel source
15 and to ensure that the electric energy it sells to consumers is generated using a diverse range of
16 fuels and technologies, including renewable technologies.

17 “(9) Each electric utility shall develop and implement a 10-year plan to increase the
18 efficiency of its fossil fuel generation.”.

19 (b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies
20 Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

21 “(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of
22 subsection (b), any reference contained in this section to the date of enactment of the Public Utility
23 Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this
24 subsection.”.

25 **SEC. 1144. TECHNICAL ASSISTANCE.**

26 Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is
27 amended to read as follows:

28 “(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide

1 such technical assistance as determined appropriate to assist State regulatory authorities and electric
2 utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and
3 (9) of section 113(b).”.

4 **SEC. 1145. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.**

5 (a) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—Section 210 of
6 the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end
7 the following:

8 “(m) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—

9 “(1) **OBLIGATION TO PURCHASE.** — After the date of enactment of this
10 subsection, no electric utility shall be required to enter into a new contract or obligation to
11 purchase electric energy from a qualifying cogeneration facility or a qualifying small power
12 production facility under this section if the Commission finds that the qualifying cogeneration
13 facility or qualifying small power production facility has nondiscriminatory access to –

14 “(A)(i) independently administered, auction-based day ahead and real time
15 wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-
16 term sales of capacity and electric energy; or

17 “(B)(i) transmission and interconnection services that are provided by a
18 Commission-approved regional transmission entity and administered pursuant to an open
19 access transmission tariff that affords nondiscriminatory treatment to all shippers; and (ii)
20 competitive wholesale markets that provide a meaningful opportunity to sell capacity,
21 including long-term and short-term sales, and electric energy, including long-term, short-
22 term and real-time sales, to buyers other than the utility to which the qualifying facility is
23 interconnected. In determining whether a meaningful opportunity to sell exists, the
24 Commission shall consider, among other factors, evidence of transactions within the
25 relevant market; or

26 “(C) wholesale markets for the sale of capacity and electric energy that are, at a
27 minimum, of comparable competitive quality as markets described in subparagraphs (A)
28 and (B).

1 “(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—

2 “(A) After the date of enactment of this subsection, no electric utility shall be
3 required pursuant to this section to enter into a new contract or obligation to purchase
4 from or sell electric energy to a facility that is not an existing qualifying cogeneration
5 facility unless the facility meets the criteria for qualifying cogeneration facilities established
6 by the Commission pursuant to the rulemaking required by subsection (n).

7 “(B) For the purposes of this paragraph, the term ‘existing qualifying
8 cogeneration facility’ means a facility that –

9 “(i) was a qualifying cogeneration facility on the date of enactment of
10 subsection (m); or

11 “(ii) had filed with the Commission a notice of self-certification, self-
12 recertification or an application for Commission certification under 18 C.F.R.
13 292.207 prior to the date on which the Commission issues the final rule required
14 by subsection (n).

15 “(3) COMMISSION REVIEW. — Any electric utility may file an application with the
16 Commission for relief from the mandatory purchase obligation pursuant to this subsection on a
17 service territory-wide basis. Such application shall set forth the factual basis upon which relief is
18 requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of
19 paragraph (1) of this subsection have been met. After notice, including sufficient notice to
20 potentially affected qualifying cogeneration facilities and qualifying small power production
21 facilities, and an opportunity for comment, the Commission shall make a final determination
22 within 90 days of such application regarding whether the conditions set forth in subparagraphs
23 (A), (B) or (C) of paragraph (1) have been met.

24 “(4) REINSTATEMENT OF OBLIGATION TO PURCHASE. — At any time after the
25 Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to
26 purchase electric energy, a qualifying cogeneration facility, a qualifying small power production
27 facility, a State agency, or any other affected person may apply to the Commission for an order

1 reinstating the electric utility’s obligation to purchase electric energy under this section. Such
2 application shall set forth the factual basis upon which the application is based and describe why
3 the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are
4 no longer met. After notice, including sufficient notice to potentially affected utilities, and
5 opportunity for comment, the Commission shall issue an order within 90 days of such application
6 reinstating the electric utility’s obligation to purchase electric energy under this section if the
7 Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1)
8 which relieved the obligation to purchase, are no longer met.

