

1 pacity and efficiency of existing transmission facili-
2 ties and improve the operation of such facilities.

3 The Commission may, from time to time, revise such rule.

4 “(b) FUNDING OF CERTAIN FACILITIES.—The rule
5 promulgated pursuant to this section shall provide that,
6 upon the request of a regional transmission organization
7 or other Commission-approved transmission organization,
8 new transmission facilities that increase the transfer capa-
9 bility of the transmission system shall be participant fund-
10 ed. In such rules, the Commission shall also provide guid-
11 ance as to what types of facilities may be participant fund-
12 ed.

13 “(c) JUST AND REASONABLE RATES.—With respect
14 to any transmission rate filed with the Commission on or
15 after the effective date of the rule promulgated under this
16 section, the Commission shall, in its review of such rate
17 under sections 205 and 206, apply the rules adopted pur-
18 suant to this section, including any revisions thereto.
19 Nothing in this section shall be construed to override,
20 weaken, or conflict with the procedural and other require-
21 ments of this part, including the requirement of sections
22 205 and 206 that all rates, charges, terms, and conditions
23 be just and reasonable and not unduly discriminatory or
24 preferential.”.



1 **SEC. 7012. SITING OF INTERSTATE ELECTRICAL TRANS-**
2 **MISSION FACILITIES.**

3 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
4 II of the Federal Power Act is amended by adding at the
5 end the following:

6 **“SEC. 216. SITING OF INTERSTATE ELECTRICAL TRANS-**
7 **MISSION FACILITIES**

8 “(a) TRANSMISSION STUDIES.—Within one year
9 after the enactment of this section, and every 3 years
10 thereafter, the Secretary of Energy shall conduct a study
11 of electric transmission congestion. After considering al-
12 ternatives and recommendations from interested parties
13 the Secretary shall issue a report, based on such study,
14 which may designate one or more geographic areas experi-
15 encing electric energy transmission congestion as ‘inter-
16 state congestion areas’.

17 “(b) CONSTRUCTION PERMIT.—The Commission is
18 authorized, after notice and an opportunity for hearing,
19 to issue permits for the construction or modification of
20 electric transmission facilities in interstate congestion
21 areas designated by the Secretary under subsection (a) if
22 the Commission makes each of the following findings:

23 “(1) A finding that—

24 “(A) the State in which the transmission
25 facilities are to be constructed or modified is



1 without authority to approve the siting of the
2 facilities, or

3 “(B) a State commission or body in the
4 State in which the transmission facilities are to
5 be constructed or modified that has authority to
6 approve the siting of the facilities has withheld
7 approval, conditioned its approval in such a
8 manner that the proposed construction or modi-
9 fication will not significantly reduce trans-
10 mission congestion in interstate commerce and
11 is otherwise not economically feasible, or de-
12 layed final approval for more than one year
13 after the filing of an application seeking ap-
14 proval or one year after the designation of the
15 relevant interstate congestion area, whichever is
16 later.

17 “(2) A finding that the facilities to be author-
18 ized by the permit will be used for the transmission
19 of electric energy in interstate commerce.

20 “(3) A finding that the proposed construction
21 or modification is consistent with the public interest.

22 “(4) A finding that the proposed construction
23 or modification will significantly reduce transmission
24 congestion in interstate commerce.



1 The Commission may include in a permit issued under this
2 section conditions consistent with the public interest.

3 “(c) PERMIT APPLICATIONS.—Permit applications
4 under subsection (b) shall be made in writing to the Com-
5 mission and verified under oath. The Commission shall
6 issue rules setting forth the form of the application, the
7 information it is to contain, and the manner of service of
8 notice of the permit application upon interested persons.

9 “(d) COMMENTS.—In any proceeding before the
10 Commission under subsection (b), the Commission shall
11 afford each State in which a transmission facility covered
12 by the permit is or will be located, each affected Federal
13 agency and Indian tribe, private property owners, and
14 other interested persons, a reasonable opportunity to
15 present their views and recommendations with respect to
16 the need for and impact of a facility covered by the permit.

17 “(e) RIGHTS-OF-WAY.—In the case of a permit under
18 subsection (b) for electric transmission facilities to be lo-
19 cated on property other than property owned by the
20 United States or a State, if the permit holder cannot ac-
21 quire by contract, or is unable to agree with the owner
22 of the property to the compensation to be paid for, the
23 necessary right-of-way to construct or modify such trans-
24 mission facilities, the permit holder may acquire the right-
25 of-way by the exercise of the right of eminent domain in



1 the district court of the United States for the district in
2 which the property concerned is located, or in the appro-
3 priate court of the State in which the property is located.
4 The practice and procedure in any action or proceeding
5 for that purpose in the district court of the United States
6 shall conform as nearly as may be with the practice and
7 procedure in similar action or proceeding in the courts of
8 the State where the property is situated.

9 “(f) STATE LAW.—Nothing in this section shall pre-
10 clude any person from constructing any transmission fa-
11 cilities pursuant to State law.

12 “(g) COMPLIANCE WITH OTHER LAWS.—Commis-
13 sion action under this section shall be subject to the Na-
14 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
15 et seq.) and all other applicable Federal laws.

