

TITLE XII—ELECTRICITY

Sec. 1201. Short title.

Subtitle A—Reliability Standards

Sec. 1211. Electric reliability standards.

Subtitle B—Transmission Infrastructure Modernization

Sec. 1221. Siting of interstate electric transmission facilities.

Sec. 1222. Third-party finance.

Sec. 1223. Advanced transmission technologies.

Sec. 1224. Advanced Power System Technology Incentive Program.

Subtitle C—Transmission Operation Improvements

Sec. 1231. Open nondiscriminatory access.

Sec. 1232. Federal utility participation in Transmission Organizations.

Sec. 1233. Native load service obligation.

Sec. 1234. Study on the benefits of economic dispatch.

Sec. 1235. Protection of transmission contracts in the Pacific Northwest.

Subtitle D—Transmission rate reform

Sec. 1241. Transmission infrastructure investment.

Sec. 1242. Funding new interconnection and transmission upgrades.

Subtitle E—Amendments to PURPA

Sec. 1251. Net metering and additional standards.

Sec. 1252. Smart metering.

Sec. 1253. Cogeneration and small power production purchase and sale requirements.

Sec. 1254. Interconnection.

Subtitle F—Repeal of PUHCA

Sec. 1261. Short title.

Sec. 1262. Definitions.

Sec. 1263. Repeal of the Public Utility Holding Company Act of 1935.

Sec. 1264. Federal access to books and records.

Sec. 1265. State access to books and records.

Sec. 1266. Exemption authority.

Sec. 1267. Affiliate transactions.

Sec. 1268. Applicability.

Sec. 1269. Effect on other regulations.

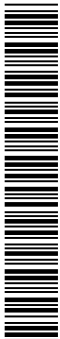
Sec. 1270. Enforcement.

Sec. 1271. Savings provisions.

Sec. 1272. Implementation.

Sec. 1273. Transfer of resources.

Sec. 1274. Effective date.



Sec. 1275. Service allocation.
Sec. 1276. Authorization of appropriations.
Sec. 1277. Conforming amendments to the Federal Power Act.

Subtitle G—Market transparency, enforcement, and consumer protection

Sec. 1281. Market transparency rules.
Sec. 1282. False statements.
Sec. 1283. Market manipulation.
Sec. 1284. Enforcement.
Sec. 1285. Refund effective date.
Sec. 1286. Refund authority.
Sec. 1287. Consumer privacy and unfair trade practices.
Sec. 1288. Authority of court to prohibit individuals from serving as officers, directors, and energy traders.
Sec. 1289. Merger review reform.
Sec. 1290. [Relief for extraordinary violations].

Subtitle H—Definitions

Sec. 1291. Definitions.

Subtitle I—Technical and conforming amendments

Sec. 1295. Conforming amendments.

Subtitle J—Economic Dispatch

Sec. 1298. Economic dispatch.

Subtitle K—[Renewable portfolio standard]

1 **SEC. 1201. SHORT TITLE.**

2 This title may be cited as the “Electricity Moderniza-
3 tion Act of 2005”.

4 **Subtitle A—Reliability Standards**

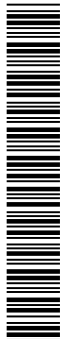
5 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

6 (a) IN GENERAL.—Part II of the Federal Power Act
7 (16 U.S.C 824 et seq.) is amended by adding at the end
8 the following:

9 **“SEC. 215. ELECTRIC RELIABILITY.**

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

11 “(1) The term ‘bulk-power system’ means—



1 “(A) facilities and control systems nec-
2 essary for operating an interconnected electric
3 energy transmission network (or any portion
4 thereof); and

5 “(B) electric energy from generation facili-
6 ties needed to maintain transmission system re-
7 liability.

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

10 “(2) The terms ‘Electric Reliability Organiza-
11 tion’ and ‘ERO’ mean the organization certified by
12 the Commission under subsection (c) the purpose of
13 which is to establish and enforce reliability stand-
14 ards for the bulk-power system, subject to Commis-
15 sion review.

16 “(3) The term ‘reliability standard’ means a re-
17 quirement, approved by the Commission under this
18 section, to provide for reliable operation of the bulk-
19 power system. The term includes requirements for
20 the operation of existing bulk-power system facilities,
21 including cybersecurity protection, and the design of
22 planned additions or modifications to such facilities
23 to the extent necessary to provide for reliable oper-
24 ation of the bulk-power system, but the term does
25 not include any requirement to enlarge such facilities



1 or to construct new transmission capacity or genera-
2 tion capacity.

3 “(4) The term ‘reliable operation’ means oper-
4 ating the elements of the bulk-power system within
5 equipment and electric system thermal, voltage, and
6 stability limits so that instability, uncontrolled sepa-
7 ration, or cascading failures of such system will not
8 occur as a result of a sudden disturbance, including
9 a cybersecurity incident, or unanticipated failure of
10 system elements.

11 “(5) The term ‘Interconnection’ means a geo-
12 graphic area in which the operation of bulk-power
13 system components is synchronized such that the
14 failure of 1 or more of such components may ad-
15 versely affect the ability of the operators of other
16 components within the system to maintain reliable
17 operation of the facilities within their control.

18 “(6) The term ‘transmission organization’
19 means a Regional Transmission Organization, Inde-
20 pendent System Operator, independent transmission
21 provider, or other transmission organization finally
22 approved by the Commission for the operation of
23 transmission facilities.



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

4 “(8) The term ‘cybersecurity incident’ means a
5 malicious act or suspicious event that disrupts, or
6 was an attempt to disrupt, the operation of those
7 programmable electronic devices and communication
8 networks including hardware, software and data that
9 are essential to the reliable operation of the bulk
10 power system.

11 “(b) JURISDICTION AND APPLICABILITY.—(1) The
12 Commission shall have jurisdiction, within the United
13 States, over the ERO certified by the Commission under
14 subsection (c), any regional entities, and all users, owners
15 and operators of the bulk-power system, including but not
16 limited to the entities described in section 201(f), for pur-
17 poses of approving reliability standards established under
18 this section and enforcing compliance with this section. All
19 users, owners and operators of the bulk-power system
20 shall comply with reliability standards that take effect
21 under this section.

22 “(2) The Commission shall issue a final rule to imple-
23 ment the requirements of this section not later than 180
24 days after the date of enactment of this section.



1 “(c) CERTIFICATION.—Following the issuance of a
2 Commission rule under subsection (b)(2), any person may
3 submit an application to the Commission for certification
4 as the Electric Reliability Organization. The Commission
5 may certify 1 such ERO if the Commission determines
6 that such ERO—

7 “(1) has the ability to develop and enforce, sub-
8 ject to subsection (e)(2), reliability standards that
9 provide for an adequate level of reliability of the
10 bulk-power system; and

11 “(2) has established rules that—

12 “(A) assure its independence of the users
13 and owners and operators of the bulk-power
14 system, while assuring fair stakeholder rep-
15 resentation in the selection of its directors and
16 balanced decisionmaking in any ERO com-
17 mittee or subordinate organizational structure;

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

21 “(C) provide fair and impartial procedures
22 for enforcement of reliability standards through
23 the imposition of penalties in accordance with
24 subsection (e) (including limitations on activi-



1 ties, functions, or operations, or other appro-
2 priate sanctions);

3 “(D) provide for reasonable notice and op-
4 portunity for public comment, due process,
5 openness, and balance of interests in developing
6 reliability standards and otherwise exercising its
7 duties; and

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

11 “(d) RELIABILITY STANDARDS.—(1) The Electric
12 Reliability Organization shall file each reliability standard
13 or modification to a reliability standard that it proposes
14 to be made effective under this section with the Commis-
15 sion.

16 “(2) The Commission may approve, by rule or order,
17 a proposed reliability standard or modification to a reli-
18 ability standard if it determines that the standard is just,
19 reasonable, not unduly discriminatory or preferential, and
20 in the public interest. The Commission shall give due
21 weight to the technical expertise of the Electric Reliability
22 Organization with respect to the content of a proposed
23 standard or modification to a reliability standard and to
24 the technical expertise of a regional entity organized on
25 an Interconnection-wide basis with respect to a reliability



1 standard to be applicable within that Interconnection, but
2 shall not defer with respect to the effect of a standard
3 on competition. A proposed standard or modification shall
4 take effect upon approval by the Commission.

5 “(3) The Electric Reliability Organization shall
6 rebuttably presume that a proposal from a regional entity
7 organized on an Interconnection-wide basis for a reliability
8 standard or modification to a reliability standard to be ap-
9 plicable on an Interconnection-wide basis is just, reason-
10 able, and not unduly discriminatory or preferential, and
11 in the public interest.

12 “(4) The Commission shall remand to the Electric
13 Reliability Organization for further consideration a pro-
14 posed reliability standard or a modification to a reliability
15 standard that the Commission disapproves in whole or in
16 part.

17 “(5) The Commission, upon its own motion or upon
18 complaint, may order the Electric Reliability Organization
19 to submit to the Commission a proposed reliability stand-
20 ard or a modification to a reliability standard that ad-
21 dresses a specific matter if the Commission considers such
22 a new or modified reliability standard appropriate to carry
23 out this section.

24 “(6) The final rule adopted under subsection (b)(2)
25 shall include fair processes for the identification and time-



1 ly resolution of any conflict between a reliability standard
2 and any function, rule, order, tariff, rate schedule, or
3 agreement accepted, approved, or ordered by the Commis-
4 sion applicable to a transmission organization. Such trans-
5 mission organization shall continue to comply with such
6 function, rule, order, tariff, rate schedule or agreement ac-
7 cepted approved, or ordered by the Commission until—

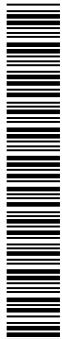
8 “(A) the Commission finds a conflict exists be-
9 tween a reliability standard and any such provision;

10 “(B) the Commission orders a change to such
11 provision pursuant to section 206 of this part; and

12 “(C) the ordered change becomes effective
13 under this part.

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

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



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

4 “(B) files notice and the record of the pro-
5 ceeding with the Commission.

6 “(2) A penalty imposed under paragraph (1) may
7 take effect not earlier than the 31st day after the ERO
8 files with the Commission notice of the penalty and the
9 record of proceedings. Such penalty shall be subject to re-
10 view by the Commission, on its own motion or upon appli-
11 cation by the user, owner or operator that is the subject
12 of the penalty filed within 30 days after the date such
13 notice is filed with the Commission. Application to the
14 Commission for review, or the initiation of review by the
15 Commission on its own motion, shall not operate as a stay
16 of such penalty unless the Commission otherwise orders
17 upon its own motion or upon application by the user,
18 owner or operator that is the subject of such penalty. In
19 any proceeding to review a penalty imposed under para-
20 graph (1), the Commission, after notice and opportunity
21 for hearing (which hearing may consist solely of the record
22 before the ERO and opportunity for the presentation of
23 supporting reasons to affirm, modify, or set aside the pen-
24 alty), shall by order affirm, set aside, reinstate, or modify
25 the penalty, and, if appropriate, remand to the ERO for



1 further proceedings. The Commission shall implement ex-
2 pedited procedures for such hearings.

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

12 “(4) The Commission shall issue regulations author-
13 izing the ERO to enter into an agreement to delegate au-
14 thority to a regional entity for the purpose of proposing
15 reliability standards to the ERO and enforcing reliability
16 standards under paragraph (1) if—

17 “(A) the regional entity is governed by—

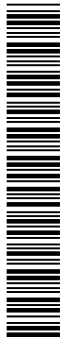
18 “(i) an independent board;

19 “(ii) a balanced stakeholder board; or

20 “(iii) a combination independent and bal-
21 anced stakeholder board.

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

24 “(C) the agreement promotes effective and effi-
25 cient administration of bulk-power system reliability.

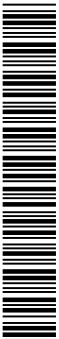


1 The Commission may modify such delegation. The ERO
2 and the Commission shall rebuttably presume that a pro-
3 posal for delegation to a regional entity organized on an
4 Interconnection-wide basis promotes effective and efficient
5 administration of bulk-power system reliability and should
6 be approved. Such regulation may provide that the Com-
7 mission may assign the ERO's authority to enforce reli-
8 ability standards under paragraph (1) directly to a re-
9 gional entity consistent with the requirements of this para-
10 graph.

11 “(5) The Commission may take such action as is nec-
12 essary or appropriate against the ERO or a regional entity
13 to ensure compliance with a reliability standard or any
14 Commission order affecting the ERO or a regional entity.

15 “(6) Any penalty imposed under this section shall
16 bear a reasonable relation to the seriousness of the viola-
17 tion and shall take into consideration the efforts of such
18 user, owner, or operator to remedy the violation in a time-
19 ly manner.

20 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
21 TION RULES.—The Electric Reliability Organization shall
22 file with the Commission for approval any proposed rule
23 or proposed rule change, accompanied by an explanation
24 of its basis and purpose. The Commission, upon its own
25 motion or complaint, may propose a change to the rules



1 of the ERO. A proposed rule or proposed rule change shall
2 take effect upon a finding by the Commission, after notice
3 and opportunity for comment, that the change is just, rea-
4 sonable, not unduly discriminatory or preferential, is in
5 the public interest, and satisfies the requirements of sub-
6 section (c).

7 “(g) RELIABILITY REPORTS.—The ERO shall con-
8 duct periodic assessments of the reliability and adequacy
9 of the bulk-power system in North America.

10 “(h) COORDINATION WITH CANADA AND MEXICO.—
11 The President is urged to negotiate international agree-
12 ments with the governments of Canada and Mexico to pro-
13 vide for effective compliance with reliability standards and
14 the effectiveness of the ERO in the United States and
15 Canada or Mexico.

16 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
17 authority to develop and enforce compliance with reli-
18 ability standards for only the bulk-power system.

19 “(2) This section does not authorize the ERO or the
20 Commission to order the construction of additional gen-
21 eration or transmission capacity or to set and enforce com-
22 pliance with standards for adequacy or safety of electric
23 facilities or services.

24 “(3) Nothing in this section shall be construed to pre-
25 empt any authority of any State to take action to ensure



1 the safety, adequacy, and reliability of electric service
2 within that State, as long as such action is not incon-
3 sistent with any reliability standard.

4 “(4) Within 90 days of the application of the Electric
5 Reliability Organization or other affected party, and after
6 notice and opportunity for comment, the Commission shall
7 issue a final order determining whether a State action is
8 inconsistent with a reliability standard, taking into consid-
9 eration any recommendation of the ERO.

10 “(5) The Commission, after consultation with the
11 ERO and the State taking action, may stay the effective-
12 ness of any State action, pending the Commission’s
13 issuance of a final order.