9 “(5) OBLIGATION TO SELL.—After the date of enactment of this subsection, no electric
10 utility shall be required to enter into a new contract or obligation to sell electric energy to a
11 qualifying cogeneration facility or a qualifying small power production facility under this section if
12 the Commission finds that—

13 “(A) competing retail electric suppliers are willing and able to sell and deliver
14 electric energy to the qualifying cogeneration facility or qualifying small power production
15 facility; and

16 “(B) the electric utility is not required by State law to sell electric energy in its
17 service territory.

18 “(6) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.—Nothing in this
19 subsection affects the rights or remedies of any party under any contract or obligation, in effect
20 or pending approval before the appropriate State regulatory authority or non-regulated electric
21 utility on the date of enactment of this subsection, to purchase electric energy or capacity from or
22 to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power
23 production facility under this Act (including the right to recover costs of purchasing electric
24 energy or capacity).

25 “(7) RECOVERY OF COSTS.—

26 “(A) The Commission shall promulgate and enforce such regulations as are
27 necessary to ensure that an electric utility that purchases electric energy or capacity from

1 a qualifying cogeneration facility or qualifying small power production facility in
2 accordance with any legally enforceable obligation entered into or imposed under this
3 section recovers all prudently incurred costs associated with the purchase.

4 “(B) A regulation under subparagraph (A) shall be enforceable in accordance
5 with the provisions of law applicable to enforcement of regulations under the Federal
6 Power Act (16 U.S.C. 791a et seq.).

7 “(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—

8 “(1) Not later than 180 days after the date of enactment of this section, the Commission
9 shall issue a rule revising the criteria for new qualifying cogeneration facilities in 18 C.F.R.
10 292.205 to ensure –

11 “(A) that the thermal energy output of a new qualifying cogeneration facility is
12 used in a productive and beneficial manner;

13 “(B) [TO BE RESOLVED]

14
15 ; and

16 “(C) continuing progress in the development of efficient electric energy
17 generating technology.

18 “(2) RULES FOR EXISTING FACILITIES.-- Notwithstanding rule revisions under paragraph
19 (1), the Commission’s criteria for qualifying cogeneration facilities in effect prior to the date on
20 which the Commission issues the final rule required by paragraph (1) shall continue to apply to
21 any cogeneration facility that—

22 “(A) was a qualifying cogeneration facility on the date of enactment of subsection
23 (m), or

24 “(B) had filed with the Commission a notice of self-certification, self-
25 recertification or an application for Commission certification under 18 C.F.R. 292.207
26 prior to the date on which the Commission issues the final rule required by paragraph
27 (1).”.

1 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

2 (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to
3 read as follows:

4 “(C) ‘qualifying small power production facility’ means a small power production
5 facility that the Commission determines, by rule, meets such requirements (including
6 requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may,
7 by rule, prescribe.”.

8 (2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to
9 read as follows:

10 “(B) ‘qualifying cogeneration facility’ means a cogeneration facility that the
11 Commission determines, by rule, meets such requirements (including requirements
12 respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule,
13 prescribe.”.

14 **Subtitle E—Provisions Regarding the Public Utility Holding** 15 **Company Act of 1935**

16 This subtitle may be cited as the “Public Utility Holding Company Act of 2003.”

17 **SEC. 1151. DEFINITIONS.**

18 For the purposes of this subtitle:

19 (1) The term “affiliate” of a company means any company 5 percent or more of the
20 outstanding voting securities of which are owned, controlled, or held with power to vote, directly
21 or indirectly, by such company.

22 (2) The term “associate company” of a company means any company in the same
23 holding company system with such company.

24 (3) The term “Commission” means the Federal Energy Regulatory Commission.

25 (4) The term “company” means a corporation, partnership, association, joint stock
26 company, business trust, or any organized group of persons, whether incorporated or not, or a
27 receiver, trustee, or other liquidating agent of any of the foregoing.

1 (5) The term “electric utility company” means any company that owns or operates
2 facilities used for the generation, transmission, or distribution of electric energy for sale.

3 (6) The terms “exempt wholesale generator” and “foreign utility company” have the
4 same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company
5 Act of 1935 (15 U.S.C. 79z-5, 79z-5b), as those sections existed on the day before the
6 effective date of this subtitle.

7 (7) The term “gas utility company” means any company that owns or operates facilities
8 used for distribution at retail (other than the distribution only in enclosed portable containers or
9 distribution to tenants or employees of the company operating such facilities for their own use
10 and not for resale) of natural or manufactured gas for heat, light, or power.