16 “(h) COMPENSATION.—Any exercise of eminent do-
17 main authority pursuant to this section shall be considered
18 a taking of private property for which just compensation
19 is due. Just compensation shall be an amount equal to
20 the full fair market value of the property taken on the
21 date of the exercise of eminent domain authority, except
22 that the compensation shall exceed fair market value if
23 necessary to make the landowner whole for decreases in
24 the value of any portion of the land not subject to eminent
25 domain. Any parcel of land acquired by eminent domain



1 under this subsection shall be transferred back to the
2 owner from whom it was acquired (or his heirs or assigns)
3 if the land is not used for power line construction or modi-
4 fication within a reasonable period of time after the acqui-
5 sition. Property acquired under this subsection may not
6 be used for any heritage area, recreational trail, or park,
7 or for any other purpose (other than power line construc-
8 tion or modification, and for power line operation and
9 maintenance) without the consent of the owner of the par-
10 cel from whom the property was acquired (or his heirs or
11 assigns).

12 “(i) ERCOT.—Nothing in this section shall be con-
13 strued to authorize any interconnection with any facility
14 owned or operated by an entity referred to in section
15 212(k)(2)(B).

16 “(j) RIGHTS OF WAY ON FEDERAL LANDS.—

17 “(1) LEAD AGENCY.—If an applicant, or pro-
18 spective applicant, for Federal authorization related
19 to an electricity transmission or distribution facility
20 so requests, the Department of Energy (DOE) shall
21 act as the lead agency for purposes of coordinating
22 all applicable Federal authorization and related envi-
23 ronmental review of the facility. The term ‘Federal
24 authorization’ shall mean any authorization required
25 under Federal law in order to site a transmission or



1 distribution facility, including but not limited to
2 such permits, special use authorizations, certifi-
3 cations, opinions, or other approvals as may be re-
4 quired, whether issued by a Federal or a State agen-
5 cy. To the maximum extent practicable under appli-
6 cable Federal law, the Secretary of Energy shall co-
7 ordinate this Federal authorization and review proc-
8 ess with any Indian tribes, multi-State entities, and
9 State agencies that are responsible for conducting
10 any separate permitting and environmental reviews
11 of the facility, to ensure timely and efficient review
12 and permit decisions.

13 “(2) AUTHORITY TO SET DEADLINES.—As lead
14 agency, the Department of Energy, in consultation
15 with other Federal and, as appropriate, with Indian
16 tribes, multi-State entities, and State agencies that
17 are willing to coordinate their own separate permit-
18 ting and environmental reviews with the Federal au-
19 thorization and environmental reviews, shall estab-
20 lish prompt and binding intermediate milestones and
21 ultimate deadlines for the review of and Federal au-
22 thorization decisions relating to the proposed facil-
23 ity. The Secretary of Energy shall ensure that once
24 an application has been submitted with such data as
25 the Secretary deems necessary, all permit decisions



1 and related environmental reviews under all applica-
2 ble Federal laws shall be completed within 1 year or,
3 if a requirement of another provision of Federal law
4 makes this impossible, as soon thereafter as is prac-
5 ticable. The Secretary of Energy also shall provide
6 an expeditious pre-application mechanism for pro-
7 spective applicants to confer with the agencies in-
8 volved to have each such agency determine and com-
9 municate to the prospective applicant within 60 days
10 of when the prospective applicant submits a request
11 for such information concerning—

12 “(A) the likelihood of approval for a poten-
13 tial facility; and

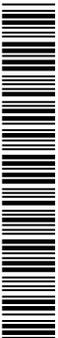
14 “(B) key issues of concern to the agencies
15 and public.

16 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
17 AND RECORD OF DECISION.—The Secretary of En-
18 ergy, in consultation with the affected agencies, shall
19 prepare a single environmental review document,
20 which shall be used as the basis for all decisions on
21 the proposed project under Federal law. The docu-
22 ment may be an environmental assessment or envi-
23 ronmental impact statement under the National En-
24 vironmental Policy Act of 1969 if warranted, or such
25 other form of analysis as may be warranted. DOE



1 and other agencies shall streamline the review and
2 permitting of transmission and distribution facilities
3 within corridors designated under Section 503 of the
4 Federal Land Policy and Management Act (43
5 U.S.C. Section 1763) by fully taking into account
6 prior analyses and decisions as to the corridors. The
7 document under this section may consist of or in-
8 clude an environmental assessment, if allowed by
9 law, or an environmental impact statement, if war-
10 ranted or required by law, or such other form of
11 analysis as warranted, consistent with any require-
12 ment of the National Environmental Policy Act, the
13 Federal Land Policy and Management Act, or any
14 other applicable law. Such document shall include
15 consideration by the relevant agencies of any appli-
16 cable criteria or other matters as required under ap-
17 plicable laws.

18 “(4) APPEALS.—In the event that any agency
19 has denied a Federal authorization required for a
20 transmission or distribution facility, or has failed to
21 act by the deadline established by the Secretary pur-
22 suant to this section for deciding whether to issue
23 the authorization, the applicant or any State in
24 which the facility would be located may file an ap-
25 peal with the Secretary of Energy, who shall, in con-



1 sultation with the affected agency, review the denial
2 or take action on the pending application. Based on
3 the overall record and in consultation with the af-
4 fected agency, the Secretary may then either issue
5 the necessary authorization with any appropriate
6 conditions, or deny the application. The Secretary
7 shall issue a decision within 90 days of the filing of
8 the appeal. In making a decision under this para-
9 graph, the Secretary shall comply with all applicable
10 requirements of Federal law, including any require-
11 ments of the Endangered Species Act, the Clean
12 Water Act, the National Forest Management Act,
13 the National Environmental Policy Act, and the
14 Federal Land Management and Policy Act.

