

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To modify a provision relating to native load service obligation.

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

**S.** \_\_\_\_\_

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

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

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

Viz:

1 Beginning on page 48, strike line 5 and all that fol-  
2 lows through page 52, line 12, and insert the following:

3 **“SEC. 218. NATIVE LOAD SERVICE OBLIGATION.**

4 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any  
5 load-serving entity that, as of the date of enactment of  
6 this section—

7 “(A) owns generation facilities, markets the  
8 output of Federal generation facilities, or holds  
9 rights under 1 or more wholesale contracts to pur-

1 chase electric energy, for the purpose of meeting a  
2 service obligation, and

3 “(B) by reason of ownership of transmission fa-  
4 cilities, or 1 or more contracts or service agreements  
5 for firm transmission service, holds firm trans-  
6 mission rights for delivery of the output of such gen-  
7 eration facilities or such purchased energy to meet  
8 such service obligation,  
9 is entitled to use such firm transmission rights, or, equiva-  
10 lent tradable or financial transmission rights, in order to  
11 deliver such output or purchased energy, or the output of  
12 other generating facilities or purchased energy to the ex-  
13 tent deliverable using such rights, to the extent required  
14 to meet its service obligation.

15 “(2) To the extent that all or a portion of the service  
16 obligation covered by such firm transmission rights or  
17 equivalent tradable or financial transmission rights is  
18 transferred to another load-serving entity, the successor  
19 load-serving entity shall be entitled to use the firm trans-  
20 mission rights or equivalent tradable or financial trans-  
21 mission rights associated with the transferred service obli-  
22 gation. Subsequent transfers to another load-serving enti-  
23 ty, or back to the original load-serving entity, shall be enti-  
24 tled to the same rights.

1       “(3) The Commission shall exercise its authority  
2 under this Act in a manner that facilitates the planning  
3 and expansion of transmission facilities to meet the rea-  
4 sonable needs of load-serving entities to satisfy their serv-  
5 ice obligations, and enables load-serving entities to secure  
6 firm transmission rights (or equivalent tradable or finan-  
7 cial rights) on a long term basis for long term power sup-  
8 ply arrangements made, or planned, to meet such needs.

9       “(b) ALLOCATION OF TRANSMISSION RIGHTS.—  
10 Nothing in subsections (a)(1) and (a)(2) of this section  
11 shall affect any existing or future methodology employed  
12 by an RTO or ISO for allocating or auctioning trans-  
13 mission rights if the RTO or ISO was authorized by the  
14 Commission to allocate or auction financial transmission  
15 rights on its system as of January 1, 2005, and the Com-  
16 mission determines that any future allocation or auction  
17 is just, reasonable and not unduly discriminatory or pref-  
18 erential, provided, however, that if such an RTO or ISO  
19 never allocated financial transmission rights on its system  
20 that pertained to a period before January 1, 2005, with  
21 respect to any application by such RTO or ISO that would  
22 change its methodology the Commission shall exercise its  
23 authority in a manner consistent with the Act and that  
24 takes into account the policies expressed in subsections  
25 (a)(1) and (a)(2) as applied to firm transmission rights

1 held by a load serving entity as of January 1, 2005, to  
2 the extent the associated generation ownership or power  
3 purchase arrangements remain in effect.

4 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-  
5 mission may exercise authority under this Act to make  
6 transmission rights not used to meet an obligation covered  
7 by subsection (a) available to other entities in a manner  
8 determined by the Commission to be just, reasonable, and  
9 not unduly discriminatory or preferential.

10 “(d) OBLIGATION TO BUILD.—Nothing in this Act  
11 shall relieve a load-serving entity from any obligation  
12 under State or local law to build transmission or distribu-  
13 tion facilities adequate to meet its service obligations.

14 “(e) CONTRACTS.—Nothing in this section shall pro-  
15 vide a basis for abrogating any contract or service agree-  
16 ment for firm transmission service or rights in effect as  
17 of the date of the enactment of this subsection. If an ISO  
18 in the Western Interconnection had allocated financial  
19 transmission rights prior to the date of enactment of this  
20 section but had not done so with respect to one or more  
21 load-serving entities’ firm transmission rights held under  
22 contracts to which the preceding sentence applies (or held  
23 by reason of ownership or future ownership of trans-  
24 mission facilities), such load-serving entities may not be  
25 required, without their consent, to convert such firm

1 transmission rights to tradable or financial rights, except  
2 where the load-serving entity has voluntarily joined the  
3 ISO as a participating transmission owner (or its suc-  
4 cessor) in accordance with the ISO tariff.

5 “(f) WATER PUMPING FACILITIES.—The Commis-  
6 sion shall ensure that any entity described in section  
7 201(f) that owns transmission facilities used predomi-  
8 nately to support its own water pumping facilities shall  
9 have, with respect to such facilities, protections for trans-  
10 mission service comparable to those provided to load-serv-  
11 ing entities pursuant to this section.

12 “(g) FERC RULEMAKING ON LONG-TERM TRANS-  
13 MISSION RIGHTS IN ORGANIZED MARKETS.—Within one  
14 year after the date of enactment of this section and after  
15 notice and an opportunity for comment, the Commission  
16 shall by rule or order implement subsection (a)(3) in Com-  
17 mission-approved RTOs and ISOs with organized elec-  
18 tricity markets.

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

21 “(i) JURISDICTION.—This section does not authorize  
22 the Commission to take any action not otherwise within  
23 its jurisdiction.

24 “(j) EFFECT OF EXERCISING RIGHTS.—An entity  
25 that lawfully exercises rights granted under subsection (a)

1 shall not be considered by such action as engaging in  
2 undue discrimination or preference under this Act.

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

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

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

15 “(l) DEFINITIONS.—For purposes of this section:

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

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

1           “(3) The term ‘service obligation’ means a re-  
2           quirement applicable to, or the exercise of authority  
3           granted to, an electric utility under Federal, State  
4           or local law or under long-term contracts to provide  
5           electric service to end-users or to a distribution util-  
6           ity.

7           “(4) The term ‘State utility’ means a State or  
8           any political subdivision of a State, or any agency,  
9           authority, or instrumentality of any 1 or more of the  
10          foregoing, or a corporation which is wholly owned,  
11          directly or indirectly, by any 1 or more of the fore-  
12          going, competent to carry on the business of devel-  
13          oping, transmitting, utilizing or distributing power.”.