11 (8) The term “holding company” means—

12 (A) any company that directly or indirectly owns, controls, or holds, with power
13 to vote, 10 percent or more of the outstanding voting securities of a public-utility
14 company or of a holding company of any public-utility company; and

15 (B) any person, determined by the Commission, after notice and opportunity for
16 hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or
17 understanding with one or more persons) such a controlling influence over the
18 management or policies of any public-utility company or holding company as to make it
19 necessary or appropriate for the rate protection of utility customers with respect to rates
20 that such person be subject to the obligations, duties, and liabilities imposed by this
21 subtitle upon holding companies.

22 (9) The term “holding company system” means a holding company, together with its
23 subsidiary companies.

24 (10) The term “jurisdictional rates” means rates established by the Commission for the
25 transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in
26 interstate commerce, the transportation of natural gas in interstate commerce, and the sale in
27 interstate commerce of natural gas for resale for ultimate public consumption for domestic,

1 commercial, industrial, or any other use.

2 (11) The term “natural gas company” means a person engaged in the transportation of
3 natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

4 (12) The term “person” means an individual or company.

5 (13) The term “public utility” means any person who owns or operates facilities used for
6 transmission of electric energy in interstate commerce or sales of electric energy at wholesale in
7 interstate commerce.

8 (14) The term “public-utility company” means an electric utility company or a gas utility
9 company.

10 (15) The term “State commission” means any commission, board, agency, or officer, by
11 whatever name designated, of a State, municipality, or other political subdivision of a State that,
12 under the laws of such State, has jurisdiction to regulate public-utility companies.

13 (16) The term “subsidiary company” of a holding company means—

14 (A) any company, 10 percent or more of the outstanding voting securities of
15 which are directly or indirectly owned, controlled, or held with power to vote, by such
16 holding company; and

17 (B) any person, the management or policies of which the Commission, after
18 notice and opportunity for hearing, determines to be subject to a controlling influence,
19 directly or indirectly, by such holding company (either alone or pursuant to an
20 arrangement or understanding with one or more other persons) so as to make it
21 necessary for the rate protection of utility customers with respect to rates that such
22 person be subject to the obligations, duties, and liabilities imposed by this subtitle upon
23 subsidiary companies of holding companies.

24 (17) The term “voting security” means any security presently entitling the owner or
25 holder thereof to vote in the direction or management of the affairs of a company.

26 **SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

27 The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective
28 12 months after the date of enactment of this Act.

1 **SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each associate company thereof shall maintain,
3 and shall make available to the Commission, such books, accounts, memoranda, and other records as
4 the Commission determines are relevant to costs incurred by a public utility or natural gas company that
5 is an associate company of such holding company and necessary or appropriate for the protection of
6 utility customers with respect to jurisdictional rates.

7 (b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company
8 of a holding company shall maintain, and make available to the Commission, such books, accounts,
9 memoranda, and other records with respect to any transaction with another affiliate, as the Commission
10 determines are relevant to costs incurred by a public utility or natural gas company that is an associate
11 company of such holding company and necessary or appropriate for the protection of utility customers
12 with respect to jurisdictional rates.

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

18 (d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any
19 fact or information that may come to his or her knowledge during the course of examination of books,
20 accounts, memoranda, or other records as provided in this section, except as may be directed by the
21 Commission or by a court of competent jurisdiction.

22 **SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.**

23 (a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to
24 regulate a public-utility company in a holding company system, and subject to such terms and conditions
25 as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any
26 trade secrets or sensitive commercial information, a holding company or any associate company or
27 affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other
28 records that—

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

3 (2) the State commission determines are relevant to costs incurred by such public-utility
4 company; and

5 (3) are necessary for the effective discharge of the responsibilities of the State
6 commission with respect to such proceeding.

7 (b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law
8 concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights
9 of any State to obtain books, accounts, memoranda, or other records, under Federal law, contract, or
10 otherwise.

11 (c) COURT JURISDICTION.—Any United States district court located in the State in which the
12 State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance
13 with this section.

14 **SEC. 1155. EXEMPTION AUTHORITY.**

15 (a) RULEMAKING.—Not later than 90 days after the date of enactment of this title, the
16 Commission shall promulgate a final rule to exempt from the requirements of section 1153 any person
17 that is a holding company, solely with respect to one or more—

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

20 (2) exempt wholesale generators; or

21 (3) foreign utility companies.