15 “(5) CONFORMING REGULATIONS AND MEMO-
16 RANDA OF AGREEMENT.—Not later than 18 months
17 after the date of enactment of this section, the Sec-
18 retary of Energy shall issue any regulations nec-
19 essary to implement the foregoing provisions. Not
20 later than 1 year after the date of enactment of this
21 section, the Secretary and the heads of all relevant
22 Federal departments and non-departmental agencies
23 shall, and interested Indian tribes, multi-State enti-
24 ties, and State agencies may, enter into Memoranda
25 of Agreement to ensure the timely and coordinated



1 review and permitting of electricity transmission and
2 distribution facilities. The head of each Federal de-
3 partment or non-departmental agency with approval
4 authority shall designate a senior responsible official
5 and dedicate sufficient other staff and resources to
6 ensure that the DOE regulations and any Memo-
7 randa are fully implemented.

8 “(6) MISCELLANEOUS.—Each Federal author-
9 ization for an electricity transmission or distribution
10 facility shall be issued for a duration, as determined
11 by the Secretary of Energy, commensurate with the
12 anticipated use of the facility and with appropriate
13 authority to manage the right-of-way for reliability
14 and environmental protection. Further, when such
15 authorizations expire, they shall be reviewed for re-
16 newal taking fully into account reliance on such elec-
17 tricity infrastructure, recognizing its importance for
18 public health, safety and economic welfare and as a
19 legitimate use of Federal lands.

20 “(7) MAINTAINING AND ENHANCING THE
21 TRANSMISSION INFRASTRUCTURE.—In exercising the
22 responsibilities under this Section, the Secretary of
23 Energy shall consult regularly with the Federal En-
24 ergy Regulatory Commission (FERC) and FERC-



1 approved Regional Transmission Organizations and
2 Independent System Operators.

3 “(k) INTERSTATE COMPACTS.—The consent of Con-
4 gress is hereby given for States to enter into interstate
5 compacts establishing regional transmission siting agen-
6 cies to facilitate coordination among the States within
7 such areas for purposes of siting future electric energy
8 transmission facilities and to carry out State electric en-
9 ergy transmission siting responsibilities. The Secretary of
10 Energy may provide technical assistance to regional trans-
11 mission siting agencies established under this subsection.

12 “(l) SAVINGS CLAUSE.—Nothing in this section shall
13 be construed to affect any requirement of the environ-
14 mental laws of the United States, including, but not lim-
15 ited to, the National Environmental Policy Act of 1969.
16 This section shall not apply to any component of the Na-
17 tional Wilderness Preservation System, the National Wild
18 and Scenic Rivers System, or the National Park system
19 (including National Monuments therein).”.

20 (b) FEDERAL CORRIDORS.—The Secretary of the In-
21 terior, the Secretary of Energy, the Secretary of Agri-
22 culture, and the Chairman of the Council on Environ-
23 mental Quality shall, within 90 days of the date of enact-
24 ment of this subsection, submit a joint report to Congress
25 identifying the following:



1 (1) all existing designated transmission and dis-
2 tribution corridors on Federal land and the status of
3 work related to proposed transmission and distribu-
4 tion corridor designations, the schedule for com-
5 pleting such work, any impediments to completing
6 the work, and steps that Congress could take to ex-
7 pedite the process;

8 (2) the number of pending applications to lo-
9 cate transmission and distribution facilities on Fed-
10 eral lands, key information relating to each such fa-
11 cility, how long each application has been pending,
12 the schedule for issuing a timely decision as to each
13 facility, and progress in incorporating existing and
14 new such rights-of-way into relevant land use and
15 resource management plans or their equivalent; and

16 (3) the number of existing transmission and
17 distribution rights-of-way on Federal lands that will
18 come up for renewal within the following 5, 10, and
19 15 year periods, and a description of how the Secre-
20 taries plan to manage such renewals.



1 **Subtitle B—Transmission**
2 **Operation**

3 **SEC. 7021. OPEN ACCESS TRANSMISSION BY CERTAIN UTIL-**
4 **ITIES.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by inserting after section 211 the fol-
7 lowing:

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

10 “(a) IN GENERAL.—Subject to section 212(h), the
11 Commission may, by rule or order, require an unregulated
12 transmitting utility to provide transmission services—

13 “(1) at rates that are comparable to those that
14 the unregulated transmitting utility charges itself,
15 and

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

21 “(b) EXEMPTIONS.—

22 “(1) IN GENERAL.—The Commission shall ex-
23 empt from any rule or order under this subsection
24 any unregulated transmitting utility that—



1 “(A)(i) sells no more than 4,000,000
2 megawatt hours of electricity per year; and

3 “(ii) is a distribution utility; or

4 “(B) does not own or operate any trans-
5 mission facilities that are necessary for oper-
6 ating an interconnected transmission system (or
7 any portion thereof); or

8 “(C) meets other criteria the Commission
9 determines to be in the public interest.

