

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modify the provision relating to native load service obligations.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. _____

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____ to Title XII—Electricity (END05371.LC)

Viz:

- 1 Beginning on page 48, strike line 1 and all that fol-
- 2 lows through page 52, line 12, and insert the following:
- 3 **SEC. 1235. NATIVE LOAD SERVICE OBLIGATION.**
- 4 Part II of the Federal Power Act (16 U.S.C. 824 et
- 5 seq.) (as amended by section 1232) is amended by adding
- 6 at the end the following:
- 7 **“SEC. 218. NATIVE LOAD SERVICE OBLIGATION.**
- 8 **“(a) DEFINITIONS.—In this section:**

1 “(1) The term ‘distribution utility’ means an
2 electric utility that has a service obligation to end-
3 users or to a State utility or electric cooperative
4 that, directly or indirectly, through 1 or more addi-
5 tional State utilities or electric cooperatives, provides
6 electric service to end-users.

7 “(2) The term ‘load-serving entity’ means a dis-
8 tribution utility or an electric utility that has a serv-
9 ice obligation.

10 “(3) The term ‘service obligation’ means a re-
11 quirement applicable to, or the exercise of authority
12 granted to, an electric utility under Federal, State,
13 or local law or under long-term contracts to provide
14 electric service to end-users or to a distribution util-
15 ity.

16 “(4) The term ‘State utility’ means a State or
17 any political subdivision of a State, or any agency,
18 authority, or instrumentality of any 1 or more
19 States or political subdivisions, or a corporation that
20 is wholly owned, directly or indirectly, by any 1 or
21 more of the States or political subdivisions, com-
22 petent to carry on the business of developing, trans-
23 mitting, using, or distributing power.

1 “(b) MEETING SERVICE OBLIGATIONS.—(1) Para-
2 graph (2) applies to any load-serving entity that, as of
3 the date of enactment of this section—

4 “(A) owns generation facilities, markets the
5 output of Federal generation facilities, or holds
6 rights under 1 or more wholesale contracts to pur-
7 chase electric energy, for the purpose of meeting a
8 service obligation; and

9 “(B) by reason of ownership of transmission fa-
10 cilities, or 1 or more contracts or service agreements
11 for firm transmission service, holds firm trans-
12 mission rights for delivery of the output of the gen-
13 eration facilities or the purchased energy to meet the
14 service obligation.

15 “(2) Any load-serving entity described in paragraph
16 (1) is entitled to use the firm transmission rights, or,
17 equivalent tradable or financial transmission rights, in
18 order to deliver the output or purchased energy, or the
19 output of other generating facilities or purchased energy
20 to the extent deliverable using the rights, to the extent
21 required to meet the service obligation of the load-serving
22 entity.

23 “(3)(A) To the extent that all or a portion of the
24 service obligation covered by the firm transmission rights
25 or equivalent tradable or financial transmission rights is

1 transferred to another load-serving entity, the successor
2 load-serving entity shall be entitled to use the firm trans-
3 mission rights or equivalent tradable or financial trans-
4 mission rights associated with the transferred service obli-
5 gation.

6 “(B) Subsequent transfers to another load-serving
7 entity, or back to the original load-serving entity, shall be
8 entitled to the same rights.

9 “(4) The Commission shall exercise the authority of
10 the Commission under this Act in a manner that facili-
11 tates the planning and expansion of transmission facilities
12 to meet the reasonable needs of load-serving entities to
13 satisfy the service obligations of the load-serving entities,
14 and enables load-serving entities to secure firm trans-
15 mission rights (or equivalent tradable or financial rights)
16 on a long term basis for long term power supply arrange-
17 ments made, or planned, to meet such needs.