22 (b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds
23 that the books, accounts, memoranda, and other records of any person are not relevant to the
24 jurisdictional rates of a public-utility company or natural gas company, or if the Commission finds that
25 any class of transactions is not relevant to the jurisdictional rates of a public-utility company, the
26 Commission shall exempt such person or transaction from the requirements of section 1153.

27 **SEC. 1156. AFFILIATE TRANSACTIONS.**

28 Nothing in this subtitle shall preclude the Commission or a State commission from exercising its

1 jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility,
2 or natural gas company may recover in rates any costs of an activity performed by an associate
3 company, or any costs of goods or services acquired by such public-utility company, public utility, or
4 natural gas company from an associate company.

5 **SEC. 1157. APPLICABILITY.**

6 No provision of this subtitle shall apply to, or be deemed to include—

7 (1) the United States;

8 (2) a State or any political subdivision of a State;

9 (3) any foreign governmental authority not operating in the United States;

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

11 (2), or (3); or

12 (5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3)

13 acting as such in the course of such officer, agent, or employee's official duty.

14 **SEC. 1158. EFFECT ON OTHER REGULATIONS.**

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

17 **SEC. 1159. ENFORCEMENT.**

18 The Commission shall have the same powers as set forth in sections 306 through 317 of the
19 Federal Power Act (16 U.S.C. 825e-825p) to enforce the provisions of this subtitle.

20 **SEC. 1160. SAVINGS PROVISIONS.**

21 (a) **IN GENERAL.**—Nothing in this subtitle prohibits a person from engaging in or continuing to
22 engage in activities or transactions in which it is legally engaged or authorized to engage on the date of
23 enactment of this Act, if that person continues to comply with the terms of any such authorization,
24 whether by rule or by order.

25 (b) **EFFECT ON OTHER COMMISSION AUTHORITY.**—Nothing in this subtitle limits the authority of
26 the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that
27 Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

28 **SEC. 1161. IMPLEMENTATION.**

1 Not later than 12 months after the date of enactment of this title, the Commission shall—

2 (1) promulgate such regulations as may be necessary or appropriate to implement this
3 subtitle; and

4 (2) submit to Congress detailed recommendations on technical and conforming
5 amendments to Federal law necessary to carry out this subtitle and the amendments made by
6 this subtitle.

7 **SEC. 1162. TRANSFER OF RESOURCES.**

8 All books and records that relate primarily to the functions transferred to the Commission under
9 this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

10 **SEC. 1163. EFFECTIVE DATE.**

11 This subtitle shall take effect 12 months after the date of enactment of this title.

12 **SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.**

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

14
15 **Subtitle F—Market Transparency, Anti-Manipulation And**
16 **Enforcement**

17 **SEC. 1171. MARKET TRANSPARENCY RULES.**

18 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the
19 following:

20 “MARKET TRANSPARENCY RULES

21 “SEC. 218. (a) Not later than 180 days after the date of enactment of this section, the
22 Commission shall issue rules establishing an electronic information system to provide the Commission
23 and the public with access to such information as is necessary or appropriate to facilitate price
24 transparency and participation in markets subject to the Commission’s jurisdiction. Such systems shall
25 provide information about the availability and market price of wholesale electric energy and transmission
26 services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of
27 transmission services, and the public. The Commission shall have authority to obtain such information

1 from any electric and transmitting utility, including any entity described in section 201(f).

2 “(b) The Commission shall exempt from disclosure information it determines would, if disclosed,
3 be detrimental to the operation of an effective market or jeopardize system security. This section shall
4 not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or
5 sale of wholesale electric energy and transmission services within the area described in section
6 212(k)(2)(A). In determining the information to be made available under this section and time to make
7 such information available, the Commission shall seek to ensure that consumers and competitive markets
8 are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can
9 be facilitated by untimely public disclosure of transaction-specific information.

10 “(c) This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading
11 Commission with respect to accounts, agreements, contracts, or transactions in commodities under the
12 Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information to a designated contract
13 market, registered derivatives transaction execution facility, board of trade, exchange, or market
14 involving accounts, agreements, contracts, or transactions in commodities (including natural gas,
15 electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures
16 Trading Commission shall be directed to the Commodity Futures Trading Commission.”.