10 “(2) LOCAL DISTRIBUTION.— The requirements
11 of subsection (a) shall not apply to facilities used in
12 local distribution.

13 “(c) RATE CHANGING PROCEDURES.—The rate
14 changing procedures applicable to public utilities under
15 subsections (c) and (d) of section 205 are applicable to
16 unregulated transmitting utilities for purposes of this sec-
17 tion.

18 “(d) REMAND.—In exercising its authority under
19 paragraph (1), the Commission may remand transmission
20 rates to an unregulated transmitting utility for review and
21 revision where necessary to meet the requirements of sub-
22 section (a).

23 “(e) SECTION 211 REQUESTS.—The provision of
24 transmission services under subsection (a) does not pre-



1 clude a request for transmission services under section
2 211.

3 “(f) DEFINITIONS.—For purposes of this section—

4 “(1) The term ‘unregulated transmitting utility’
5 means an entity that—

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

9 “(B) is either an entity described in sec-
10 tion 201(f) or a rural electric cooperative.

11 “(2) The term ‘distribution utility’ means an
12 unregulated transmitting utility that serves at least
13 ninety percent of its electric customers at retail.”.

14 **SEC. 7022. REGIONAL TRANSMISSION ORGANIZATIONS.**

15 (a) SENSE OF THE CONGRESS ON RTOs.—It is the
16 sense of Congress that, in order to promote fair, open ac-
17 cess to electric transmission service, benefit retail con-
18 sumers, facilitate wholesale competition, improve effi-
19 ciencies in transmission grid management, promote grid
20 reliability, remove opportunities for unduly discriminatory
21 or preferential transmission practices, and provide for the
22 efficient development of transmission infrastructure need-
23 ed to meet the growing demands of competitive wholesale
24 power markets, all transmitting utilities in interstate com-
25 merce should voluntarily become members of independ-



1 ently administered regional transmission organizations
2 that have operational control of interstate transmission fa-
3 cilities and do not own or control generation facilities used
4 to supply electric energy for sale at wholesale.

5 (b) SENSE OF THE CONGRESS ON CAPITAL INVEST-
6 MENT.—It is the sense of the Congress that the Federal
7 Energy Regulatory Commission should provide to any
8 transmitting utility that becomes a member of an oper-
9 ational regional transmitting organization approved by the
10 Commission a return on equity sufficient to attract new
11 investment capital for expansion of transmission capacity,
12 in accordance with sections 205 and 206 of the Federal
13 Power Act (16 U.S.C. 824d and 824e), including the re-
14 quirement that rates be just and reasonable.

15 (c) REPORT ON PENDING APPLICATIONS.—Not later
16 than 120 days after the date of enactment of this section,
17 the Federal Energy Regulatory Commission shall submit
18 to the Committee on Energy and Commerce of the United
19 States House of Representatives and the Committee on
20 Energy and Natural Resources of the United States Sen-
21 ate a report containing the following:

22 (1) A list of all regional transmission organiza-
23 tion applications filed at the Commission pursuant
24 to the Commission's Order No. 2000, including an
25 identification of each public utility and other entity



1 included within the proposed membership of the re-
2 gional transmission organization.

3 (2) A table showing the date each such applica-
4 tion was filed, the date of any revised filings of such
5 application, the date of each preliminary or final
6 Commission order regarding such application, and a
7 statement of whether the application has been re-
8 jected, preliminarily approved, finally approved, or
9 has some other status (including a description of
10 that status).

11 (3) For any application that has not been fi-
12 nally approved by the Commission, a detailed de-
13 scription of every aspect of the application that the
14 Commission has determined does not conform to the
15 requirements of Order No. 2000.

16 (4) For any application that has not been fi-
17 nally approved by the Commission, an explanation
18 by the Commission of why the items described pur-
19 suant to paragraph (3) constitute material non-
20 compliance with the requirements of the Commis-
21 sion's Order No. 2000 sufficient to justify denial of
22 approval by the Commission.

23 (5) For all regional transmission organization
24 applications filed pursuant to the Commission's
25 Order No. 2000, whether finally approved or not—



1 (A) a discussion of that regional trans-
2 mission organization's efforts to minimize rate
3 seams between itself and—

4 (i) other regional transmission organi-
5 zations; and

6 (ii) entities not participating in a re-
7 gional transmission organization; and

8 (B) a discussion of the impact of such
9 seams on consumers and wholesale competition;
10 and

11 (C) a discussion of minimizing cost-shifting
12 on consumers.

13 (d) FEDERAL UTILITY PARTICIPATION IN RTOS.—

14 (1) DEFINITIONS.—For purposes of this
15 section—

16 (A) The term “appropriate Federal regu-
17 latory authority” means—

18 (i) with respect to a Federal power
19 marketing agency, the Secretary of En-
20 ergy, except that the Secretary may des-
21 ignate the Administrator of a Federal
22 power marketing agency to act as the ap-
23 propriate Federal regulatory authority with
24 respect to the transmission system of that
25 Federal power marketing agency; and



1 (ii) with respect to the Tennessee Val-
2 ley Authority, the Board of Directors of
3 the Tennessee Valley Authority.

4 (B) The term “Federal utility” means a
5 Federal power marketing agency or the Ten-
6 nessee Valley Authority.