18 “(c) ALLOCATION OF TRANSMISSION RIGHTS.—
19 Nothing in subsections (b)(1), (b)(2) and (b)(3) of this
20 section shall affect any existing or future methodology em-
21 ployed by a Transmission Organization for allocating or
22 auctioning transmission rights if such Transmission Orga-
23 nization was authorized by the Commission to allocate or
24 auction financial transmission rights on its system as of
25 January 1, 2005, and the Commission determines that

1 any future allocation or auction is just, reasonable and
2 not unduly discriminatory or preferential, provided, how-
3 ever, that if such a Transmission Organization never allo-
4 cated financial transmission rights on its system that per-
5 tained to a period before January 1, 2005, with respect
6 to any application by such Transmission Organization that
7 would change its methodology the Commission shall exer-
8 cise its authority in a manner consistent with the Act and
9 that takes into account the policies expressed in sub-
10 sections (b)(1), (b)(2) and (b)(3) as applied to firm trans-
11 mission rights held by a load-serving entity as of January
12 1, 2005, to the extent the associated generation ownership
13 or power purchase arrangements remain in effect.

14 “(d) CERTAIN TRANSMISSION RIGHTS.—The Com-
15 mission may exercise authority under this Act to make
16 transmission rights not used to meet an obligation covered
17 by subsection (b) available to other entities in a manner
18 determined by the Commission to be just, reasonable, and
19 not unduly discriminatory or preferential.

20 “(e) OBLIGATION TO BUILD.—Nothing in this Act re-
21 lieves a load-serving entity from any obligation under
22 State or local law to build transmission or distribution fa-
23 cilities adequate to meet the service obligations of the load-
24 serving entity.

1 “(f) CONTRACTS.—Nothing in this section shall pro-
2 vide a basis for abrogating any contract or service agree-
3 ment for firm transmission service or rights in effect as
4 of the date of the enactment of this subsection. If an ISO
5 in the Western Interconnection had allocated financial
6 transmission rights prior to the date of enactment of this
7 section but had not done so with respect to one or more
8 load-serving entities’ firm transmission rights held under
9 contracts to which the preceding sentence applies (or held
10 by reason of ownership or future ownership of trans-
11 mission facilities), such load-serving entities may not be
12 required, without their consent, to convert such firm
13 transmission rights to tradable or financial rights, except
14 where the load-serving entity has voluntarily joined the
15 ISO as a participating transmission owner (or its suc-
16 cessor) in accordance with the ISO tariff.

17 “(g) WATER PUMPING FACILITIES.—The Commis-
18 sion shall ensure that any entity described in section
19 201(f) that owns transmission facilities used predomi-
20 nately to support its own water pumping facilities shall
21 have, with respect to the facilities, protections for trans-
22 mission service comparable to those provided to load-serv-
23 ing entities pursuant to this section.

24 “(h) ERCOT.—This section shall not apply within
25 the area referred to in section 212(k)(2)(A).

1 “(i) JURISDICTION.—This section does not authorize
2 the Commission to take any action not otherwise within
3 the jurisdiction of the Commission.

4 “(j) TVA AREA.—(1) Subject to paragraphs (2) and
5 (3), for purposes of subsection (b)(1)(B), a load-serving
6 entity that is located within the service area of the Ten-
7 nessee Valley Authority and that has a firm wholesale
8 power supply contract with the Tennessee Valley Author-
9 ity shall be considered to hold firm transmission rights
10 for the transmission of the power provided.

11 “(2) Nothing in this subsection affects the require-
12 ments of section 212(j).

13 “(3) The Commission shall not issue an order on the
14 basis of this subsection that is contrary to the purposes
15 of section 212(j).”.

16 (h) FERC RULEMAKING ON LONG-TERM TRANS-
17 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one
18 year after the date of enactment of this section and after
19 notice and an opportunity for comment, the Commission
20 shall by rule or order implement subsection (b)(4) in
21 Transmission Organizations with organized electricity
22 markets.

23 (i) EFFECT OF EXERCISING RIGHTS.—An entity that
24 to the extent required to meet its service obligations exer-
25 cises rights described in subsection (b) shall not be consid-

- 1 ered by such action as engaging in undue discrimination
- 2 or preference under this Act.