17 **SEC. 1172. MARKET MANIPULATION.**

18 Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the
19 following:

20 **“PROHIBITION ON FILING FALSE INFORMATION**

21 “SEC. 219. It shall be a violation of this Act for any person or any other entity (including entities
22 described in section 201(f)) knowingly and willfully to report any information relating to the price of
23 electricity sold at wholesale or availability of transmission capacity, which information the person or any
24 other entity knew to be false at the time of the reporting, to any governmental entity with the intent to
25 manipulate the data being compiled by such governmental entity.

26 **“PROHIBITION ON ROUND TRIP TRADING**

27 “SEC. 220. (a) It shall be a violation of this Act for any person or any other entity (including
28 entities described in section 201(f)) knowingly and willfully to enter into any contract or other

1 arrangement to execute a ‘round trip trade’ for the purchase or sale of electric energy at wholesale.

2 “(b) For the purposes of this section, the term ‘round trip trade’ means a transaction, or
3 combination of transactions, in which a person or any other entity—

4 “(1) enters into a contract or other arrangement to purchase from, or sell to, any other
5 person or other entity electric energy at wholesale;

6 “(2) simultaneously with entering into the contract or arrangement described in
7 paragraph (1), arranges a financially offsetting trade with such other person or entity for the same
8 such electric energy, at the same location, price, quantity and terms so that, collectively, the
9 purchase and sale transactions in themselves result in no financial gain or loss; and

10 “(3) enters into the contract or arrangement with the intent to deceptively affect reported
11 revenues, trading volumes, or prices.”.

12 **SEC. 1173. MARKET TRANSPARENCY.**

13 (a) **IN GENERAL.** – It shall be a violation of the Commodity Exchange Act (7 U.S.C 1 et. seq)
14 for a person or entity to knowingly and willfully report or manipulate any information relating the price,
15 quantity, sale or purchase, and counter party of any agreement, contract or transaction related to natural
16 gas or electricity in interstate commerce, which the person or entity knew to be false at the time of
17 reporting to any governmental entity or any person or entity engaged in the business of collecting and
18 disseminating information.

19 (b) **Clarification of Existing CFTC Authority.** – Section 9 of the Commodity Exchange Act (7
20 U.S.C. 13) is amended by designating subsection (f) as subsection (e), and adding:

21 “(f) **Commission Administrative and Civil Authority.** – The Commission may bring administrative
22 or civil action as provided in this Act against any person for a violation of any provision of this section
23 including, but not limited to, false reporting under subsection (a)(2). This applies to any action pending
24 on or commenced after the date of enactment of the Energy Policy Act of 2003.”.

25 (c) **Fraud Authority.** – Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended
26 by striking subsection (a) and inserting the following:

27 “(a) **Prohibition.** – It shall be unlawful for any person, directly or indirectly in or in connection
28 with any account, or any offer to enter into, the entry into, or the confirmation of the execution of, any

1 agreement contract, or transaction subject to regulation or this Act –

2 “(1) to cheat or defraud or attempt to cheat or defraud any person;

3 “(2) to willfully make or cause to be made to any person any false report or statement,
4 or to willfully enter or cause to be entered for any person any false record;

5 “(3) to willfully deceive or attempt to deceive any person by any means whatsoever; or

6 “(4) except as permitted in written rules of a designated contract market or registered
7 derivative transaction execution facility which the agreement, contract, or transaction is traded
8 and executed –

9 “(A) to bucket an order;

10 “(B) to fill an order by offsetting against 1 or more orders of another person; or

11 “(C) willfully and knowingly, for or on behalf of any other person and without the
12 prior consent of such person, to become –

13 “(i) the buyer with respect to any selling order of the person; or

14 “(ii) the seller with respect to any buying order of the person.”

15 (d) Technical Corrections. – Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e) is
16 amended by adding at the end the following:

17 “Any request by any Federal, State or foreign government department, agency, or political
18 subdivision, or foreign futures authority, for information to a designated contract market,
19 registered derivatives transaction execution facility, board of trade, exchange, or market
20 involving accounts, agreements, contracts, or transactions in commodities (including natural gas
21 and electricity) within the exclusive jurisdiction of the Commission shall be directed to the
22 Commission.”.

23 (e) Authorization. – There are authorized to be appropriated to the Commission for fiscal year
24 2004 such sums as may be necessary to carry out the additional responsibilities and obligations of the
25 Commission under this section.