7 (C) The term “transmission system”
8 means electric transmission facilities owned,
9 leased, or contracted for by the United States
10 and operated by a Federal utility.

11 (2) TRANSFER.—The appropriate Federal regu-
12 latory authority is authorized to enter into a con-
13 tract, agreement or other arrangement transferring
14 control and use of all or part of the Federal utility’s
15 transmission system to a regional transmission orga-
16 nization approved by the Federal Energy Regulatory
17 Commission. Such contract, agreement or arrange-
18 ment shall include—

19 (A) performance standards for operation
20 and use of the transmission system that the
21 head of the Federal utility determines necessary
22 or appropriate, including standards that assure
23 recovery of all the Federal utility’s costs and
24 expenses related to the transmission facilities
25 that are the subject of the contract, agreement



1 or other arrangement, consistency with existing
2 contracts and third-party financing arrange-
3 ments, and consistency with said Federal util-
4 ity's statutory authorities, obligations, and limi-
5 tations;

6 (B) provisions for monitoring and over-
7 sight by the Federal utility of the regional
8 transmission organization's fulfillment of the
9 terms and conditions of the contract, agreement
10 or other arrangement, including a provision
11 that may provide for the resolution of disputes
12 through arbitration or other means with the re-
13 gional transmission organization or with other
14 participants, notwithstanding the obligations
15 and limitations of any other law regarding arbi-
16 tration; and

17 (C) a provision that allows the Federal
18 utility to withdraw from the regional trans-
19 mission organization and terminate the con-
20 tract, agreement or other arrangement in ac-
21 cordance with its terms.

22 Neither this section, actions taken pursuant to it,
23 nor any other transaction of a Federal utility using
24 a regional transmission organization shall serve to
25 confer upon the Federal Energy Regulatory Com-



1 mission jurisdiction or authority over the Federal
2 utility's electric generation assets, electric capacity
3 or energy that the Federal utility is authorized by
4 law to market, or the Federal utility's power sales
5 activities.

6 (3) EXISTING STATUTORY AND OTHER OBLIGA-
7 TIONS.—

8 (A) SYSTEM OPERATION REQUIRE-
9 MENTS.—Any statutory provision requiring or
10 authorizing a Federal utility to transmit electric
11 power or to construct, operate or maintain its
12 transmission system shall not be construed to
13 prohibit a transfer of control and use of its
14 transmission system pursuant to, and subject to
15 all requirements of paragraph (2).

16 (B) OTHER OBLIGATIONS.—This sub-
17 section shall not be construed to—

18 (i) suspend, or exempt any Federal
19 utility from, any provision of existing Fed-
20 eral law, including but not limited to any
21 requirement or direction relating to the use
22 of the Federal utility's transmission sys-
23 tem, environmental protection, fish and
24 wildlife protection, flood control, naviga-
25 tion, water delivery, or recreation; or



1 (ii) authorize abrogation of any con-
2 tract or treaty obligation.

3 **SEC. 7023. NATIVE LOAD.**

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

7 **“SEC. 217. SERVICE OBLIGATIONS OF LOAD-SERVING ENTI-
8 TIES.**

9 “(a) IN GENERAL.—In exercising authority under
10 this Act, the Commission shall ensure that any load-serv-
11 ing entity that either—

12 “(1) owns transmission facilities for the trans-
13 mission of electric energy in interstate commerce
14 used to purchase or deliver electric energy to meet—

15 “(A) a service obligation to customers; or

16 “(B) an existing wholesale contractual obli-
17 gation; or

18 “(2) holds a contract or service agreement for
19 firm transmission service used to purchase or deliver
20 electric energy to meet—

21 “(A) a service obligation to customers; or

22 “(B) an existing wholesale contractual obli-
23 gation

24 shall be entitled to use such transmission facilities or
25 rights to firm transmission service to meet such obliga-



1 tions before transmission capacity is made available for
2 other uses.

3 “(b) USE BY SUCCESSOR IN INTEREST.—To the ex-
4 tent that all or a portion of the service obligation or con-
5 tractual obligation covered by subsection (a) is transferred
6 to another load serving entity, the successor shall be enti-
7 tled to use such transmission facilities or firm trans-
8 mission rights associated with the transferred service obli-
9 gation consistent with subsection (a). Subsequent trans-
10 fers to another load serving entity, or back to the original
11 load-serving entity, shall be entitled to the same rights.

12 “(c) OTHER ENTITIES.—The Commission may exer-
13 cise authority under this Act to make transmission rights
14 not used to meet an obligation covered by subsection (a)
15 available to other entities in a manner determined by the
16 Commission to be not unduly discriminatory or pref-
17 erential.

18 “(d) DEFINITIONS.—For the purposes of this section:

19 “(1) The term ‘load-serving entity’ means an
20 electric utility, transmitting utility or Federal power
21 marketing agency that has an obligation under Fed-
22 eral, State, or local law, or under long-term con-
23 tracts, to provide electric service to either—



1 “(A) electric consumers (as defined in sec-
2 tion 3(5) of the Public Utility Regulatory Poli-
3 cies Act of 1978 (16 U.S.C. 2602(5)); or

4 “(B) an electric utility as defined in sec-
5 tion 3(4) of the Public Utility Regulatory Poli-
6 cies Act of 1978 (16 U.S.C. 2602(5)) that has
7 an obligation to provide electric service to elec-
8 tric consumers.