14 “(j) REGIONAL ADVISORY BODIES.—The Commis-
15 sion shall establish a regional advisory body on the petition
16 of at least $\frac{2}{3}$ of the States within a region that have more
17 than $\frac{1}{2}$ of their electric load served within the region. A
18 regional advisory body shall be composed of 1 member
19 from each participating State in the region, appointed by
20 the Governor of each State, and may include representa-
21 tives of agencies, States, and provinces outside the United
22 States. A regional advisory body may provide advice to the
23 Electric Reliability Organization, a regional entity, or the
24 Commission regarding the governance of an existing or
25 proposed regional entity within the same region, whether



1 a standard proposed to apply within the region is just,
2 reasonable, not unduly discriminatory or preferential, and
3 in the public interest, whether fees proposed to be assessed
4 within the region are just, reasonable, not unduly discrimi-
5 natory or preferential, and in the public interest and any
6 other responsibilities requested by the Commission. The
7 Commission may give deference to the advice of any such
8 regional advisory body if that body is organized on an
9 Interconnection-wide basis.

10 “(k) ALASKA AND HAWAII.—The provisions of this
11 section do not apply to Alaska or Hawaii.”

12 (b) STATUS OF ERO.—The Electric Reliability Orga-
13 nization certified by the Federal Energy Regulatory Com-
14 mission under section 215(c) of the Federal Power Act
15 and any regional entity delegated enforcement authority
16 pursuant to section 215(e)(4) of that Act are not depart-
17 ments, agencies, or instrumentalities of the United States
18 Government.

19 **Subtitle B—Transmission**
20 **Infrastructure Modernization**

21 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
22 **MISSION FACILITIES.**

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



1 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
2 **MISSION FACILITIES.**

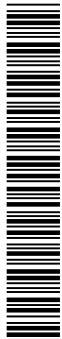
3 “(a) DESIGNATION OF NATIONAL INTEREST ELEC-
4 TRIC TRANSMISSION CORRIDORS.—(1) Not later than 1
5 year after the date of enactment of this section and every
6 3 years thereafter, the Secretary of Energy (referred to
7 in this section as the ‘Secretary’), in consultation with af-
8 fected States, shall conduct a study of electric trans-
9 mission congestion.

10 “(2) After considering alternatives and recommenda-
11 tions from interested parties (including an opportunity for
12 comment from affected States), the Secretary shall issue
13 a report, based on the study, which may designate any
14 geographic area experiencing electric energy transmission
15 capacity constraints or congestion that adversely affects
16 consumers as a national interest electric transmission cor-
17 ridor.

18 “(3) The Secretary shall conduct the study and issue
19 the report in consultation with any appropriate regional
20 entity referred to in section 215.

21 “(4) In determining whether to designate a national
22 interest electric transmission corridor under paragraph
23 (2), the Secretary may consider whether—

24 “(A) the economic vitality and development of
25 the corridor, or the end markets served by the cor-



1 ridor, may be constrained by lack of adequate or
2 reasonably priced electricity;

3 “(B)(i) economic growth in the corridor, or the
4 end markets served by the corridor, may be jeopard-
5 ized by reliance on limited sources of energy; and

6 “(ii) a diversification of supply is warranted;

7 “(C) the energy independence of the United
8 States would be served by the designation;

9 “(D) the designation would be in the interest of
10 national energy policy; and

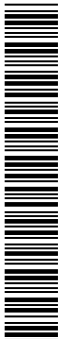
11 “(E) the designation would enhance national
12 defense and homeland security.

13 “(b) CONSTRUCTION PERMIT.—Except as provided
14 in subsection (i), the Commission may, after notice and
15 an opportunity for hearing, issue 1 or more permits for
16 the construction or modification of electric transmission
17 facilities in a national interest electric transmission cor-
18 ridor designated by the Secretary under subsection (a) if
19 the Commission finds that—

20 “(1)(A) a State in which the transmission fa-
21 cilities are to be constructed or modified does not
22 have authority to—

23 “(i) approve the siting of the facilities; or

24 “(ii) consider the interstate benefits ex-
25 pected to be achieved by the proposed construc-



1 tion or modification of transmission facilities in
2 the State;

3 “(B) the applicant for a permit is a transmit-
4 ting utility under this Act but does not qualify to
5 apply for a permit or siting approval for the pro-
6 posed project in a State because the applicant does
7 not serve end-use customers in the State; or

8 “(C) a State commission or other entity that
9 has authority to approve the siting of the facilities
10 has—

11 “(i) withheld approval for more than 1
12 year after the filing of an application seeking
13 approval pursuant to applicable law or 1 year
14 after the designation of the relevant national in-
15 terest electric transmission corridor, whichever
16 is later; or

17 “(ii) conditioned its approval in such a
18 manner that the proposed construction or modi-
19 fication will not significantly reduce trans-
20 mission congestion in interstate commerce or is
21 not economically feasible;

22 “(2) the facilities to be authorized by the per-
23 mit will be used for the transmission of electric en-
24 ergy in interstate commerce;



1 “(3) the proposed construction or modification
2 is consistent with the public interest;

3 “(4) the proposed construction or modification
4 will significantly reduce transmission congestion in
5 interstate commerce and protects or benefits con-
6 sumers;

7 “(5) the proposed construction or modification
8 is consistent with sound national energy policy and
9 will enhance energy independence; and

10 “(6) the proposed modification will maximize,
11 to the extent reasonable and economical, the trans-
12 mission capabilities of existing towers or structures.

13 “(c) PERMIT APPLICATIONS.—(1) Permit applica-
14 tions under subsection (b) shall be made in writing to the
15 Commission.

16 “(2) The Commission shall issue rules specifying—

17 “(A) the form of the application;

18 “(B) the information to be contained in the ap-
19 plication; and

20 “(C) the manner of service of notice of the per-
21 mit application on interested persons.

22 “(d) COMMENTS.—In any proceeding before the
23 Commission under subsection (b), the Commission shall
24 afford each State in which a transmission facility covered
25 by the permit is or will be located, each affected Federal

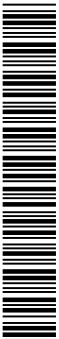


1 agency and Indian tribe, private property owners, and
2 other interested persons, a reasonable opportunity to
3 present their views and recommendations with respect to
4 the need for and impact of a facility covered by the permit.

5 “(e) RIGHTS-OF-WAY.—(1) In the case of a permit
6 under subsection (b) for electric transmission facilities to
7 be located on property other than property owned by the
8 United States or a State, if the permit holder cannot ac-
9 quire by contract, or is unable to agree with the owner
10 of the property to the compensation to be paid for, the
11 necessary right-of-way to construct or modify the trans-
12 mission facilities, the permit holder may acquire the right-
13 of-way by the exercise of the right of eminent domain in
14 the district court of the United States for the district in
15 which the property concerned is located, or in the appro-
16 priate court of the State in which the property is located.

17 “(2) Any right-of-way acquired under paragraph (1)
18 shall be used exclusively for the construction or modifica-
19 tion of electric transmission facilities within a reasonable
20 period of time after the acquisition.

21 “(3) The practice and procedure in any action or pro-
22 ceeding under this subsection in the district court of the
23 United States shall conform as nearly as practicable to
24 the practice and procedure in a similar action or pro-



1 ceeding in the courts of the State in which the property
2 is located.

3 “(f) COMPENSATION.—(1) Any right-of-way acquired
4 pursuant to subsection (e) shall be considered a taking of
5 private property for which just compensation is due.

6 “(2) Just compensation shall be an amount equal to
7 the fair market value (including applicable severance dam-
8 ages) of the property taken on the date of the exercise
9 of eminent domain authority.

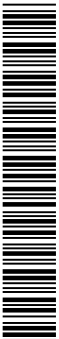
10 “(g) STATE LAW.—Nothing in this section precludes
11 any person from constructing or modifying any trans-
12 mission facility in accordance with State law.

13 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
14 FOR TRANSMISSION FACILITIES.—(1) In this subsection:

15 “(A) The term ‘Federal authorization’ means
16 any authorization required under Federal law in
17 order to site a transmission facility.

18 “(B) The term ‘Federal authorization’ includes
19 such permits, special use authorizations, certifi-
20 cations, opinions, or other approvals as may be re-
21 quired under Federal law in order to site a trans-
22 mission facility.

23 “(2) The Department of Energy shall act as the lead
24 agency for purposes of coordinating all applicable Federal



1 authorizations and related environmental reviews of the
2 facility.

3 “(3) To the maximum extent practicable under appli-
4 cable Federal law, the Secretary shall coordinate the Fed-
5 eral authorization and review process under this sub-
6 section with any Indian tribes, multistate entities, and
7 State agencies that are responsible for conducting any sep-
8 arate permitting and environmental reviews of the facility,
9 to ensure timely and efficient review and permit decisions.

10 “(4)(A) As head of the lead agency, the Secretary,
11 in consultation with agencies responsible for Federal au-
12 thorizations and, as appropriate, with Indian tribes,
13 multistate entities, and State agencies that are willing to
14 coordinate their own separate permitting and environ-
15 mental reviews with the Federal authorization and envi-
16 ronmental reviews, shall establish prompt and binding in-
17 termediate milestones and ultimate deadlines for the re-
18 view of, and Federal authorization decisions relating to,
19 the proposed facility.

20 “(B) The Secretary shall ensure that, once an appli-
21 cation has been submitted with such data as the Secretary
22 considers necessary, all permit decisions and related envi-
23 ronmental reviews under all applicable Federal laws shall
24 be completed—

25 “(i) within 1 year; or



1 “(ii) if a requirement of another provision of
2 Federal law does not permit compliance with clause
3 (i), as soon thereafter as is practicable.

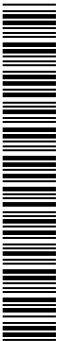
4 “(C) The Secretary shall provide an expeditious pre-
5 application mechanism for prospective applicants to confer
6 with the agencies involved to have each such agency deter-
7 mine and communicate to the prospective applicant not
8 later than 60 days after the prospective applicant submits
9 a request for such information concerning—

10 “(i) the likelihood of approval for a potential fa-
11 cility; and

12 “(ii) key issues of concern to the agencies and
13 public.

14 “(5)(A) As lead agency head, the Secretary, in con-
15 sultation with the affected agencies, shall prepare a single
16 environmental review document, which shall be used as the
17 basis for all decisions on the proposed project under Fed-
18 eral law.

19 “(B) The Secretary and the heads of other agencies
20 shall streamline the review and permitting of transmission
21 within corridors designated under section 503 of the Fed-
22 eral Land Policy and Management Act (43 U.S.C. 1763)
23 by fully taking into account prior analyses and decisions
24 relating to the corridors.



1 “(C) The document shall include consideration by the
2 relevant agencies of any applicable criteria or other mat-
3 ters as required under applicable law.

4 “(6)(A) If any agency has denied a Federal author-
5 ization required for a transmission facility, or has failed
6 to act by the deadline established by the Secretary pursu-
7 ant to this section for deciding whether to issue the au-
8 thorization, the applicant or any State in which the facility
9 would be located may file an appeal with the President,
10 who shall, in consultation with the affected agency, review
11 the denial or failure to take action on the pending applica-
12 tion.

13 “(B) Based on the overall record and in consultation
14 with the affected agency, the President may—

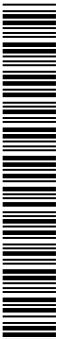
15 “(i) issue the necessary authorization with any
16 appropriate conditions; or

17 “(ii) deny the application.

18 “(C) The President shall issue a decision not later
19 than 90 days after the date of the filing of the appeal.

20 “(D) In making a decision under this paragraph, the
21 President shall comply with applicable requirements of
22 Federal law, including any requirements of—

23 “(i) the National Forest Management Act of
24 1976 (16 U.S.C. 472a et seq.);



1 “(ii) the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.);

3 “(iii) the Federal Water Pollution Control Act
4 (33 U.S.C. 1251 et seq.);

5 “(iv) the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.); and

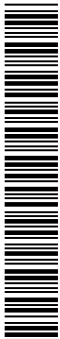
7 “(v) the Federal Land Policy and Management
8 Act of 1976 (43 U.S.C. 1701 et seq.).

9 “(7)(A) Not later than 18 months after the date of
10 enactment of this section, the Secretary shall issue any
11 regulations necessary to implement this subsection.

12 “(B)(i) Not later than 1 year after the date of enact-
13 ment of this section, the Secretary and the heads of all
14 Federal agencies with authority to issue Federal author-
15 izations shall enter into a memorandum of understanding
16 to ensure the timely and coordinated review and permit-
17 ting of electricity transmission facilities.

18 “(ii) Interested Indian tribes, multistate entities, and
19 State agencies may enter the memorandum of under-
20 standing.

21 “(C) The head of each Federal agency with authority
22 to issue a Federal authorization shall designate a senior
23 official responsible for, and dedicate sufficient other staff
24 and resources to ensure, full implementation of the regula-
25 tions and memorandum required under this paragraph.



1 “(8)(A) Each Federal land use authorization for an
2 electricity transmission facility shall be issued—

3 “(i) for a duration, as determined by the Sec-
4 retary, commensurate with the anticipated use of the
5 facility; and

6 “(ii) with appropriate authority to manage the
7 right-of-way for reliability and environmental protec-
8 tion.

9 “(B) On the expiration of the authorization (includ-
10 ing an authorization issued before the date of enactment
11 of this section), the authorization shall be reviewed for re-
12 newal taking fully into account reliance on such electricity
13 infrastructure, recognizing the importance of the author-
14 ization for public health, safety, and economic welfare and
15 as a legitimate use of Federal land.

16 “(9) In exercising the responsibilities under this sec-
17 tion, the Secretary shall consult regularly with—

18 “(A) the Federal Energy Regulatory Commis-
19 sion;

20 “(B) electric reliability organizations (including
21 related regional entities) approved by the Commis-
22 sion; and

23 “(C) Transmission Organizations approved by
24 the Commission.



1 “(i) INTERSTATE COMPACTS.—(1) The consent of
2 Congress is given for 3 or more contiguous States to enter
3 into an interstate compact, subject to approval by Con-
4 gress, establishing regional transmission siting agencies
5 to—

6 “(A) facilitate siting of future electric energy
7 transmission facilities within those States; and

8 “(B) carry out the electric energy transmission
9 siting responsibilities of those States.

10 “(2) The Secretary may provide technical assistance
11 to regional transmission siting agencies established under
12 this subsection.

13 “(3) The regional transmission siting agencies shall
14 have the authority to review, certify, and permit siting of
15 transmission facilities, including facilities in national in-
16 terest electric transmission corridors (other than facilities
17 on property owned by the United States).

18 “(4) The Commission shall have no authority to issue
19 a permit for the construction or modification of an electric
20 transmission facility within a State that is a party to a
21 compact, unless the members of the compact are in dis-
22 agreement and the Secretary makes, after notice and an
23 opportunity for a hearing, the finding described in sub-
24 section (b)(1)(C).



1 “(j) RELATIONSHIP TO OTHER LAWS.—(1) Except
2 as specifically provided, nothing in this section affects any
3 requirement of an environmental law of the United States,
4 including the National Environmental Policy Act of 1969
5 (42 U.S.C. 4321 et seq.).