26 **SEC. 1174. ENFORCEMENT.**

27 (a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

28 (1) inserting “electric utility,” after “Any person,”; and

1 (2) inserting “, transmitting utility,” after “licensee” each place it appears.

2 (b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is
3 amended by inserting “or transmitting utility” after “any person” in the first sentence.

4 (c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C.
5 8251) is amended by inserting “electric utility,” after “Any person,” in the first sentence.

6 (d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is
7 amended—

8 (1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking
9 “two years” and inserting “five years”;

10 (2) in subsection (b), by striking “\$500” and inserting “\$25,000”; and

11 (3) by striking subsection (c).

12 (e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o-1) is
13 amended—

14 (1) in subsections (a) and (b), by striking “section 211, 212, 213, or 214” each place it
15 appears and inserting “Part II”; and

16 (2) in subsection (b), by striking “\$10,000” and inserting “\$1,000,000”.

17 (f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

18 (1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking
19 “two years” and inserting “five years”; and

20 (2) in subsection (b), by striking “\$500” and inserting “\$50,000”.

21 **SEC. 1175. REFUND EFFECTIVE DATE.**

22 Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

23 (1) striking “the date 60 days after the filing of such complaint nor later than 5 months
24 after the expiration of such 60-day period” in the second sentence and inserting “the date of the
25 filing of such complaint nor later than 5 months after the filing of such complaint”;

26 (2) striking “60 days after” in the third sentence and inserting “of”;

27 (3) striking “expiration of such 60-day period” in the third sentence and inserting
28 “publication date”; and

1 (4) striking the fifth sentence and inserting the following: “If no final decision is rendered
2 by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to
3 this section, the Commission shall state the reasons why it has failed to do so and shall state its
4 best estimate as to when it reasonably expects to make such decision.”.

5 **Subtitle G—Consumer Protections**

6 **SEC. 1181. ELECTRIC UTILITY MERGERS.**

7 (a) Section 203(a) of the Federal Power Act (16 U.S.C. 824(b)) is amended to read as follows:

8 “(a)(1) No public utility shall, without first having secured an order of the Commission
9 authorizing it to do so—

10 “(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the
11 Commission, or any part thereof of a value in excess of \$10,000,000,

12 “(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of
13 any other persons, by any means whatsoever, or

14 “(C) purchase, acquire, or take any security of any other public utility of a value in excess of
15 \$10,000,000.

16 “(2) No holding company in a holding company system that includes an electric utility company
17 shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly,
18 merge or consolidate with an electric utility company, a gas utility company, or a holding company in a
19 holding company system that includes a public-utility company of value in excess of \$10,000,000
20 without first having secured an order of the Commission authorizing it to do so.

21 “(3) Upon application for such approval the Commission shall give reasonable notice in writing
22 to the Governor and State commission of each of the States in which the physical property affected, or
23 any part thereof, is situated, and to such other persons as it may deem advisable.

24 “(4) After notice and opportunity for hearing, the Commission shall approve the proposed
25 disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will
26 be consistent with the public interest. In evaluating whether a transaction will be consistent with the
27 public interest, the Commission shall consider whether the proposed transaction—

1 “(A) will adequately protect consumer interests,

2 “(B) will be consistent with competitive wholesale markets,

3 “(C) will not impair the ability of the Commission or the ability of a State commission
4 having jurisdiction following the completion of the transaction over any public utility that
5 is a party to the transaction or an associate company of any party to the transaction to
6 protect the interests of consumers or the public,

7 “(D) will not impair the financial integrity of any public utility that is a party to the
8 transaction or an associate company of any party to the transaction, and

9 “(E) satisfies such other criteria as the Commission considers consistent with the public
10 interest.

11 “(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of
12 applications for the approval of dispositions, consolidations, or acquisitions under this section. Such
13 rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the
14 standards established in paragraph (4). The Commission shall provide expedited review for such
15 transactions. The Commission shall grant or deny any other application for approval of a transaction
16 within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the
17 Commission does not act within 90 days, such application shall be deemed granted unless the
18 Commission finds, based on good cause, that further consideration is required to determine whether the
19 proposed transaction meets the standards of paragraph (4) and issues one or more orders tolling the
20 time for acting on the application.