9 Such obligations shall be deemed ‘service obliga-
10 tions’.

11 “(2) The term ‘existing wholesale contractual
12 obligation’ means an obligation under a firm long-
13 term wholesale contract that was in effect on March
14 28, 2003. A contract modification after March 28,
15 2003 (other than one that increases the quantity of
16 electric energy sold under the contract) shall not af-
17 fect the status of such contract as an existing whole-
18 sale contractual obligation.

19 “(e) RELATIONSHIP TO OTHER PROVISIONS.—To the
20 extent that a transmitting utility reserves transmission ca-
21 pacity (or reserves the equivalent amount of tradable
22 transmission rights) to provide firm transmission service
23 to meet service obligations or firm long-term wholesale
24 contractual obligations pursuant to subsection (a), that



1 transmitting utility shall not be considered as engaging
2 in undue discrimination or preference under this Act.

3 “(f) JURISDICTION.—This section shall not apply to
4 an entity located in an area referred to in section
5 212(k)(2)(A).

6 “(g) SAVINGS CLAUSE.—Nothing in this section shall
7 alter or affect the allocation of transmission rights ap-
8 proved by the Commission prior to the date of enactment
9 of this Section by an Independent System Operator or Re-
10 gional Transmission Organization.

11 **Subtitle C—Reliability**

12 **SEC. 7031. ELECTRIC RELIABILITY STANDARDS.**

13 Part II of the Federal Power Act (16 U.S.C 824 et
14 seq.) is amended by inserting the following new section
15 at the end thereof:

16 **“SEC. 217. ELECTRIC RELIABILITY.**

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

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

19 “(A) facilities and control systems nec-
20 essary for operating an interconnected electric
21 energy transmission network (or any portion
22 thereof); and

23 “(B) electric energy from generation facili-
24 ties needed to maintain transmission system re-
25 liability.



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

3 “(2) The terms ‘Electric Reliability Organiza-
4 tion’ and ‘ERO’ mean the organization certified by
5 the Commission under subsection (c) the purpose of
6 which is to establish and enforce reliability stand-
7 ards for the bulk-power system, subject to Commis-
8 sion review.

9 “(3) The term ‘reliability standard’ means a re-
10 quirement, approved by the Commission under this
11 section, to provide for reliable operation of the bulk-
12 power system. The term includes requirements for
13 the operation of existing bulk-power system facilities
14 and the design of planned additions or modifications
15 to such facilities to the extent necessary to provide
16 for reliable operation of the bulk-power system, but
17 the term does not include any requirement to en-
18 large such facilities or to construct new transmission
19 capacity or generation capacity.

20 “(4) The term ‘reliable operation’ means oper-
21 ating the elements of the bulk-power system within
22 equipment and electric system thermal, voltage, and
23 stability limits so that instability, uncontrolled sepa-
24 ration, or cascading failures of such system will not



1 occur as a result of a sudden disturbance or unan-
2 ticipated failure of system elements.

3 “(5) The term ‘Interconnection’ means a geo-
4 graphic area in which the operation of bulk-power
5 system components is synchronized such that the
6 failure of one or more of such components may ad-
7 versely affect the ability of the operators of other
8 components within the system to maintain reliable
9 operation of the facilities within their control.

10 “(6) The term ‘transmission organization’
11 means a regional transmission organization, inde-
12 pendent system operator, independent transmission
13 provider, or other transmission organization finally
14 approved by the Commission for the operation of
15 transmission facilities.

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

19 “(b) JURISDICTION AND APPLICABILITY.—(1) The
20 Commission shall have jurisdiction, within the United
21 States, over the ERO certified by the Commission under
22 subsection (c), any regional entities, and all users, owners
23 and operators of the bulk-power system, including but not
24 limited to the entities described in section 201(f), for pur-
25 poses of approving reliability standards established under



1 this section and enforcing compliance with this section. All
2 users, owners and operators of the bulk-power system
3 shall comply with reliability standards that take effect
4 under this section.

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

8 “(c) CERTIFICATION.—Following the issuance of a
9 Commission rule under subsection (b)(2), any person may
10 submit an application to the Commission for certification
11 as the Electric Reliability Organization (ERO). The Com-
12 mission may certify one such ERO if the Commission de-
13 termines that such ERO—

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

18 “(2) has established rules that—

19 “(A) assure its independence of the users
20 and owners and operators of the bulk-power
21 system, while assuring fair stakeholder rep-
22 resentation in the selection of its directors and
23 balanced decisionmaking in any ERO com-
24 mittee or subordinate organizational structure;



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

4 “(C) provide fair and impartial procedures
5 for enforcement of reliability standards through
6 the imposition of penalties in accordance with
7 subsection (e) (including limitations on activi-
8 ties, functions, or operations, or other appro-
9 priate sanctions);

10 “(D) provide for reasonable notice and op-
11 portunity for public comment, due process,
12 openness, and balance of interests in developing
13 reliability standards and otherwise exercising its
14 duties; and

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

18 “(d) RELIABILITY STANDARDS.—(1) The Electric
19 Reliability Organization shall file each reliability standard
20 or modification to a reliability standard that it proposes
21 to be made effective under this section with the Commis-
22 sion.