6 “(2) Subsection (h)(6) shall not apply to any unit of
7 the National Park System, the National Wildlife Refuge
8 System, the National Wild and Scenic Rivers System, the
9 National Trails System, the National Wilderness Preser-
10 vation System, or a National Monument.

11 “(k) ERCOT.—This section shall not apply within
12 the area referred to in section 212(k)(2)(A).”.

13 (b) REPORTS TO CONGRESS ON CORRIDORS AND
14 RIGHTS OF WAY ON FEDERAL LANDS.—Not later than
15 90 days after the date of enactment of this Act, the Sec-
16 retary of the Interior, the Secretary, the Secretary of Agri-
17 culture, and the Chairman of the Council on Environ-
18 mental Quality shall submit to Congress a joint report
19 identifying—

20 (1)(A) all existing designated transmission and
21 distribution corridors on Federal land and the status
22 of work related to proposed transmission and dis-
23 tribution corridor designations under title V of the
24 Federal Land Policy and Management Act of 1976
25 (43 U.S.C. 1761 et seq.);



1 (B) the schedule for completing the work;

2 (C) any impediments to completing the work;

3 and

4 (D) steps that Congress could take to expedite
5 the process;

6 (2)(A) the number of pending applications to
7 locate transmission facilities on Federal land;

8 (B) key information relating to each such facil-
9 ity;

10 (C) how long each application has been pend-
11 ing;

12 (D) the schedule for issuing a timely decision as
13 to each facility; and

14 (E) progress in incorporating existing and new
15 such rights-of-way into relevant land use and re-
16 source management plans or the equivalent of those
17 plans; and

18 (3)(A) the number of existing transmission and
19 distribution rights-of-way on Federal land that will
20 come up for renewal within the following 5-, 10-,
21 and 15-year periods; and

22 (B) a description of how the Secretaries plan to
23 manage the renewals.



1 **SEC. 1222. THIRD-PARTY FINANCE.**

2 (a) EXISTING FACILITIES.—The Secretary, acting
3 through the Administrator of the Western Area Power Ad-
4 ministration (hereinafter in this section referred to as
5 “WAPA”), or through the Administrator of the South-
6 western Power Administration (hereinafter in this section
7 referred to as “SWPA”), or both, may design, develop,
8 construct, operate, maintain, or own, or participate with
9 other entities in designing, developing, constructing, oper-
10 ating, maintaining, or owning, an electric power trans-
11 mission facility and related facilities (“Project”) needed
12 to upgrade existing transmission facilities owned by
13 SWPA or WAPA if the Secretary, in consultation with the
14 applicable Administrator, determines that the proposed
15 Project—

16 (1)(A) is located in a national interest electric
17 transmission corridor designated under section
18 216(a) of the Federal Power Act and will reduce
19 congestion of electric transmission in interstate com-
20 merce; or

21 (B) is necessary to accommodate an actual or
22 projected increase in demand for electric trans-
23 mission capacity;

24 (2) is consistent with—

25 (A) transmission needs identified, in a
26 transmission expansion plan or otherwise, by



1 the appropriate Transmission Organization (as
2 defined in the Federal Power Act), if any, or
3 approved regional reliability organization; and

4 (B) efficient and reliable operation of the
5 transmission grid; and

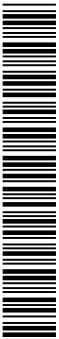
6 (3) would be operated in conformance with pru-
7 dent utility practice.

8 (b) NEW FACILITIES.—The Secretary, acting
9 through WAPA or SWPA, or both, may design, develop,
10 construct, operate, maintain, or own, or participate with
11 other entities in designing, developing, constructing, oper-
12 ating, maintaining, or owning, a new electric power trans-
13 mission facility and related facilities (“Project”) located
14 within any State in which WAPA or SWPA operates if
15 the Secretary, in consultation with the applicable Adminis-
16 trator, determines that the proposed Project—

17 (1)(A) is located in an area designated under
18 section 216(a) of the Federal Power Act and will re-
19 duce congestion of electric transmission in interstate
20 commerce; or

21 (B) is necessary to accommodate an actual or
22 projected increase in demand for electric trans-
23 mission capacity;

24 (2) is consistent with—



1 (A) transmission needs identified, in a
2 transmission expansion plan or otherwise, by
3 the appropriate Transmission Organization (as
4 defined in the Federal Power Act) if any, or ap-
5 proved regional reliability organization; and

6 (B) efficient and reliable operation of the
7 transmission grid;

8 (3) will be operated in conformance with pru-
9 dent utility practice;

10 (4) will be operated by, or in conformance with
11 the rules of, the appropriate (A) Transmission Orga-
12 nization, if any, or (B) if such an organization does
13 not exist, regional reliability organization; and

14 (5) will not duplicate the functions of existing
15 transmission facilities or proposed facilities which
16 are the subject of ongoing or approved siting and re-
17 lated permitting proceedings.

18 (c) OTHER FUNDS.—

19 (1) IN GENERAL.—In carrying out a Project
20 under subsection (a) or (b), the Secretary may ac-
21 cept and use funds contributed by another entity for
22 the purpose of carrying out the Project.

23 (2) AVAILABILITY.—The contributed funds
24 shall be available for expenditure for the purpose of
25 carrying out the Project—



1 (A) without fiscal year limitation; and

2 (B) as if the funds had been appropriated
3 specifically for that Project.

4 (3) ALLOCATION OF COSTS.—In carrying out a
5 Project under subsection (a) or (b), any costs of the
6 Project not paid for by contributions from another
7 entity shall be collected through rates charged to
8 customers using the new transmission capability pro-
9 vided by the Project and allocated equitably among
10 these project beneficiaries using the new trans-
11 mission capability.

12 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
13 this section affects any requirement of—

14 (1) any Federal environmental law, including
15 the National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.);

17 (2) any Federal or State law relating to the
18 siting of energy facilities; or

19 (3) any existing authorizing statutes.

20 (e) SAVINGS CLAUSE.—Nothing in this section shall
21 constrain or restrict an Administrator in the utilization
22 of other authority delegated to the Administrator of
23 WAPA or SWPA.

24 (f) SECRETARIAL DETERMINATIONS.—Any deter-
25 mination made pursuant to subsections (a) or (b) shall



1 be based on findings by the Secretary using the best avail-
2 able data.

3 (g) **MAXIMUM FUNDING AMOUNT.**—The Secretary
4 shall not accept and use more than \$100,000,000 under
5 subsection (c)(1) for the period encompassing fiscal years
6 2006 through 2015.

7 **SEC. 1223. ADVANCED TRANSMISSION TECHNOLOGIES.**

8 (a) **DEFINITION OF ADVANCED TRANSMISSION**
9 **TECHNOLOGY.**—In this section, the term “advanced
10 transmission technology” means a technology that in-
11 creases the capacity, efficiency, or reliability of an existing
12 or new transmission facility, including—

13 (1) high-temperature lines (including super-
14 conducting cables);

15 (2) underground cables;

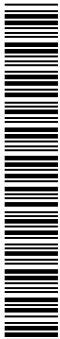
16 (3) advanced conductor technology (including
17 advanced composite conductors, high-temperature
18 low-sag conductors, and fiber optic temperature
19 sensing conductors);

20 (4) high-capacity ceramic electric wire, connec-
21 tors, and insulators;

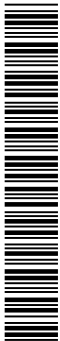
22 (5) optimized transmission line configurations
23 (including multiple phased transmission lines);

24 (6) modular equipment;

25 (7) wireless power transmission;



- 1 (8) ultra-high voltage lines;
- 2 (9) high-voltage DC technology;
- 3 (10) flexible AC transmission systems;
- 4 (11) energy storage devices (including pumped
- 5 hydro, compressed air, superconducting magnetic en-
- 6 ergy storage, flywheels, and batteries);
- 7 (12) controllable load;
- 8 (13) distributed generation (including PV, fuel
- 9 cells, and microturbines);
- 10 (14) enhanced power device monitoring;
- 11 (15) direct system state sensors;
- 12 (16) fiber optic technologies;
- 13 (17) power electronics and related software (in-
- 14 cluding real time monitoring and analytical soft-
- 15 ware);
- 16 (18) mobile transformers and mobile sub-
- 17 stations; and
- 18 (19) any other technologies the Commission
- 19 considers appropriate.
- 20 (b) **AUTHORITY.**—In carrying out the Federal Power
- 21 Act (16 U.S.C. 791a et seq.) and the Public Utility Regu-
- 22 latory Policies Act of 1978 (16 U.S.C. 2601 et seq.), the
- 23 Commission shall encourage, as appropriate, the deploy-
- 24 ment of advanced transmission technologies.



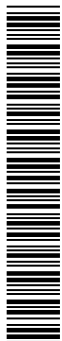
1 **SEC. 1224. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
2 **CENTIVE PROGRAM.**

3 (a) PROGRAM.—The Secretary is authorized to estab-
4 lish an Advanced Power System Technology Incentive Pro-
5 gram to support the deployment of certain advanced power
6 system technologies and to improve and protect certain
7 critical governmental, industrial, and commercial proc-
8 esses. Funds provided under this section shall be used by
9 the Secretary to make incentive payments to eligible own-
10 ers or operators of advanced power system technologies
11 to increase power generation through enhanced oper-
12 ational, economic, and environmental performance. Pay-
13 ments under this section may only be made upon receipt
14 by the Secretary of an incentive payment application es-
15 tablishing an applicant as either—

16 (1) a qualifying advanced power system tech-
17 nology facility; or

18 (2) a qualifying security and assured power fa-
19 cility.

20 (b) INCENTIVES.—Subject to availability of funds, a
21 payment of 1.8 cents per kilowatt-hour shall be paid to
22 the owner or operator of a qualifying advanced power sys-
23 tem technology facility under this section for electricity
24 generated at such facility. An additional 0.7 cents per kilo-
25 watt-hour shall be paid to the owner or operator of a quali-
26 fying security and assured power facility for electricity



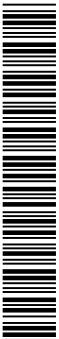
1 generated at such facility. Any facility qualifying under
2 this section shall be eligible for an incentive payment for
3 up to, but not more than, the first 10,000,000 kilowatt-
4 hours produced in any fiscal year.

5 (c) ELIGIBILITY.—For purposes of this section:

6 (1) QUALIFYING ADVANCED POWER SYSTEM
7 TECHNOLOGY FACILITY.—The term “qualifying ad-
8 vanced power system technology facility” means a
9 facility using an advanced fuel cell, turbine, or hy-
10 brid power system or power storage system to gen-
11 erate or store electric energy.

12 (2) QUALIFYING SECURITY AND ASSURED
13 POWER FACILITY.—The term “qualifying security
14 and assured power facility” means a qualifying ad-
15 vanced power system technology facility determined
16 by the Secretary, in consultation with the Secretary
17 of Homeland Security, to be in critical need of se-
18 cure, reliable, rapidly available, high-quality power
19 for critical governmental, industrial, or commercial
20 applications.

21 (d) AUTHORIZATION.—There are authorized to be ap-
22 propriated to the Secretary for the purposes of this sec-
23 tion, \$10,000,000 for each of the fiscal years 2006
24 through 2012.



1 **Subtitle C—Transmission**
2 **Operation Improvements**

3 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

4 Part II of the Federal Power Act (16 U.S.C. 824 et
5 seq.) is amended by inserting after section 211 (16 U.S.C.
6 824j) the following:

7 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
8 **TING UTILITIES.**

9 “(a) DEFINITION OF UNREGULATED TRANSMITTING
10 UTILITY.—In this section, the term ‘unregulated trans-
11 mitting utility’ means an entity that—

12 “(1) owns or operates facilities used for the
13 transmission of electric energy in interstate com-
14 merce; and

15 “(2) is an entity described in section 201(f).

16 “(b) TRANSMISSION OPERATION SERVICES.—Subject
17 to section 212(h), the Commission may, by rule or order,
18 require an unregulated transmitting utility to provide
19 transmission services—

20 “(1) at rates that are comparable to those that
21 the unregulated transmitting utility charges itself;
22 and

23 “(2) on terms and conditions (not relating to
24 rates) that are comparable to those under which the
25 unregulated transmitting utility provides trans-



1 mission services to itself and that are not unduly
2 discriminatory or preferential.

3 “(c) EXEMPTION.—The Commission shall exempt
4 from any rule or order under this section any unregulated
5 transmitting utility that—

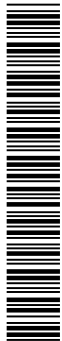
6 “(1) sells not more than 4,000,000 megawatt
7 hours of electricity per year;

8 “(2) does not own or operate any transmission
9 facilities that are necessary for operating an inter-
10 connected transmission system (or any portion of the
11 system); or

12 “(3) meets other criteria the Commission deter-
13 mines to be in the public interest.

14 “(d) LOCAL DISTRIBUTION FACILITIES.—The re-
15 quirements of subsection (b) shall not apply to facilities
16 used in local distribution.

17 “(e) EXEMPTION TERMINATION.—If the Commis-
18 sion, after an evidentiary hearing held on a complaint and
19 after giving consideration to reliability standards estab-
20 lished under section 215, finds on the basis of a prepon-
21 derance of the evidence that any exemption granted pursu-
22 ant to subsection (c) unreasonably impairs the continued
23 reliability of an interconnected transmission system, the
24 Commission shall revoke the exemption granted to the
25 transmitting utility.



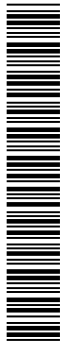
1 “(f) APPLICATION TO UNREGULATED TRANSMITTING
2 UTILITIES.—The rate changing procedures applicable to
3 public utilities under subsections (c) and (d) of section 205
4 are applicable to unregulated transmitting utilities for
5 purposes of this section.

6 “(g) REMAND.—In exercising authority under sub-
7 section (b)(1), the Commission may remand transmission
8 rates to an unregulated transmitting utility for review and
9 revision if necessary to meet the requirements of sub-
10 section (b).

11 “(h) OTHER REQUESTS.—The provision of trans-
12 mission services under subsection (b) does not preclude
13 a request for transmission services under section 211.

14 “(i) LIMITATION.—The Commission may not require
15 a State or municipality to take action under this section
16 that would violate a private activity bond rule for purposes
17 of section 141 of the Internal Revenue Code of 1986.

18 “(j) TRANSFER OF CONTROL OF TRANSMITTING FA-
19 CILITIES.—Nothing in this section authorizes the Commis-
20 sion to require an unregulated transmitting utility to
21 transfer control or operational control of its transmitting
22 facilities to a Transmission Organization that is des-
23 igned to provide nondiscriminatory transmission ac-
24 cess.”.



1 **SEC. 1232. FEDERAL UTILITY PARTICIPATION IN TRANS-**
2 **MISSION ORGANIZATIONS.**

3 (a) DEFINITIONS.—In this section—

4 (1) APPROPRIATE FEDERAL REGULATORY AU-
5 THORITY.—The term “appropriate Federal regu-
6 latory authority” means—

7 (A) in the case of a Federal power mar-
8 keting agency, the Secretary, except that the
9 Secretary may designate the Administrator of a
10 Federal power marketing agency to act as the
11 appropriate Federal regulatory authority with
12 respect to the transmission system of the Fed-
13 eral power marketing agency; and

14 (B) in the case of the Tennessee Valley
15 Authority, the Board of Directors of the Ten-
16 nessee Valley Authority.