21 “(6) For purposes of this subsection, the terms “associate company”, “electric utility company”,
22 “gas utility company”, “holding company”, “holding company system”, and “public-utility company” have
23 the meaning given those terms in the Public Utility Holding Company Act of 2003.”.

24 (b) Effective Date—The amendments made by this section shall take effect 12 months after the
25 date of enactment of this section.

26 **SEC. 1182. MARKET-BASED POLICY.**

27 Within six months of the enactment of this section, the Commission shall issue a policy statement

1 establishing the conditions under which public utilities may charge market-based rates for the sale of
2 electric energy subject to the jurisdiction of the Commission. Such policy statement should consider
3 consumer protections and market power, as well as any other factors the Commission may deem
4 necessary, to ensure that such rates are just and reasonable.

5 **SEC. 1183. INTER-AGENCY REVIEW OF COMPETITION IN THE WHOLESALE AND RETAIL MARKETS FOR**
6 **ELECTRIC ENERGY.**

7 (a) **TASK FORCE.**—There is established an inter-agency task force, to be known as the
8 “Electric Energy Market Competition Task Force” (referred to in this section as the “task force”),
9 which shall consist of—

10 (1) one member each from—

11 (A) the Department of Justice, to be appointed by the Attorney General of the
12 United States;

13 (B) the Federal Energy Regulatory Commission, to be appointed by the
14 chairman of that Commission;

15 (C) the Federal Trade Commission, to be appointed by the chairman of that
16 Commission;

17 (D) the Department of Energy, to be appointed by the Secretary of Energy; and

18 (E) the Rural Utilities Service, to be appointed by the Secretary of Agriculture.

19 (b) **STUDY AND REPORT.**—

20 (1) **STUDY.**—The task force shall perform a study and analysis of competition within
21 the wholesale and retail market for electric energy in the United States.

22 (2) **REPORT.**—

23 (A) **FINAL REPORT.**—Not later than 1 year after the effective date of this
24 subtitle, the task force shall submit a final report of its findings under paragraph (1) to the
25 Congress.

26 (B) **PUBLIC COMMENT.**—At least 60 days before submission of a final
27 report to the Congress under subparagraph (A), the task force shall publish a draft
28 report in the Federal Register to provide for public comment.

1 (c) CONSULTATION.—In performing the study required by this section, the task force shall
2 consult with and solicit comments from its advisory members, the States, representatives of the electric
3 power industry, and the public.

4 **SEC. 1184. CONSUMER PRIVACY.**

5 The Federal Trade Commission shall issue rules protecting the privacy of electric consumers
6 from the disclosure of consumer information in connection with the sale or delivery of electric energy to a
7 retail electric consumer. If the Federal Trade Commission determines that a State’s regulations provide
8 equivalent or greater protection than the provisions of this section, such State regulations shall apply in
9 that State in lieu of the regulations issued by the Commission under this section.

10 **SEC. 1185. UNFAIR TRADE PRACTICES.**

11 (a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of
12 selection of an electric utility except with the informed consent of the electric consumer or if determined
13 by the appropriate State regulatory authority to be necessary to prevent loss of service.

14 (b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods
15 and services to an electric consumer unless expressly authorized by law or the electric consumer.

16 (c) STATE AUTHORITY.—If the Federal Trade Commission determines that a State’s regulations
17 provide equivalent or greater protection than the provisions of this section, such State regulations shall
18 apply in that State in lieu of the regulations issued by the Commission under this section.

19 **SEC. 1186. DEFINITIONS.**

20 For purposes of this subtitle—

21 (1) the term “State regulatory authority” has the meaning given that term in section 3(21)
22 of the Federal Power Act (16 U.S.C. 796(21)).

23 (2) the term “electric consumer” and “electric utility” have the meanings given those
24 terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

25 **Subtitle H—Technical Amendments**

26 **SEC. 1191. TECHNICAL AMENDMENTS.**

27 (a) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

28 (1) striking “(2)”;

- 1 (2) striking “(A)” and inserting “(1)”
- 2 (3) striking “(B)” and inserting “(2)”; and
- 3 (4) striking “termination of modification” and inserting “termination or modification”.
- 4 (b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking
- 5 “electric utility” the second time it appears and inserting “transmitting utility”.
- 6 (c) Section 315 (c) of the Federal Power Act (16 U.S.C. 825n(c)) is amended by striking
- 7 “subsection” and inserting “section”.