23 “(2) The Commission may approve, by rule or order,
24 a proposed reliability standard or modification to a reli-
25 ability standard if it determines that the standard is just,



1 reasonable, not unduly discriminatory or preferential, and
2 in the public interest. The Commission shall give due
3 weight to the technical expertise of the Electric Reliability
4 Organization with respect to the content of a proposed
5 standard or modification to a reliability standard and to
6 the technical expertise of a regional entity organized on
7 an Interconnection-wide basis with respect to a reliability
8 standard to be applicable within that Interconnection, but
9 shall not defer with respect to the effect of a standard
10 on competition. A proposed standard or modification shall
11 take effect upon approval by the Commission.

12 “(3) The Electric Reliability Organization shall
13 rebuttably presume that a proposal from a regional entity
14 organized on an Interconnection-wide basis for a reliability
15 standard or modification to a reliability standard to be ap-
16 plicable on an Interconnection-wide basis is just, reason-
17 able, and not unduly discriminatory or preferential, and
18 in the public interest.

19 “(4) The Commission shall remand to the Electric
20 Reliability Organization for further consideration a pro-
21 posed reliability standard or a modification to a reliability
22 standard that the Commission disapproves in whole or in
23 part.

24 “(5) The Commission, upon its own motion or upon
25 complaint, may order the Electric Reliability Organization



1 to submit to the Commission a proposed reliability stand-
2 ard or a modification to a reliability standard that ad-
3 dresses a specific matter if the Commission considers such
4 a new or modified reliability standard appropriate to carry
5 out this section.

6 “(6) The final rule adopted under subsection (b)(2)
7 shall include fair processes for the identification and time-
8 ly resolution of any conflict between a reliability standard
9 and any function, rule, order, tariff, rate schedule, or
10 agreement accepted, approved, or ordered by the Commis-
11 sion applicable to a transmission organization. Such trans-
12 mission organization shall continue to comply with such
13 function, rule, order, tariff, rate schedule or agreement ac-
14 cepted approved, or ordered by the Commission until—

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

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

19 “(C) the ordered change becomes effective
20 under this part.

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



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

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

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

12 “(2) A penalty imposed under paragraph (1) may
13 take effect not earlier than the 31st day after the electric
14 reliability organization files with the Commission notice of
15 the penalty and the record of proceedings. Such penalty
16 shall be subject to review by the Commission, on its own
17 motion or upon application by the user, owner or operator
18 that is the subject of the penalty filed within 30 days after
19 the date such notice is filed with the Commission. Applica-
20 tion to the Commission for review, or the initiation of re-
21 view by the Commission on its own motion, shall not oper-
22 ate as a stay of such penalty unless the Commission other-
23 wise orders upon its own motion or upon application by
24 the user, owner or operator that is the subject of such
25 penalty. In any proceeding to review a penalty imposed



1 under paragraph (1), the Commission, after notice and op-
2 portunity for hearing (which hearing may consist solely
3 of the record before the electric reliability organization and
4 opportunity for the presentation of supporting reasons to
5 affirm, modify, or set aside the penalty), shall by order
6 affirm, set aside, reinstate, or modify the penalty, and,
7 if appropriate, remand to the electric reliability organiza-
8 tion for further proceedings. The Commission shall imple-
9 ment expedited procedures for such hearings.

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

19 “(4) The Commission shall establish regulations au-
20 thorizing the ERO to enter into an agreement to delegate
21 authority to a regional entity for the purpose of proposing
22 reliability standards to the ERO and enforcing reliability
23 standards under paragraph (1) if—

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

25 “(i) an independent board;



1 “(ii) a balanced stakeholder board; or

2 “(iii) a combination independent and bal-
3 anced stakeholder board.”

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

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

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

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

22 “(6) Any penalty imposed under this section shall
23 bear a reasonable relation to the seriousness of the viola-
24 tion and shall take into consideration the efforts of such



1 user, owner, or operator to remedy the violation in a time-
2 ly manner.

3 “(f) CHANGES IN ELECTRICITY RELIABILITY ORGA-
4 NIZATION RULES.—The Electric Reliability Organization
5 shall file with the Commission for approval any proposed
6 rule or proposed rule change, accompanied by an expla-
7 nation of its basis and purpose. The Commission, upon
8 its own motion or complaint, may propose a change to the
9 rules of the Electric Reliability Organization. A proposed
10 rule or proposed rule change shall take effect upon a find-
11 ing by the Commission, after notice and opportunity for
12 comment, that the change is just, reasonable, not unduly
13 discriminatory or preferential, is in the public interest, and
14 satisfies the requirements of subsection (c).

15 “(g) RELIABILITY REPORTS.—The Electric Reli-
16 ability Organization shall conduct periodic assessments of
17 the reliability and adequacy of the bulk-power system in
18 North America.

19 “(h) COORDINATION WITH CANADA AND MEXICO.—
20 The President is urged to negotiate international agree-
21 ments with the governments of Canada and Mexico to pro-
22 vide for effective compliance with reliability standards and
23 the effectiveness of the Electric Reliability Organization
24 in the United States and Canada or Mexico.



1 “(i) SAVINGS PROVISIONS.—(1) The Electric Reli-
2 ability Organization shall have authority to develop and
3 enforce compliance with reliability standards for only the
4 bulk-power system.