17 (2) FEDERAL POWER MARKETING AGENCY.—
18 The term “Federal power marketing agency” has
19 the meaning given the term in section 3 of the Fed-
20 eral Power Act (16 U.S.C. 796).

21 (3) FEDERAL UTILITY.—The term “Federal
22 utility” means—

23 (A) a Federal power marketing agency; or

24 (B) the Tennessee Valley Authority.

25 (4) TRANSMISSION ORGANIZATION.—The term
26 “Transmission Organization” has the meaning given



1 the term in section 3 of the Federal Power Act (16
2 U.S.C. 796).

3 (5) TRANSMISSION SYSTEM.—The term “trans-
4 mission system” means an electric transmission fa-
5 cility owned, leased, or contracted for by the United
6 States and operated by a Federal utility.

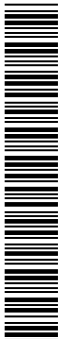
7 (b) TRANSFER.—The appropriate Federal regulatory
8 authority may enter into a contract, agreement, or other
9 arrangement transferring control and use of all or part
10 of the transmission system of a Federal utility to a Trans-
11 mission Organization.

12 (c) CONTENTS.—The contract, agreement, or ar-
13 rangement shall include—

14 (1) performance standards for operation and
15 use of the transmission system that the head of the
16 Federal utility determines are necessary or appro-
17 priate, including standards that ensure—

18 (A) recovery of all of the costs and ex-
19 penses of the Federal utility related to the
20 transmission facilities that are the subject of
21 the contract, agreement, or other arrangement;

22 (B) consistency with existing contracts and
23 third-party financing arrangements; and



1 (C) consistency with the statutory authori-
2 ties, obligations, and limitations of the Federal
3 utility;

4 (2) provisions for monitoring and oversight by
5 the Federal utility of the Transmission Organiza-
6 tion's terms and conditions of the contract, agree-
7 ment, or other arrangement, including a provision
8 for the resolution of disputes through arbitration or
9 other means with the Transmission Organization or
10 with other participants, notwithstanding the obliga-
11 tions and limitations of any other law regarding ar-
12 bitration; and

13 (3) a provision that allows the Federal utility to
14 withdraw from the Transmission Organization and
15 terminate the contract, agreement, or other arrange-
16 ment in accordance with its terms.

17 (d) COMMISSION.—Neither this section, actions taken
18 pursuant to this section, nor any other transaction of a
19 Federal utility participating in a Transmission Organiza-
20 tion shall confer on the Commission jurisdiction or author-
21 ity over—

22 (1) the electric generation assets, electric capac-
23 ity, or energy of the Federal utility that the Federal
24 utility is authorized by law to market; or



1 (2) the power sales activities of the Federal
2 utility.

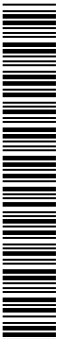
3 (e) EXISTING STATUTORY AND OTHER OBLIGA-
4 TIONS.—

5 (1) SYSTEM OPERATION REQUIREMENTS.—No
6 statutory provision requiring or authorizing a Fed-
7 eral utility to transmit electric power or to construct,
8 operate, or maintain the transmission system of the
9 Federal utility prohibits a transfer of control and
10 use of the transmission system pursuant to, and
11 subject to, the requirements of this section.

12 (2) OTHER OBLIGATIONS.—This subsection
13 does not—

14 (A) suspend, or exempt any Federal utility
15 from, any provision of Federal law in effect on
16 the date of enactment of this Act, including any
17 requirement or direction relating to the use of
18 the transmission system of the Federal utility,
19 environmental protection, fish and wildlife pro-
20 tection, flood control, navigation, water delivery,
21 or recreation; or

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



1 (3) CONFORMING AMENDMENT.—Section 311
2 of the Energy and Water Development Appropria-
3 tions Act, 2001 (16 U.S.C. 824n) is repealed.

4 **SEC. 1233. NATIVE LOAD SERVICE OBLIGATION.**

5 (a) IN GENERAL.—Part II of the Federal Power Act
6 (16 U.S.C. 824 et seq.) is amended by adding at the end
7 the following:

8 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) The term ‘distribution utility’ means an
11 electric utility that has a service obligation to end-
12 users or to a State utility or electric cooperative
13 that, directly or indirectly, through 1 or more addi-
14 tional State utilities or electric cooperatives, provides
15 electric service to end-users.

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

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



1 “(4) The term ‘State utility’ means a State or
2 any political subdivision of a State, or any agency,
3 authority, or instrumentality of any 1 or more of the
4 foregoing, or a corporation that is wholly owned, di-
5 rectly or indirectly, by any 1 or more of the fore-
6 going, competent to carry on the business of devel-
7 oping, transmitting, utilizing, or distributing power.

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

11 “(A) owns generation facilities, markets the
12 output of Federal generation facilities, or holds
13 rights under 1 or more wholesale contracts to pur-
14 chase electric energy, for the purpose of meeting a
15 service obligation; and

16 “(B) by reason of ownership of transmission fa-
17 cilities, or 1 or more contracts or service agreements
18 for firm transmission service, holds firm trans-
19 mission rights for delivery of the output of the gen-
20 eration facilities or the purchased energy to meet the
21 service obligation.

22 “(2) Any load-serving entity described in paragraph
23 (1) is entitled to use the firm transmission rights, or,
24 equivalent tradable or financial transmission rights, in
25 order to deliver the output or purchased energy, or the



1 output of other generating facilities or purchased energy
2 to the extent deliverable using the rights, to the extent
3 required to meet the service obligation of the load-serving
4 entity.

5 “(3)(A) To the extent that all or a portion of the
6 service obligation covered by the firm transmission rights
7 or equivalent tradable or financial transmission rights is
8 transferred to another load-serving entity, the successor
9 load-serving entity shall be entitled to use the firm trans-
10 mission rights or equivalent tradable or financial trans-
11 mission rights associated with the transferred service obli-
12 gation.

13 “(B) Subsequent transfers to another load-serving
14 entity, or back to the original load-serving entity, shall be
15 entitled to the same rights.

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



1 “(c) ALLOCATION OF TRANSMISSION RIGHTS.—
2 Nothing in subsections (b)(1), (b)(2) and (b)(3) of this
3 section shall affect any existing or future methodology em-
4 ployed by a Transmission Organization for allocating or
5 auctioning transmission rights if such Transmission Orga-
6 nization was authorized by the Commission to allocate or
7 auction financial transmission rights on its system as of
8 January 1, 2005, and the Commission determines that
9 any future allocation or auction is just, reasonable and
10 not unduly discriminatory or preferential, provided, how-
11 ever, that if such a Transmission Organization never allo-
12 cated financial transmission rights on its system that per-
13 tained to a period before January 1, 2005, with respect
14 to any application by such Transmission Organization that
15 would change its methodology the Commission shall exer-
16 cise its authority in a manner consistent with the Act and
17 that takes into account the policies expressed in sub-
18 sections (b)(1), (b)(2) and (b)(3) as applied to firm trans-
19 mission rights held by a load-serving entity as of January
20 1, 2005, to the extent the associated generation ownership
21 or power purchase arrangements remain in effect.

22 “(d) CERTAIN TRANSMISSION RIGHTS.—The Com-
23 mission may exercise authority under this Act to make
24 transmission rights not used to meet an obligation covered
25 by subsection (b) available to other entities in a manner

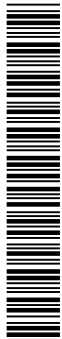


1 determined by the Commission to be just, reasonable, and
2 not unduly discriminatory or preferential.

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

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

24 “(g) WATER PUMPING FACILITIES.—The Commis-
25 sion shall ensure that any entity described in section



1 201(f) that owns transmission facilities used predomi-
2 nately to support its own water pumping facilities shall
3 have, with respect to the facilities, protections for trans-
4 mission service comparable to those provided to load-serv-
5 ing entities pursuant to this section.

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

8 “(i) JURISDICTION.—This section does not authorize
9 the Commission to take any action not otherwise within
10 the jurisdiction of the Commission.

11 “(j) TVA AREA.—(1) Subject to paragraphs (2) and
12 (3), for purposes of subsection (b)(1)(B), a load-serving
13 entity that is located within the service area of the Ten-
14 nessee Valley Authority and that has a firm wholesale
15 power supply contract with the Tennessee Valley Author-
16 ity shall be considered to hold firm transmission rights
17 for the transmission of the power provided.

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

20 “(3) The Commission shall not issue an order on the
21 basis of this subsection that is contrary to the purposes
22 of section 212(j).

23 “(k) EFFECT OF EXERCISING RIGHTS.—An entity
24 that to the extent required to meet its service obligations
25 exercises rights described in subsection (b) shall not be



1 considered by such action as engaging in undue discrimi-
2 nation or preference under this Act”.

3 (b) FERC RULEMAKING ON LONG-TERM TRANS-
4 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one
5 year after the date of enactment of this section and after
6 notice and an opportunity for comment, the Commission
7 shall by rule or order, implement section 217(b)(4) of the
8 Federal Power Act in Transmission Organizations, as de-
9 fined by that Act with organized electricity markets.

10 **SEC. 1234. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
11 **PATCH.**

12 (a) STUDY.—The Secretary, in coordination and con-
13 sultation with the States, shall conduct a study on—

14 (1) the procedures currently used by electric
15 utilities to perform economic dispatch;

16 (2) identifying possible revisions to those proce-
17 dures to improve the ability of nonutility generation
18 resources to offer their output for sale for the pur-
19 pose of inclusion in economic dispatch; and

20 (3) the potential benefits to residential, com-
21 mercial, and industrial electricity consumers nation-
22 ally and in each state if economic dispatch proce-
23 dures were revised to improve the ability of non-
24 utility generation resources to offer their output for
25 inclusion in economic dispatch.



1 (b) DEFINITION.—The term “economic dispatch”
2 when used in this section means the operation of genera-
3 tion facilities to produce energy at the lowest cost to reli-
4 ably serve consumers, recognizing any operational limits
5 of generation and transmission facilities.

6 (c) REPORT TO CONGRESS AND THE STATES.—Not
7 later than 90 days after the date of enactment of this Act,
8 and on a yearly basis following, the Secretary shall submit
9 a report to Congress and the States on the results of the
10 study conducted under subsection (a), including rec-
11 ommendations to Congress and the States for any sug-
12 gested legislative or regulatory changes.

13 **SEC. 1235. PROTECTION OF TRANSMISSION CONTRACTS IN**
14 **THE PACIFIC NORTHWEST.**

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

17 **“SEC. 218. PROTECTION OF TRANSMISSION CONTRACTS IN**
18 **THE PACIFIC NORTHWEST.**

19 “(a) DEFINITION OF ELECTRIC UTILITY OR PER-
20 SON.—In this section, the term ‘electric utility or person’
21 means an electric utility or person that—

22 “(1) as of the date of enactment of the Energy
23 Policy Act of 2005 holds firm transmission rights
24 pursuant to contract or by reason of ownership of
25 transmission facilities; and



1 “(2) is located—

2 “(A) in the Pacific Northwest, as that re-
3 gion is defined in section 3 of the Pacific
4 Northwest Electric Power Planning and Con-
5 servation Act (16 U.S.C. 839a); or

6 “(B) in that portion of a State included in
7 the geographic area proposed for a regional
8 transmission organization in Commission Dock-
9 et Number RT01–35 on the date on which that
10 docket was opened.

11 “(b) PROTECTION OF TRANSMISSION CONTRACTS.—
12 Nothing in this Act confers on the Commission the author-
13 ity to require an electric utility or person to convert to
14 tradable or financial rights—

15 “(1) firm transmission rights described in sub-
16 section (a); or

17 “(2) firm transmission rights obtained by exer-
18 cising contract or tariff rights associated with the
19 firm transmission rights described in subsection
20 (a).”.

21 **Subtitle D—Transmission Rate** 22 **Reform**

23 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

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



1 **“SEC. 219. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

2 “(a) RULEMAKING REQUIREMENT.—Not later than
3 1 year after the date of enactment of this section, the
4 Commission shall establish, by rule, incentive-based (in-
5 cluding performance-based) rate treatments for the trans-
6 mission of electric energy in interstate commerce by public
7 utilities for the purpose of benefiting consumers by ensur-
8 ing reliability and reducing the cost of delivered power by
9 reducing transmission congestion.

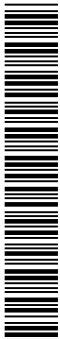
10 “(b) CONTENTS.—The rule shall—

11 “(1) promote reliable and economically efficient
12 transmission and generation of electricity by pro-
13 moting capital investment in the enlargement, im-
14 provement, maintenance, and operation of all facili-
15 ties for the transmission of electric energy in inter-
16 state commerce, regardless of the ownership of the
17 facilities;

18 “(2) provide a return on equity that attracts
19 new investment in transmission facilities (including
20 related transmission technologies);

21 “(3) encourage deployment of transmission
22 technologies and other measures to increase the ca-
23 pacity and efficiency of existing transmission facili-
24 ties and improve the operation of the facilities; and

25 “(4) allow recovery of—

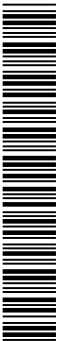


1 “(A) all prudently incurred costs necessary
2 to comply with mandatory reliability standards
3 issued pursuant to section 215; and

4 “(B) all prudently incurred costs related to
5 transmission infrastructure development pursu-
6 ant to section 216.

7 “(c) INCENTIVES.—In the rule issued under this sec-
8 tion, the Commission shall, to the extent within its juris-
9 diction, provide for incentives to each transmitting utility
10 or electric utility that joins a Transmission Organization.
11 The Commission shall ensure that any costs recoverable
12 pursuant to this subsection may be recovered by such util-
13 ity through the transmission rates charged by such utility
14 or through the transmission rates charged by the Trans-
15 mission Organization that provides transmission service to
16 such utility.

17 “(d) JUST AND REASONABLE RATES.—All rates ap-
18 proved under the rules adopted pursuant to this section,
19 including any revisions to the rules, are subject to the re-
20 quirements of sections 205 and 206 that all rates, charges,
21 terms, and conditions be just and reasonable and not un-
22 duly discriminatory or preferential.”.



1 **SEC. 1242. FUNDING NEW INTERCONNECTION AND TRANS-**
2 **MISSION UPGRADES.**

3 The Commission may approve a participant funding
4 plan that allocates costs related to transmission upgrades
5 or new generator interconnection, without regard to
6 whether an applicant is a member of a Commission-ap-
7 proved Transmission Organization, if the plan results in
8 rates that—

- 9 (1) are just and reasonable;
- 10 (2) are not unduly discriminatory or pref-
11 erential; and
- 12 (3) are otherwise consistent with sections 205
13 and 206 of the Federal Power Act (16 U.S.C. 824d,
14 824e).

15 **Subtitle E—Amendments to PURPA**

16 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

17 (a) ADOPTION OF STANDARDS.—Section 111(d) of
18 the Public Utility Regulatory Policies Act of 1978 (16
19 U.S.C. 2621(d)) is amended by adding at the end the fol-
20 lowing:

21 “(11) NET METERING.—Each electric utility
22 shall make available upon request net metering serv-
23 ice to any electric consumer that the electric utility
24 serves. For purposes of this paragraph, the term
25 ‘net metering service’ means service to an electric
26 consumer under which electric energy generated by



1 that electric consumer from an eligible on-site gener-
2 ating facility and delivered to the local distribution
3 facilities may be used to offset electric energy pro-
4 vided by the electric utility to the electric consumer
5 during the applicable billing period.

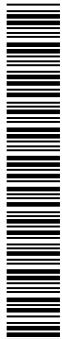
6 “(12) FUEL SOURCES.—Each electric utility
7 shall develop a plan to minimize dependence on 1
8 fuel source and to ensure that the electric energy it
9 sells to consumers is generated using a diverse range
10 of fuels and technologies, including renewable tech-
11 nologies.

12 “(13) FOSSIL FUEL GENERATION EFFI-
13 CIENCY.—Each electric utility shall develop and im-
14 plement a 10-year plan to increase the efficiency of
15 its fossil fuel generation.”.

16 (b) COMPLIANCE.—

17 (1) TIME LIMITATIONS.—Section 112(b) of the
18 Public Utility Regulatory Policies Act of 1978 (16
19 U.S.C. 2622(b)) is amended by adding at the end
20 the following:

21 “(3)(A) Not later than 2 years after the enactment
22 of this paragraph, each State regulatory authority (with
23 respect to each electric utility for which it has ratemaking
24 authority) and each nonregulated electric utility shall com-
25 mence the consideration referred to in section 111, or set



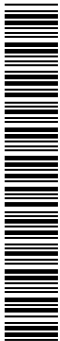
1 a hearing date for such consideration, with respect to each
2 standard established by paragraphs (11) through (13) of
3 section 111(d).

4 “(B) Not later than 3 years after the date of the en-
5 actment of this paragraph, each State regulatory authority
6 (with respect to each electric utility for which it has rate-
7 making authority), and each nonregulated electric utility,
8 shall complete the consideration, and shall make the deter-
9 mination, referred to in section 111 with respect to each
10 standard established by paragraphs (11) through (13) of
11 section 111(d).”.

12 (2) FAILURE TO COMPLY.—Section 112(c) of
13 the Public Utility Regulatory Policies Act of 1978
14 (16 U.S.C. 2622(c)) is amended by adding at the
15 end the following: “In the case of each standard es-
16 tablished by paragraphs (11) through (13) of section
17 111(d), the reference contained in this subsection to
18 the date of enactment of this Act shall be deemed
19 to be a reference to the date of enactment of such
20 paragraphs (11) through (13).” .

21 (3) PRIOR STATE ACTIONS.—

22 (A) IN GENERAL.—Section 112 of the
23 Public Utility Regulatory Policies Act of 1978
24 (16 U.S.C. 2622) is amended by adding at the
25 end the following:



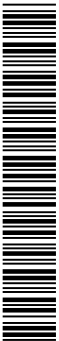
1 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
2 (c) of this section shall not apply to the standards estab-
3 lished by paragraphs (11) through (13) of section 111(d)
4 in the case of any electric utility in a State if, before the
5 enactment of this subsection—

6 “(1) the State has implemented for such utility
7 the standard concerned (or a comparable standard);

8 “(2) the State regulatory authority for such
9 State or relevant nonregulated electric utility has
10 conducted a proceeding to consider implementation
11 of the standard concerned (or a comparable stand-
12 ard) for such utility; or

13 “(3) the State legislature has voted on the im-
14 plementation of such standard (or a comparable
15 standard) for such utility.”.

16 (B) CROSS REFERENCE.—Section 124 of
17 such Act (16 U.S.C. 2634) is amended by add-
18 ing the following at the end thereof: “In the
19 case of each standard established by paragraphs
20 (11) through (13) of section 111(d), the ref-
21 erence contained in this subsection to the date
22 of enactment of this Act shall be deemed to be
23 a reference to the date of enactment of such
24 paragraphs (11) through (13).”.



1 **SEC. 1252. SMART METERING.**

2 (a) IN GENERAL.—Section 111(d) of the Public Util-
3 ity Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
4 is amended by adding at the end the following:

5 “(14) TIME-BASED METERING AND COMMU-
6 NICATIONS.—(A) Not later than 18 months after the
7 date of enactment of this paragraph, each electric
8 utility shall offer each of its customer classes, and
9 provide individual customers upon customer request,
10 a time-based rate schedule under which the rate
11 charged by the electric utility varies during different
12 time periods and reflects the variance, if any, in the
13 utility’s costs of generating and purchasing elec-
14 tricity at the wholesale level. The time-based rate
15 schedule shall enable the electric consumer to man-
16 age energy use and cost through advanced metering
17 and communications technology.

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

21 “(i) time-of-use pricing whereby electricity
22 prices are set for a specific time period on an
23 advance or forward basis, typically not changing
24 more often than twice a year, based on the util-
25 ity’s cost of generating and/or purchasing such
26 electricity at the wholesale level for the benefit

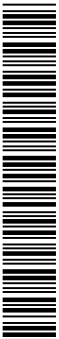


1 of the consumer. Prices paid for energy con-
2 sumed during these periods shall be pre-estab-
3 lished and known to consumers in advance of
4 such consumption, allowing them to vary their
5 demand and usage in response to such prices
6 and manage their energy costs by shifting
7 usage to a lower cost period or reducing their
8 consumption overall;

9 “(ii) critical peak pricing whereby time-of-
10 use prices are in effect except for certain peak
11 days, when prices may reflect the costs of gen-
12 erating and/or purchasing electricity at the
13 wholesale level and when consumers may receive
14 additional discounts for reducing peak period
15 energy consumption;

16 “(iii) real-time pricing whereby electricity
17 prices are set for a specific time period on an
18 advanced or forward basis, reflecting the util-
19 ity’s cost of generating and/or purchasing elec-
20 tricity at the wholesale level, and may change
21 as often as hourly; and

22 “(iv) credits for consumers with large loads
23 who enter into pre-established peak load reduc-
24 tion agreements that reduce a utility’s planned
25 capacity obligations.



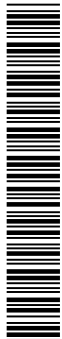
1 “(C) Each electric utility subject to subpara-
2 graph (A) shall provide each customer requesting a
3 time-based rate with a time-based meter capable of
4 enabling the utility and customer to offer and re-
5 ceive such rate, respectively.

6 “(D) For purposes of implementing this para-
7 graph, any reference contained in this section to the
8 date of enactment of the Public Utility Regulatory
9 Policies Act of 1978 shall be deemed to be a ref-
10 erence to the date of enactment of this paragraph.

11 “(E) In a State that permits third-party mar-
12 keters to sell electric energy to retail electric con-
13 sumers, such consumers shall be entitled to receive
14 the same time-based metering and communications
15 device and service as a retail electric consumer of
16 the electric utility.

17 “(F) Notwithstanding subsections (b) and (c) of
18 section 112, each State regulatory authority shall,
19 not later than 18 months after the date of enact-
20 ment of this paragraph conduct an investigation in
21 accordance with section 115(i) and issue a decision
22 whether it is appropriate to implement the standards
23 set out in subparagraphs (A) and (C).”.

24 (b) STATE INVESTIGATION OF DEMAND RESPONSE
25 AND TIME-BASED METERING.—Section 115 of the Public



1 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625)
2 is amended as follows:

3 (1) By inserting in subsection (b) after the
4 phrase “the standard for time-of-day rates estab-
5 lished by section 111(d)(3)” the following: “and the
6 standard for time-based metering and communica-
7 tions established by section 111(d)(14)”.

8 (2) By inserting in subsection (b) after the
9 phrase “are likely to exceed the metering” the fol-
10 lowing: “and communications”.

11 (3) By adding the at the end the following:
12 “(i) TIME-BASED METERING AND COMMUNICA-
13 TIONS.—In making a determination with respect to the
14 standard established by section 111(d)(14), the investiga-
15 tion requirement of section 111(d)(14)(F) shall be as fol-
16 lows: Each State regulatory authority shall conduct an in-
17 vestigation and issue a decision whether or not it is appro-
18 priate for electric utilities to provide and install time-based
19 meters and communications devices for each of their cus-
20 tomers which enable such customers to participate in time-
21 based pricing rate schedules and other demand response
22 programs.”.

23 (c) FEDERAL ASSISTANCE ON DEMAND RE-
24 SPONSE.—Section 132(a) of the Public Utility Regulatory
25 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by



1 striking “and” at the end of paragraph (3), striking the
2 period at the end of paragraph (4) and inserting “; and”,
3 and by adding the following at the end thereof:

4 “(5) technologies, techniques, and rate-making
5 methods related to advanced metering and commu-
6 nications and the use of these technologies, tech-
7 niques and methods in demand response programs.”.

8 (d) FEDERAL GUIDANCE.—Section 132 of the Public
9 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
10 is amended by adding the following at the end thereof:

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

13 “(1) educating consumers on the availability,
14 advantages, and benefits of advanced metering and
15 communications technologies, including the funding
16 of demonstration or pilot projects;

17 “(2) working with States, utilities, other energy
18 providers and advanced metering and communica-
19 tions experts to identify and address barriers to the
20 adoption of demand response programs; and

21 “(3) not later than 180 days after the date of
22 enactment of the Energy Policy Act of 2005, pro-
23 viding Congress with a report that identifies and
24 quantifies the national benefits of demand response



1 and makes a recommendation on achieving specific
2 levels of such benefits by January 1, 2007.”.

3 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
4 TION.—

5 (1) IN GENERAL.—It is the policy of the United
6 States to encourage States to coordinate, on a re-
7 gional basis, State energy policies to provide reliable
8 and affordable demand response services to the pub-
9 lic.

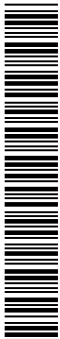
10 (2) TECHNICAL ASSISTANCE.—The Secretary
11 shall provide technical assistance to States and re-
12 gional organizations formed by 2 or more States to
13 assist them in—

14 (A) identifying the areas with the greatest
15 demand response potential;

16 (B) identifying and resolving problems in
17 transmission and distribution networks, includ-
18 ing through the use of demand response;

19 (C) developing plans and programs to use
20 demand response to respond to peak demand or
21 emergency needs; and

22 (D) identifying specific measures con-
23 sumers can take to participate in these demand
24 response programs.



1 (3) REPORT.—Not later than 1 year after the
2 date of enactment of the Energy Policy Act of 2005,
3 the Commission shall prepare and publish an annual
4 report, by appropriate region, that assesses demand
5 response resources, including those available from all
6 consumer classes, and which identifies and reviews—

7 (A) saturation and penetration rate of ad-
8 vanced meters and communications tech-
9 nologies, devices and systems;

10 (B) existing demand response programs
11 and time-based rate programs;

12 (C) the annual resource contribution of de-
13 mand resources;

14 (D) the potential for demand response as
15 a quantifiable, reliable resource for regional
16 planning purposes;

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



1 (F) regulatory barriers to improved cus-
2 tomer participation in demand response, peak
3 reduction and critical period pricing programs.

4 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
5 SPONSE DEVICES.—It is the policy of the United States
6 that time-based pricing and other forms of demand re-
7 sponse, whereby electricity customers are provided with
8 electricity price signals and the ability to benefit by re-
9 sponding to them, shall be encouraged, the deployment of
10 such technology and devices that enable electricity cus-
11 tomers to participate in such pricing and demand response
12 systems shall be facilitated, and unnecessary barriers to
13 demand response participation in energy, capacity and an-
14 cillary service markets shall be eliminated. It is further
15 the policy of the United States that the benefits of such
16 demand response that accrue to those not deploying such
17 technology and devices, but who are part of the same re-
18 gional electricity entity, shall be recognized.

19 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
20 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
21 2622(b)) is amended by adding at the end the following:

22 “(4)(A) Not later than 1 year after the enact-
23 ment of this paragraph, each State regulatory au-
24 thority (with respect to each electric utility for which
25 it has ratemaking authority) and each nonregulated



1 electric utility shall commence the consideration re-
2 ferred to in section 111, or set a hearing date for
3 such consideration, with respect to the standard es-
4 tablished by paragraph (14) of section 111(d).

5 “(B) Not later than 2 years after the date of
6 the enactment of this paragraph, each State regu-
7 latory authority (with respect to each electric utility
8 for which it has ratemaking authority), and each
9 nonregulated electric utility, shall complete the con-
10 sideration, and shall make the determination, re-
11 ferred to in section 111 with respect to the standard
12 established by paragraph (14) of section 111(d).”.

13 (h) FAILURE TO COMPLY.—Section 112(c) of the
14 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
15 2622(c)) is amended by adding at the end the following:

16 “ In the case of the standard established by para-
17 graph (14) of section 111(d), the reference contained in
18 this subsection to the date of enactment of this Act shall
19 be deemed to be a reference to the date of enactment of
20 such paragraph (14).”.

21 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
22 TERING STANDARDS.—

23 (1) IN GENERAL.—Section 112 of the Public
24 Utility Regulatory Policies Act of 1978 (16 U.S.C.



1 2622) is amended by adding at the end the fol-
2 lowing:

3 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
4 (c) of this section shall not apply to the standard estab-
5 lished by paragraph (14) of section 111(d) in the case of
6 any electric utility in a State if, before the enactment of
7 this subsection—

8 “(1) the State has implemented for such utility
9 the standard concerned (or a comparable standard);

10 “(2) the State regulatory authority for such
11 State or relevant nonregulated electric utility has
12 conducted a proceeding to consider implementation
13 of the standard concerned (or a comparable stand-
14 ard) for such utility within the previous 3 years; or

15 “(3) the State legislature has voted on the im-
16 plementation of such standard (or a comparable
17 standard) for such utility within the previous 3
18 years.”.

19 (2) CROSS REFERENCE.—Section 124 of such
20 Act (16 U.S.C. 2634) is amended by adding the fol-
21 lowing at the end thereof: “In the case of the stand-
22 ard established by paragraph (14) of section 111(d),
23 the reference contained in this subsection to the date
24 of enactment of this Act shall be deemed to be a ref-



1 erence to the date of enactment of such paragraph
2 (14).”.

3 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
4 **TION PURCHASE AND SALE REQUIREMENTS.**

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

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

11 “(1) **OBLIGATION TO PURCHASE.**—After the
12 date of enactment of this subsection, no electric util-
13 ity shall be required to enter into a new contract or
14 obligation to purchase electric energy from a quali-
15 fying cogeneration facility or a qualifying small
16 power production facility under this section if the
17 Commission finds that the qualifying cogeneration
18 facility or qualifying small power production facility
19 has nondiscriminatory access to—

20 “(A)(i) independently administered, auc-
21 tion-based day ahead and real time wholesale
22 markets for the sale of electric energy; and (ii)
23 wholesale markets for long-term sales of capac-
24 ity and electric energy; or



1 “(B)(i) transmission and interconnection
2 services that are provided by a Commission-ap-
3 proved regional transmission entity and admin-
4 istered pursuant to an open access transmission
5 tariff that affords nondiscriminatory treatment
6 to all customers; and (ii) competitive wholesale
7 markets that provide a meaningful opportunity
8 to sell capacity, including long-term and short-
9 term sales, and electric energy, including long-
10 term, short-term and real-time sales, to buyers
11 other than the utility to which the qualifying fa-
12 cility is interconnected. In determining whether
13 a meaningful opportunity to sell exists, the
14 Commission shall consider, among other fac-
15 tors, evidence of transactions within the rel-
16 evant market; or

17 “(C) wholesale markets for the sale of ca-
18 pacity and electric energy that are, at a min-
19 imum, of comparable competitive quality as
20 markets described in subparagraphs (A) and
21 (B).

22 “(2) REVISED PURCHASE AND SALE OBLIGA-
23 TION FOR NEW FACILITIES.—(A) After the date of
24 enactment of this subsection, no electric utility shall
25 be required pursuant to this section to enter into a



1 new contract or obligation to purchase from or sell
2 electric energy to a facility that is not an existing
3 qualifying cogeneration facility unless the facility
4 meets the criteria for qualifying cogeneration facili-
5 ties established by the Commission pursuant to the
6 rulemaking required by subsection (n).

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

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

12 “(ii) had filed with the Commission a no-
13 tice of self-certification, self recertification or
14 an application for Commission certification
15 under 18 C.F.R. 292.207 prior to the date on
16 which the Commission issues the final rule re-
17 quired by subsection (n).

18 “(3) COMMISSION REVIEW.—Any electric utility
19 may file an application with the Commission for re-
20 lief from the mandatory purchase obligation pursu-
21 ant to this subsection on a service territory-wide
22 basis. Such application shall set forth the factual
23 basis upon which relief is requested and describe
24 why the conditions set forth in subparagraphs (A),
25 (B) or (C) of paragraph (1) of this subsection have



1 been met. After notice, including sufficient notice to
2 potentially affected qualifying cogeneration facilities
3 and qualifying small power production facilities, and
4 an opportunity for comment, the Commission shall
5 make a final determination within 90 days of such
6 application regarding whether the conditions set
7 forth in subparagraphs (A), (B) or (C) of paragraph
8 (1) have been met.

9 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
10 CHASE.—At any time after the Commission makes a
11 finding under paragraph (3) relieving an electric
12 utility of its obligation to purchase electric energy,
13 a qualifying cogeneration facility, a qualifying small
14 power production facility, a State agency, or any
15 other affected person may apply to the Commission
16 for an order reinstating the electric utility’s obliga-
17 tion to purchase electric energy under this section.
18 Such application shall set forth the factual basis
19 upon which the application is based and describe
20 why the conditions set forth in subparagraphs (A),
21 (B) or (C) of paragraph (1) of this subsection are
22 no longer met. After notice, including sufficient no-
23 tice to potentially affected utilities, and opportunity
24 for comment, the Commission shall issue an order
25 within 90 days of such application reinstating the



1 electric utility's obligation to purchase electric en-
2 ergy under this section if the Commission finds that
3 the conditions set forth in subparagraphs (A), (B) or
4 (C) of paragraph (1) which relieved the obligation to
5 purchase, are no longer met.

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

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

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

20 “(6) NO EFFECT ON EXISTING RIGHTS AND
21 REMEDIES.—Nothing in this subsection affects the
22 rights or remedies of any party under any contract
23 or obligation, in effect or pending approval before
24 the appropriate State regulatory authority or non-
25 regulated electric utility on the date of enactment of



1 this subsection, to purchase electric energy or capac-
2 ity from or to sell electric energy or capacity to a
3 qualifying cogeneration facility or qualifying small
4 power production facility under this Act (including
5 the right to recover costs of purchasing electric en-
6 ergy or capacity).

7 “(7) RECOVERY OF COSTS.—(A) The Commis-
8 sion shall issue and enforce such regulations as are
9 necessary to ensure that an electric utility that pur-
10 chases electric energy or capacity from a qualifying
11 cogeneration facility or qualifying small power pro-
12 duction facility in accordance with any legally en-
13 forceable obligation entered into or imposed under
14 this section recovers all prudently incurred costs as-
15 sociated with the purchase.

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

20 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
21 TIES.—(1)(A) Not later than 180 days after the date of
22 enactment of this section, the Commission shall issue a
23 rule revising the criteria in 18 C.F.R. 292.205 for new
24 qualifying cogeneration facilities seeking to sell electric en-
25 ergy pursuant to section 210 of this Act to ensure—



1 “(i) that the thermal energy output of a new
2 qualifying cogeneration facility is used in a produc-
3 tive and beneficial manner;

4 “(ii) the electrical, thermal, and chemical out-
5 put of the cogeneration facility is used fundamen-
6 tally for industrial, commercial, or institutional pur-
7 poses and is not intended fundamentally for sale to
8 an electric utility, taking into account technological,
9 efficiency, economic, and variable thermal energy re-
10 quirements, as well as State laws applicable to sales
11 of electric energy from a qualifying facility to its
12 host facility; and

13 “(iii) continuing progress in the development of
14 efficient electric energy generating technology.

15 “(B) The rule issued pursuant to paragraph (1)(A)
16 of this subsection shall be applicable only to facilities that
17 seek to sell electric energy pursuant to section 210 of this
18 Act. For all other purposes, except as specifically provided
19 in subsection (m)(2)(A), qualifying facility status shall be
20 determined in accordance with the rules and regulations
21 of this Act.

22 “(2) Notwithstanding rule revisions under paragraph
23 (1), the Commission’s criteria for qualifying cogeneration
24 facilities in effect prior to the date on which the Commis-



1 sion issues the final rule required by paragraph (1) shall
2 continue to apply to any cogeneration facility that—

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

5 “(B) had filed with the Commission a notice of
6 self-certification, self-recertification or an application
7 for Commission certification under 18 C.F.R.
8 292.207 prior to the date on which the Commission
9 issues the final rule required by paragraph (1).”.

10 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

11 (1) QUALIFYING SMALL POWER PRODUCTION
12 FACILITY.—Section 3(17)(C) of the Federal Power
13 Act (16 U.S.C. 796(17)(C)) is amended to read as
14 follows:

15 “(C) ‘qualifying small power production fa-
16 cility’ means a small power production facility
17 that the Commission determines, by rule, meets
18 such requirements (including requirements re-
19 specting fuel use, fuel efficiency, and reliability)
20 as the Commission may, by rule, prescribe;”.

21 (2) QUALIFYING COGENERATION FACILITY.—
22 Section 3(18)(B) of the Federal Power Act (16
23 U.S.C. 796(18)(B)) is amended to read as follows:

24 “(B) ‘qualifying cogeneration facility’
25 means a cogeneration facility that the Commis-



1 sion determines, by rule, meets such require-
2 ments (including requirements respecting min-
3 imum size, fuel use, and fuel efficiency) as the
4 Commission may, by rule, prescribe;”.

5 **SEC. 1254. INTERCONNECTION.**

6 (a) ADOPTION OF STANDARDS.—Section 111(d) of
7 the Public Utility Regulatory Policies Act of 1978 (16
8 U.S.C. 2621 (d)) is amended by adding at the end the
9 following:

10 “(15) INTERCONNECTION.—Each electric utility
11 shall make available, upon request, interconnection
12 service to any electric consumer that the electric
13 utility serves. For purposes of this paragraph, the
14 term ‘interconnection service’ means service to an
15 electric consumer under which an on-site generating
16 facility on the consumer’s premises shall be con-
17 nected to the local distribution facilities. Inter-
18 connection services shall be offered based upon the
19 standards developed by the Institute of Electrical
20 and Electronics Engineers: IEEE Standard 1547 for
21 Interconnecting Distributed Resources with Electric
22 Power Systems, as they may be amended from time
23 to time. In addition, agreements and procedures
24 shall be established whereby the services are offered
25 shall promote current best practices of interconnec-



1 tion for distributed generation, including but not
2 limited to practices stipulated in model codes adopt-
3 ed by associations of state regulatory agencies. All
4 such agreements and procedures shall be just and
5 reasonable, and not unduly discriminatory or pref-
6 erential.”.

7 (b) COMPLIANCE.—

8 (1) TIME LIMITATIONS.—Section 112(b) of the
9 Public Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2622(b)) is amended by adding at the end
11 the following:

12 “(5)(A) Not later than one year after the enact-
13 ment of this paragraph, each State regulatory au-
14 thority (with respect to each electric utility for which
15 it has ratemaking authority) and each nonregulated
16 utility shall commence the consideration referred to
17 in section 111, or set a hearing date for consider-
18 ation, with respect to the standard established by
19 paragraph (15) of section 111(d).

20 “(B) Not later than two years after the date of
21 the enactment of the this paragraph, each State reg-
22 ulatory authority (with respect to each electric utility
23 for which it has ratemaking authority), and each
24 nonregulated electric utility, shall complete the con-
25 sideration, and shall make the determination, re-



1 ferred to in section 111 with respect to each stand-
2 ard established by paragraph (15) of section
3 111(d).”.

4 (2) FAILURE TO COMPLY.—Section 112(d) of
5 the Public Utility Regulatory Policies Act of 1978
6 (16 U.S.C. 2622 (c)) is amended by adding at the
7 end the following: “In the case of the standard es-
8 tablished by paragraph (15), the reference contained
9 in this subsection to the date of enactment of this
10 Act shall be deemed to be a reference to the date of
11 enactment of paragraph (15).”.

12 (3) PRIOR STATE ACTIONS.—

13 (A) IN GENERAL.—Section 112 of the
14 Public Utility Regulatory Policies Act of 1978
15 (16 U.S.C. 2622) is amended by adding at the
16 end the following:

17 “(f) PRIOR STATE ACTIONS.—Subsections (b) and
18 (c) of this section shall not apply to the standard estab-
19 lished by paragraph (15) of section 111(d) in the case of
20 any electric utility in a State if, before the enactment of
21 this subsection—

22 “(1) the State has implemented for such utility
23 the standard concerned (or a comparable standard);

24 “(2) the State regulatory authority for such
25 State or relevant nonregulated electric utility has



1 conducted a proceeding to consider implementation
2 of the standard concerned (or a comparable stand-
3 ard) for such utility; or

4 “(3) the State legislature has voted on the im-
5 plementation of such standard (or a comparable
6 standard) for such utility.”.

7 (B) CROSS REFERENCE.—Section 124 of
8 such Act (16 U.S.C. 2634) is amended by add-
9 ing the following at the end thereof: “In the
10 case of each standard established by paragraph
11 (15) of section 111(d), the reference contained
12 in this subsection to the date of enactment of
13 the Act shall be deemed to be a reference to the
14 date of enactment of paragraph (15).”.

15 **Subtitle F—Repeal of PUHCA**

16 **SEC. 1261. SHORT TITLE.**

17 This subtitle may be cited as the “Public Utility
18 Holding Company Act of 2005”.

19 **SEC. 1262. DEFINITIONS.**

20 For purposes of this subtitle:

21 (1) AFFILIATE.—The term “affiliate” of a com-
22 pany means any company, 5 percent or more of the
23 outstanding voting securities of which are owned,
24 controlled, or held with power to vote, directly or in-
25 directly, by such company.



1 (2) ASSOCIATE COMPANY.—The term “associate
2 company” of a company means any company in the
3 same holding company system with such company.

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

6 (4) COMPANY.—The term “company” means a
7 corporation, partnership, association, joint stock
8 company, business trust, or any organized group of
9 persons, whether incorporated or not, or a receiver,
10 trustee, or other liquidating agent of any of the fore-
11 going.

12 (5) ELECTRIC UTILITY COMPANY.—The term
13 “electric utility company” means any company that
14 owns or operates facilities used for the generation,
15 transmission, or distribution of electric energy for
16 sale.

17 (6) EXEMPT WHOLESALE GENERATOR AND
18 FOREIGN UTILITY COMPANY.—The terms “exempt
19 wholesale generator” and “foreign utility company”
20 have the same meanings as in sections 32 and 33,
21 respectively, of the Public Utility Holding Company
22 Act of 1935 (15 U.S.C. 79z-5a, 79z-5b), as those
23 sections existed on the day before the effective date
24 of this subtitle.

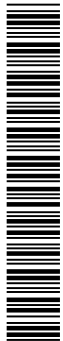


1 (7) GAS UTILITY COMPANY.—The term “gas
2 utility company” means any company that owns or
3 operates facilities used for distribution at retail
4 (other than the distribution only in enclosed portable
5 containers or distribution to tenants or employees of
6 the company operating such facilities for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

9 (8) HOLDING COMPANY.—The term “holding
10 company” means—

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

16 (B) any person, determined by the Com-
17 mission, after notice and opportunity for hear-
18 ing, to exercise directly or indirectly (either
19 alone or pursuant to an arrangement or under-
20 standing with 1 or more persons) such a con-
21 trolling influence over the management or poli-
22 cies of any public-utility company or holding
23 company as to make it necessary or appropriate
24 for the rate protection of utility customers with
25 respect to rates that such person be subject to



1 the obligations, duties, and liabilities imposed
2 by this subtitle upon holding companies.

3 (9) HOLDING COMPANY SYSTEM.—The term
4 “holding company system” means a holding com-
5 pany, together with its subsidiary companies.

6 (10) JURISDICTIONAL RATES.—The term “ju-
7 risdictional rates” means rates accepted or estab-
8 lished by the Commission for the transmission of
9 electric energy in interstate commerce, the sale of
10 electric energy at wholesale in interstate commerce,
11 the transportation of natural gas in interstate com-
12 merce, and the sale in interstate commerce of nat-
13 ural gas for resale for ultimate public consumption
14 for domestic, commercial, industrial, or any other
15 use.

16 (11) NATURAL GAS COMPANY.—The term “nat-
17 ural gas company” means a person engaged in the
18 transportation of natural gas in interstate commerce
19 or the sale of such gas in interstate commerce for
20 resale.

21 (12) PERSON.—The term “person” means an
22 individual or company.

23 (13) PUBLIC UTILITY.—The term “public util-
24 ity” means any person who owns or operates facili-
25 ties used for transmission of electric energy in inter-



1 state commerce or sales of electric energy at whole-
2 sale in interstate commerce.

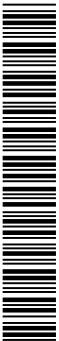
3 (14) PUBLIC-UTILITY COMPANY.—The term
4 “public-utility company” means an electric utility
5 company or a gas utility company.

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

12 (16) SUBSIDIARY COMPANY.—The term “sub-
13 sidiary company” of a holding company means—

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

19 (B) any person, the management or poli-
20 cies of which the Commission, after notice and
21 opportunity for hearing, determines to be sub-
22 ject to a controlling influence, directly or indi-
23 rectly, by such holding company (either alone or
24 pursuant to an arrangement or understanding
25 with 1 or more other persons) so as to make it



1 necessary for the rate protection of utility cus-
2 tomers with respect to rates that such person
3 be subject to the obligations, duties, and liabil-
4 ities imposed by this subtitle upon subsidiary
5 companies of holding companies.

6 (17) VOTING SECURITY.—The term “voting se-
7 curity” means any security presently entitling the
8 owner or holder thereof to vote in the direction or
9 management of the affairs of a company.

10 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
11 **PANY ACT OF 1935.**

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

14 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

15 (a) IN GENERAL.—Each holding company and each
16 associate company thereof shall maintain, and shall make
17 available to the Commission, such books, accounts, memo-
18 randa, and other records as the Commission determines
19 are relevant to costs incurred by a public utility or natural
20 gas company that is an associate company of such holding
21 company and necessary or appropriate for the protection
22 of utility customers with respect to jurisdictional rates.

23 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
24 ing company or of any subsidiary company of a holding
25 company shall maintain, and shall make available to the



1 Commission, such books, accounts, memoranda, and other
2 records with respect to any transaction with another affil-
3 iate, as the Commission determines are relevant to costs
4 incurred by a public utility or natural gas company that
5 is an associate company of such holding company and nec-
6 essary or appropriate for the protection of utility cus-
7 tomers with respect to jurisdictional rates.

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

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

23 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

24 (a) IN GENERAL.—Upon the written request of a
25 State commission having jurisdiction to regulate a public-



1 utility company in a holding company system, the holding
2 company or any associate company or affiliate thereof,
3 other than such public-utility company, wherever located,
4 shall produce for inspection books, accounts, memoranda,
5 and other records that—

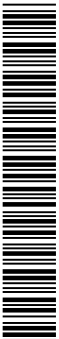
6 (1) have been identified in reasonable detail in
7 a proceeding before the State commission;

8 (2) the State commission determines are rel-
9 evant to costs incurred by such public-utility com-
10 pany; and

11 (3) are necessary for the effective discharge of
12 the responsibilities of the State commission with re-
13 spect to such proceeding.

14 (b) LIMITATION.—Subsection (a) does not apply to
15 any person that is a holding company solely by reason of
16 ownership of 1 or more qualifying facilities under the Pub-
17 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
18 2601 et seq.).

19 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
20 duction of books, accounts, memoranda, and other records
21 under subsection (a) shall be subject to such terms and
22 conditions as may be necessary and appropriate to safe-
23 guard against unwarranted disclosure to the public of any
24 trade secrets or sensitive commercial information.



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

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

11 **SEC. 1266. EXEMPTION AUTHORITY.**

12 (a) RULEMAKING.—Not later than 90 days after the
13 effective date of this subtitle, the Commission shall issue
14 a final rule to exempt from the requirements of section
15 1264 (relating to Federal access to books and records) any
16 person that is a holding company, solely with respect to
17 1 or more—

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

21 (2) exempt wholesale generators; or

22 (3) foreign utility companies.

23 (b) OTHER AUTHORITY.—The Commission shall ex-
24 empt a person or transaction from the requirements of
25 section 1264 (relating to Federal access to books and



1 records) if, upon application or upon the motion of the
2 Commission—

3 (1) the Commission finds that the books, ac-
4 counts, memoranda, and other records of any person
5 are not relevant to the jurisdictional rates of a pub-
6 lic utility or natural gas company; or

7 (2) the Commission finds that any class of
8 transactions is not relevant to the jurisdictional
9 rates of a public utility or natural gas company.

10 **SEC. 1267. AFFILIATE TRANSACTIONS.**

11 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
12 ing in this subtitle shall limit the authority of the Commis-
13 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
14 to require that jurisdictional rates are just and reasonable,
15 including the ability to deny or approve the pass through
16 of costs, the prevention of cross-subsidization, and the
17 issuance of such rules and regulations as are necessary
18 or appropriate for the protection of utility consumers.

19 (b) RECOVERY OF COSTS.—Nothing in this subtitle
20 shall preclude the Commission or a State commission from
21 exercising its jurisdiction under otherwise applicable law
22 to determine whether a public-utility company, public util-
23 ity, or natural gas company may recover in rates any costs
24 of an activity performed by an associate company, or any



1 costs of goods or services acquired by such public-utility
2 company from an associate company.

3 **SEC. 1268. APPLICABILITY.**

4 Except as otherwise specifically provided in this sub-
5 title, no provision of this subtitle shall apply to, or be
6 deemed to include—

7 (1) the United States;

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

10 (3) any foreign governmental authority not op-
11 erating in the United States;

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

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

18 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

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

22 **SEC. 1270. ENFORCEMENT.**

23 The Commission shall have the same powers as set
24 forth in sections 306 through 317 of the Federal Power



1 Act (16 U.S.C. 825e–825p) to enforce the provisions of
2 this subtitle.

3 **SEC. 1271. SAVINGS PROVISIONS.**

4 (a) IN GENERAL.—Nothing in this subtitle, or other-
5 wise in the Public Utility Holding Company Act of 1935,
6 or rules, regulations, or orders thereunder, prohibits a per-
7 son from engaging in or continuing to engage in activities
8 or transactions in which it is legally engaged or authorized
9 to engage on the date of enactment of this Act, if that
10 person continues to comply with the terms (other than an
11 expiration date or termination date) of any such author-
12 ization, whether by rule or by order.

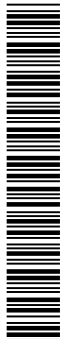
13 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
14 Nothing in this subtitle limits the authority of the Com-
15 mission under the Federal Power Act (16 U.S.C. 791a et
16 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

17 **SEC. 1272. IMPLEMENTATION.**

18 Not later than 4 months after the date of enactment
19 of this subtitle, the Commission shall—

20 (1) issue such regulations as may be necessary
21 or appropriate to implement this subtitle (other than
22 section 1265, relating to State access to books and
23 records); and

24 (2) submit to Congress detailed recommenda-
25 tions on technical and conforming amendments to



1 Federal law necessary to carry out this subtitle and
2 the amendments made by this subtitle.

3 **SEC. 1273. TRANSFER OF RESOURCES.**

4 All books and records that relate primarily to the
5 functions transferred to the Commission under this sub-
6 title shall be transferred from the Securities and Exchange
7 Commission to the Commission.

8 **SEC. 1274. EFFECTIVE DATE.**

9 (a) IN GENERAL.—Except for section 1272 (relating
10 to implementation), this subtitle shall take effect 6 months
11 after the date of enactment of this subtitle.

12 (b) COMPLIANCE WITH CERTAIN RULES.—If the
13 Commission approves and makes effective any final rule-
14 making modifying the standards of conduct governing en-
15 tities that own, operate, or control facilities for trans-
16 mission of electricity in interstate commerce or transpor-
17 tation of natural gas in interstate commerce prior to the
18 effective date of this subtitle, any action taken by a public-
19 utility company or utility holding company to comply with
20 the requirements of such rulemaking shall not subject
21 such public-utility company or utility holding company to
22 any regulatory requirement applicable to a holding com-
23 pany under the Public Utility Holding Company Act of
24 1935 (15 U.S.C. 79 et seq.).

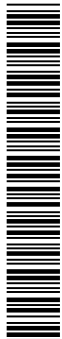


1 **SEC. 1275. SERVICE ALLOCATION.**

2 (a) FERC REVIEW.—In the case of non-power goods
3 or administrative or management services provided by an
4 associate company organized specifically for the purpose
5 of providing such goods or services to any public utility
6 in the same holding company system, at the election of
7 the system or a State commission having jurisdiction over
8 the public utility, the Commission, after the effective date
9 of this subtitle, shall review and authorize the allocation
10 of the costs for such goods or services to the extent rel-
11 evant to that associate company in order to assure that
12 each allocation is appropriate for the protection of inves-
13 tors and consumers of such public utility.

14 (b) COST ALLOCATION.—Nothing in this section shall
15 preclude the Commission or a State commission from exer-
16 cising its jurisdiction under other applicable law with re-
17 spect to the review or authorization of any costs allocated
18 to a public utility in a holding company system located
19 in the affected State as a result of the acquisition of non-
20 power goods or administrative and management services
21 by such public utility from an associate company orga-
22 nized specifically for that purpose.

23 (c) RULES.—Not later than 6 months after the date
24 of enactment of this Act, the Commission shall issue rules
25 (which rules shall be effective no earlier than the effective
26 date of this subtitle) to exempt from the requirements of



1 this section any company in a holding company system
2 whose public utility operations are confined substantially
3 to a single State and any other class of transactions that
4 the Commission finds is not relevant to the jurisdictional
5 rates of a public utility.

6 (d) PUBLIC UTILITY.—As used in this section, the
7 term “public utility” has the meaning given that term in
8 section 201(e) of the Federal Power Act.

9 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated such funds
11 as may be necessary to carry out this subtitle.

12 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
13 **POWER ACT.**

14 (a) CONFLICT OF JURISDICTION.—Section 318 of the
15 Federal Power Act (16 U.S.C. 825q) is repealed.

16 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
17 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
18 ing “1935” and inserting “2005”.

19 (2) Section 214 of the Federal Power Act (16 U.S.C.
20 824m) is amended by striking “1935” and inserting
21 “2005”.



1 **Subtitle G—Market Transparency,**
2 **Enforcement, and Consumer**
3 **Protection**

4 **SEC. 1281. MARKET TRANSPARENCY RULES.**

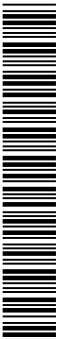
5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 220. MARKET TRANSPARENCY RULES.**

8 “(a) IN GENERAL.—The Commission may issue such
9 rules as the Commission considers to be appropriate to
10 establish an electronic information system to provide the
11 Commission and the public with access to such informa-
12 tion as is necessary or appropriate to facilitate price trans-
13 parency and participation in markets for the sale in inter-
14 state commerce of electric energy at wholesale.

15 “(b) INFORMATION TO BE MADE AVAILABLE.—(1)
16 The system under subsection (a) shall provide, on a timely
17 basis, information about the availability and market price
18 of wholesale electric energy and transmission services to
19 the Commission, State commissions, buyers and sellers of
20 wholesale electric energy, users of transmission services,
21 and the public.

22 “(2) In determining the information to be made avail-
23 able under the system and the time at which to make such
24 information available, the Commission shall seek to ensure
25 that consumers and competitive markets are protected



1 from the adverse effects of potential collusion or other
2 anticompetitive behaviors that can be facilitated by un-
3 timely public disclosure of transaction-specific informa-
4 tion.

5 “(c) AUTHORITY TO OBTAIN INFORMATION.—The
6 Commission shall have authority to obtain information de-
7 scribed in subsections (a) and (b) from any electric utility
8 or transmitting utility (including any entity described in
9 section 201(f)).

10 “(d) EXEMPTIONS.—The rules of the Commission, if
11 adopted, shall exempt from disclosure information that the
12 Commission determines would, if disclosed—

13 “(1) be detrimental to the operation of an effec-
14 tive market; or

15 “(2) jeopardize system security.

16 “(e) COMMODITY FUTURES TRADING COMMISS-
17 SION.—(1) This section shall not affect the exclusive juris-
18 diction of the Commodity Futures Trading Commission
19 with respect to accounts, agreements, contracts, or trans-
20 actions in commodities under the Commodity Exchange
21 Act (7 U.S.C. 1 et seq.).

22 “(2) Any request by the Commission for information
23 to a designated contract market, registered derivatives
24 transaction execution facility, board of trade, exchange, or
25 market involving an account, agreement, contract, or



1 transaction in a commodity (including natural gas, elec-
2 tricity and other energy commodities) within the exclusive
3 jurisdiction of the Commodity Futures Trading Commis-
4 sion shall be directed to the Commodity Futures Trading
5 Commission, which shall cooperate in responding to any
6 information request by the Commission.

7 “(f) SAVINGS PROVISION.—In exercising authority
8 under this section, the Commission shall not—

9 “(1) compete with, or displace from the market
10 place, any price publisher (including any electronic
11 price publisher); or

12 “(2) regulate price publishers (including any
13 electronic price publisher) or impose any require-
14 ments on the publication of information by price
15 publishers (including any electronic price publisher).

16 “(g) ERCOT.—This section shall not apply to a
17 transaction for the purchase or sale of wholesale electric
18 energy or transmission services within the area described
19 in section 212(k)(2)(A).”.

20 **SEC. 1282. FALSE STATEMENTS.**

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

23 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

24 “No entity (including an entity described in section
25 201(f)) shall willfully and knowingly report any informa-



1 tion relating to the price of electricity sold at wholesale
2 or the availability of transmission capacity, which informa-
3 tion the person or any other entity knew to be false at
4 the time of the reporting, to a Federal agency with intent
5 to fraudulently affect the data being compiled by the Fed-
6 eral agency.”.

7 **SEC. 1283. MARKET MANIPULATION.**

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

10 **“SEC. 222. PROHIBITION OF ENERGY MARKET MANIPULA-**
11 **TION.**

12 “(a) IN GENERAL.—It shall be unlawful for any enti-
13 ty (including an entity described in section 201(f)), di-
14 rectly or indirectly, to use or employ, in connection with
15 the purchase or sale of electric energy or the purchase or
16 sale of transmission services subject to the jurisdiction of
17 the Commission, any manipulative or deceptive device or
18 contrivance (as those terms are used in section 10(b) of
19 the Securities Exchange Act of 1934 (15 U.S.C. 78j(b))),
20 in contravention of such rules and regulations as the Com-
21 mission may prescribe as necessary or appropriate in the
22 public interest or for the protection of electric ratepayers.

23 “(b) NO PRIVATE RIGHT OF ACTION.—Nothing in
24 this section shall be construed to create a private right
25 of action.”.



1 **SEC. 1284. ENFORCEMENT.**

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

4 (1) by inserting “electric utility,” after “Any
5 person,”; and

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

8 (b) INVESTIGATIONS.—Section 307(a) of the Federal
9 Power Act (16 U.S.C. 825f(a)) is amended—

10 (1) by inserting “, electric utility, transmitting
11 utility, or other entity” after “person” each place it
12 appears; and

13 (2) in the first sentence, by inserting before the
14 period at the end the following: “, or in obtaining in-
15 formation about the sale of electric energy at whole-
16 sale in interstate commerce and the transmission of
17 electric energy in interstate commerce”.

18 (c) REVIEW OF COMMISSION ORDERS.—Section
19 313(a) of the Federal Power Act (16 U.S.C. 825l) is
20 amended by inserting “electric utility,” after “person,” in
21 the first 2 places it appears and by striking “any person
22 unless such person” and inserting “any entity unless such
23 entity”.

24 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
25 eral Power Act (16 U.S.C. 825o) is amended—

26 (1) in subsection (a)—



1 (A) by striking “\$5,000” and inserting
2 “\$1,000,000”; and

3 (B) by striking “two years” and inserting
4 “5 years”;

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

7 (3) by striking subsection (c).

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

10 (1) by striking “section 211, 212, 213, or 214”
11 each place it appears and inserting “part II”; and

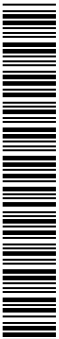
12 (2) in subsection (b), by striking “\$10,000”
13 and inserting “\$1,000,000”.

14 **SEC. 1285. REFUND EFFECTIVE DATE.**

15 Section 206(b) of the Federal Power Act (16 U.S.C.
16 824e(b)) is amended as follows:

17 (1) By striking “the date 60 days after the fil-
18 ing of such complaint nor later than 5 months after
19 the expiration of such 60-day period” in the second
20 sentence and inserting “the date of the filing of such
21 complaint nor later than 5 months after the filing of
22 such complaint”.

23 (2) By striking “60 days after” in the third
24 sentence and inserting “of”.



1 (3) By striking “expiration of such 60-day pe-
2 riod” in the third sentence and inserting “publica-
3 tion date”.

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

12 **SEC. 1286. REFUND AUTHORITY.**

13 Section 206 of the Federal Power Act (16 U.S.C.
14 824e) is amended by adding at the end the following:

15 “(e)(1) In this subsection:

16 “(A) The term ‘short-term sale’ means an
17 agreement for the sale of electric energy at wholesale
18 in interstate commerce that is for a period of 31
19 days or less (excluding monthly contracts subject to
20 automatic renewal).

21 “(B) The term ‘applicable Commission rule’
22 means a Commission rule applicable to sales at
23 wholesale by public utilities that the Commission de-
24 termines after notice and comment should also be
25 applicable to entities subject to this subsection.



1 “(2) If an entity described in section 201(f) volun-
2 tarily makes a short-term sale of electric energy through
3 an organized market in which the rates for the sale are
4 established by Commission-approved tariff (rather than by
5 contract) and the sale violates the terms of the tariff or
6 applicable Commission rules in effect at the time of the
7 sale, the entity shall be subject to the refund authority
8 of the Commission under this section with respect to the
9 violation.

10 “(3) This section shall not apply to—

11 “(A) any entity that sells in total (including af-
12 filiates of the entity) less than 8,000,000 megawatt
13 hours of electricity per year; or

14 “(B) any electric cooperative.

15 “(4)(A) The Commission shall have refund authority
16 under paragraph (2) with respect to a voluntary short-
17 term sale of electric energy by the Bonneville Power Ad-
18 ministration only if the sale is at an unjust and unreason-
19 able rate.

20 “(B) The Commission may order a refund under sub-
21 paragraph (A) only for short-term sales made by the Bon-
22 neville Power Administration at rates that are higher than
23 the highest just and reasonable rate charged by any other
24 entity for a short-term sale of electric energy in the same
25 geographic market for the same, or most nearly com-



1 parable, period as the sale by the Bonneville Power Ad-
2 ministration.

3 “(5) In the case of any Federal power marketing
4 agency or the Tennessee Valley Authority, the Commission
5 shall not assert or exercise any regulatory authority or
6 power under paragraph (2) other than the ordering of re-
7 funds to achieve a just and reasonable rate.”.

8 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
9 **TICES.**

10 (a) **PRIVACY.**—The Federal Trade Commission may
11 issue rules protecting the privacy of electric consumers
12 from the disclosure of consumer information obtained in
13 connection with the sale or delivery of electric energy to
14 electric consumers.

15 (b) **SLAMMING.**—The Federal Trade Commission
16 may issue rules prohibiting the change of selection of an
17 electric utility except with the informed consent of the
18 electric consumer or if approved by the appropriate State
19 regulatory authority.

20 (c) **CRAMMING.**—The Federal Trade Commission
21 may issue rules prohibiting the sale of goods and services
22 to an electric consumer unless expressly authorized by law
23 or the electric consumer.

24 (d) **RULEMAKING.**—The Federal Trade Commission
25 shall proceed in accordance with section 553 of title 5,



1 United States Code, when prescribing a rule under this
2 section.

3 (e) STATE AUTHORITY.—If the Federal Trade Com-
4 mission determines that a State’s regulations provide
5 equivalent or greater protection than the provisions of this
6 section, such State regulations shall apply in that State
7 in lieu of the regulations issued by the Commission under
8 this section.

9 (f) DEFINITIONS.—For purposes of this section:

10 (1) STATE REGULATORY AUTHORITY.—The
11 term “State regulatory authority” has the meaning
12 given that term in section 3(21) of the Federal
13 Power Act (16 U.S.C. 796(21)).

14 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
15 ITY.—The terms “electric consumer” and “electric
16 utility” have the meanings given those terms in sec-
17 tion 3 of the Public Utility Regulatory Policies Act
18 of 1978 (16 U.S.C. 2602).

19 **SEC. 1288. AUTHORITY OF COURT TO PROHIBIT INDIVID-**
20 **UALS FROM SERVING AS OFFICERS, DIREC-**
21 **TORS, AND ENERGY TRADERS.**

22 Section 314 of the Federal Power Act (16 U.S.C.
23 825m) is amended by adding at the end the following:

24 “(d) In any proceedings under subsection (a), the
25 court may prohibit, conditionally or unconditionally, and



1 permanently or for such period of time as the court deter-
2 mines, any individual who is engaged or has engaged in
3 practices constituting a violation of section 221 (and re-
4 lated rules and regulations) from—

5 “(1) acting as an officer or director of an elec-
6 tric utility; or

7 “(2) engaging in the business of purchasing or
8 selling—

9 “(A) electric energy; or

10 “(B) transmission services subject to the
11 jurisdiction of the Commission.”.

12 **SEC. 1289. MERGER REVIEW REFORM.**

13 (a) IN GENERAL.—Section 203(a) of the Federal
14 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
15 lows:

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

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

23 “(B) merge or consolidate, directly or indi-
24 rectly, such facilities or any part thereof with



1 those of any other person, by any means what-
2 soever;

3 “(C) purchase, acquire, or take any secu-
4 rity with a value in excess of \$10,000,000 of
5 any other public utility; or

6 “(D) purchase, lease, or otherwise acquire
7 an existing generation facility—

8 “(i) that has a value in excess of
9 \$10,000,000; and

10 “(ii) that is used for interstate whole-
11 sale sales and over which the Commission
12 has jurisdiction for ratemaking purposes.

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



1 “(3) Upon receipt of an application for such ap-
2 proval the Commission shall give reasonable notice
3 in writing to the Governor and State commission of
4 each of the States in which the physical property af-
5 fected, or any part thereof, is situated, and to such
6 other persons as it may deem advisable.

7 “(4) After notice and opportunity for hearing,
8 the Commission shall approve the proposed disposi-
9 tion, consolidation, acquisition, or change in control,
10 if it finds that the proposed transaction will be con-
11 sistent with the public interest, and will not result
12 in cross-subsidization of a non-utility associate com-
13 pany or the pledge or encumbrance of utility assets
14 for the benefit of an associate company, unless the
15 Commission determines that the cross-subsidization,
16 pledge, or encumbrance will be consistent with the
17 public interest.

18 “(5) The Commission shall, by rule, adopt pro-
19 cedures for the expeditious consideration of applica-
20 tions for the approval of dispositions, consolidations,
21 or acquisitions, under this section. Such rules shall
22 identify classes of transactions, or specify criteria for
23 transactions, that normally meet the standards es-
24 tablished in paragraph (4). The Commission shall
25 provide expedited review for such transactions. The



1 Commission shall grant or deny any other applica-
2 tion for approval of a transaction not later than 180
3 days after the application is filed. If the Commission
4 does not act within 180 days, such application shall
5 be deemed granted unless the Commission finds,
6 based on good cause, that further consideration is
7 required to determine whether the proposed trans-
8 action meets the standards of paragraph (4) and
9 issues an order tolling the time for acting on the ap-
10 plication for not more than 180 days, at the end of
11 which additional period the Commission shall grant
12 or deny the application.

13 “(6) For purposes of this subsection, the terms
14 ‘associate company’, ‘holding company’, and ‘holding
15 company system’ have the meaning given those
16 terms in the Public Utility Holding Company Act of
17 2005.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 6 months after the date of
20 enactment of this Act.

21 **SEC. 1290. [RELIEF FOR EXTRAORDINARY VIOLATIONS].**

22 **Subtitle H—Definitions**

23 **SEC. 1291. DEFINITIONS.**

24 (a) COMMISSION.—In this title, the term “Commis-
25 sion” means the Federal Energy Regulatory Commission.



1 (b) AMENDMENT.—Section 3 of the Federal Power
2 Act (16 U.S.C. 796) is amended—

3 (1) by striking paragraphs (22) and (23) and
4 inserting the following:

5 “(22) ELECTRIC UTILITY.—(A) The term ‘elec-
6 tric utility’ means a person or Federal or State
7 agency (including an entity described in section
8 201(f)) that sells electric energy.

9 “(B) The term ‘electric utility’ includes the
10 Tennessee Valley Authority and each Federal power
11 marketing administration.

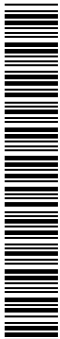
12 “(23) TRANSMITTING UTILITY.—The term
13 ‘transmitting utility’ means an entity (including an
14 entity described in section 201(f)) that owns, oper-
15 ates, or controls facilities used for the transmission
16 of electric energy—

17 “(A) in interstate commerce;

18 “(B) for the sale of electric energy at
19 wholesale.”; and

20 (2) by adding at the end the following:

21 “(26) ELECTRIC COOPERATIVE.—The term
22 ‘electric cooperative’ means a cooperatively owned
23 electric utility.



1 “(27) RTO.—The term ‘Regional Transmission
2 Organization’ or ‘RTO’ means an entity of sufficient
3 regional scope approved by the Commission—

4 “(A) to exercise operational or functional
5 control of facilities used for the transmission of
6 electric energy in interstate commerce; and

7 “(B) to ensure nondiscriminatory access to
8 the facilities.

9 “(28) ISO.—The term ‘Independent System
10 Operator’ or ‘ISO’ means an entity approved by the
11 Commission—

12 “(A) to exercise operational or functional
13 control of facilities used for the transmission of
14 electric energy in interstate commerce; and

15 “(B) to ensure nondiscriminatory access to
16 the facilities.

17 “(29) TRANSMISSION ORGANIZATION.—The
18 term ‘Transmission Organization’ means a Regional
19 Transmission Organization, Independent System Op-
20 erator, independent transmission provider, or other
21 transmission organization finally approved by the
22 Commission for the operation of transmission facili-
23 ties.”.

24 (c) APPLICABILITY.—Section 201(f) of the Federal
25 Power Act (16 U.S.C. 824(f)) is amended by striking “po-



1 litical subdivision of a state,” and inserting “political sub-
2 division of a State, an electric cooperative that receives
3 financing under the Rural Electrification Act of 1936 (7
4 U.S.C. 901 et seq.) or that sells less than 4,000,000 mega-
5 watt hours of electricity per year,”.

6 **Subtitle I—Technical and**
7 **Conforming Amendments**

8 **SEC. 1295. CONFORMING AMENDMENTS.**

9 (a) Section 201 of the Federal Power Act (16 U.S.C.
10 824) is amended—

11 (1) in subsection (b)(2)—

12 (A) in the first sentence—

13 (i) by striking “The” and inserting
14 “Notwithstanding section 201(f), the”; and

15 (ii) by striking “210, 211, and 212”
16 and inserting “203(a)(2), 206(e), 210,
17 211, 211A, 212, 215, 216, 217, 218, 219,
18 220, 221, and 222”; and

19 (B) in the second sentence—

20 (i) by inserting “or rule” after “any
21 order”; and

22 (ii) by striking “210 or 211” and in-
23 serting “203(a)(2), 206(e), 210, 211,
24 211A, 212, 215, 216, 217, 218, 219, 220,
25 221, or 222”; and



1 (2) in subsection (e), by striking “210, 211, or
2 212” and inserting “206(e), 206(f), 210, 211, 211A,
3 212, 215, 216, 217, 218, 219, 220, 221, or 222”.

4 (b) Section 206 of the Federal Power Act (16 U.S.C.
5 824e) is amended—

6 (1) in the first sentence of subsection (a), by
7 striking “hearing had” and inserting “hearing held”;
8 and

9 (2) in the seventh sentence of subsection (b), by
10 striking “the public utility to make”.

11 (c) Section 211 of the Federal Power Act (16 U.S.C.
12 824j) is amended—

13 (1) in subsection (c)—

14 (A) by striking “(2)”;

15 (B) by striking “(A)” and inserting “(1)”

16 (C) by striking “(B)” and inserting “(2)”;

17 and

18 (D) by striking “termination of modifica-
19 tion” and inserting “termination or modifica-
20 tion”; and

21 (2) in the second sentence of subsection (d)(1),
22 by striking “electric utility” the second place it ap-
23 pears and inserting “transmitting utility”.



1 (d) Section 315(c) of the Federal Power Act (16
2 U.S.C. 825n(c)) is amended by striking “subsection” and
3 inserting “section”.

4 **Subtitle J—Economic Dispatch**

5 **SEC. 1298. ECONOMIC DISPATCH.**

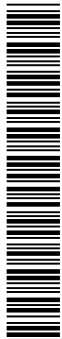
6 Part II of the Federal Power Act (16 U.S.C. 824 et
7 seq.) is amended by adding at the end the following:

8 **“SEC. 223. JOINT BOARDS ON ECONOMIC DISPATCH.**

9 “(a) IN GENERAL.—The Commission shall convene
10 joint boards on a regional basis pursuant to section 209
11 of this Act to study the issue of security constrained eco-
12 nomic dispatch for the various market regions. The Com-
13 mission shall designate the appropriate regions to be cov-
14 ered by each such joint board for purposes of this section.

15 “(b) MEMBERSHIP.—The Commission shall request
16 each State to nominate a representative for the appro-
17 priate regional joint board, and shall designate a member
18 of the Commission to chair and participate as a member
19 of each such board.

20 “(c) POWERS.—The sole authority of each joint
21 board convened under this section shall be to consider
22 issues relevant to what constitutes ‘security constrained
23 economic dispatch’ and how such a mode of operating an
24 electric energy system affects or enhances the reliability
25 and affordability of service to customers in the region con-



1 cerned and to make recommendations to the Commission
2 regarding such issues.

3 “(d) REPORT TO THE CONGRESS.—Within one year
4 after enactment of this section, the Commission shall issue
5 a report and submit such report to the Congress regarding
6 the recommendations of the joint boards under this section
7 and the Commission may consolidate the recommenda-
8 tions of more than one such regional joint board, including
9 any consensus recommendations for statutory or regu-
10 latory reform.”.

11 **Subtitle K—[Renewable Portfolio**
12 **Standard]**