5 “(2) This section does not authorize the Electric Reli-
6 ability Organization or the Commission to order the con-
7 struction of additional generation or transmission capacity
8 or to set and enforce compliance with standards for ade-
9 quacy or safety of electric facilities or services.

10 “(3) Nothing in this section shall be construed to pre-
11 empt any authority of any State to take action to ensure
12 the safety, adequacy, and reliability of electric service
13 within that State, as long as such action is not incon-
14 sistent with any reliability standard, except that the State
15 of New York may establish rules that result in greater
16 reliability within that State, as long as such action does
17 not result in lesser reliability outside the State than that
18 provided by the reliability standards.

19 “(4) Within 90 days of the application of the Electric
20 Reliability Organization or other affected party, and after
21 notice and opportunity for comment, the Commission shall
22 issue a final order determining whether a State action is
23 inconsistent with a reliability standard, taking into consid-
24 eration any recommendation of the Electric Reliability Or-
25 ganization.



1 “(5) The Commission, after consultation with the
2 Electric Reliability Organization and the State taking ac-
3 tion, may stay the effectiveness of any State action, pend-
4 ing the Commission’s issuance of a final order.

5 “(j) REGIONAL ADVISORY BODIES.—The Commis-
6 sion shall establish a regional advisory body on the petition
7 of at least two-thirds of the States within a region that
8 have more than one-half of their electric load served within
9 the region. A regional advisory body shall be composed or
10 of one member from each participating State in the region,
11 appointed by the Governor of each State, and may include
12 representatives of agencies, States, and provinces outside
13 the United States. A regional advisory body may provide
14 advice to the Electric Reliability Organization, a regional
15 entity, or the Commission regarding the governance of an
16 existing or proposed regional entity within the same re-
17 gion, whether a standard proposed to apply within the re-
18 gion is just, reasonable, not unduly discriminatory or pref-
19 erential, and in the public interest, whether fees proposed
20 to be assessed within the region are just, reasonable, not
21 unduly discriminatory or preferential, and in the public
22 interest and any other responsibilities requested by the
23 Commission. The Commission may give deference to the
24 advice of any such regional advisory body if that body is
25 organized on an Interconnection-wide basis.



1 “(k) APPLICATION TO ALASKA AND HAWAII.—The
2 provisions of this section do not apply to Alaska or Ha-
3 waii.”.

4 **Subtitle D—PUHCA Amendments**

5 **SEC. 7041. SHORT TITLE.**

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

8 **SEC. 7042. DEFINITIONS.**

9 For purposes of this subtitle:

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

15 (2) The term “associate company” of a com-
16 pany means any company in the same holding com-
17 pany system with such company.

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

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



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

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

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

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

20 (A) any company that directly or indirectly
21 owns, controls, or holds, with power to vote, 10
22 percent or more of the outstanding voting secu-
23 rities of a public utility company or of a holding
24 company of any public utility company; and



1 (B) any person, determined by the Com-
2 mission, after notice and opportunity for hear-
3 ing, to exercise directly or indirectly (either
4 alone or pursuant to an arrangement or under-
5 standing with one or more persons) such a con-
6 trolling influence over the management or poli-
7 cies of any public utility company or holding
8 company as to make it necessary or appropriate
9 for the rate protection of utility customers with
10 respect to rates that such person be subject to
11 the obligations, duties, and liabilities imposed
12 by this subtitle upon holding companies.

13 (9) The term "holding company system" means
14 a holding company, together with its subsidiary com-
15 panies.

16 (10) The term "jurisdictional rates" means
17 rates established by the Commission for the trans-
18 mission of electric energy in interstate commerce,
19 the sale of electric energy at wholesale in interstate
20 commerce, the transportation of natural gas in inter-
21 state commerce, and the sale in interstate commerce
22 of natural gas for resale for ultimate public con-
23 sumption for domestic, commercial, industrial, or
24 any other use.



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

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

7 (13) The term “public utility” means any per-
8 son who owns or operates facilities used for trans-
9 mission of electric energy in interstate commerce or
10 sales of electric energy at wholesale in interstate
11 commerce.

12 (14) The term “public utility company” means
13 an electric utility company or a gas utility company.

14 (15) The term “State commission” means any
15 commission, board, agency, or officer, by whatever
16 name designated, of a State, municipality, or other
17 political subdivision of a State that, under the laws
18 of such State, has jurisdiction to regulate public util-
19 ity companies.

20 (16) The term “subsidiary company” of a hold-
21 ing company means—

22 (A) any company, 10 percent or more of
23 the outstanding voting securities of which are
24 directly or indirectly owned, controlled, or held



1 with power to vote, by such holding company;
2 and

3 (B) any person, the management or poli-
4 cies of which the Commission, after notice and
5 opportunity for hearing, determines to be sub-
6 ject to a controlling influence, directly or indi-
7 rectly, by such holding company (either alone or
8 pursuant to an arrangement or understanding
9 with one or more other persons) so as to make
10 it necessary for the rate protection of utility
11 customers with respect to rates that such per-
12 son be subject to the obligations, duties, and li-
13 abilities imposed by this subtitle upon sub-
14 sidiary companies of holding companies.

15 (17) The term “voting security” means any se-
16 curity presently entitling the owner or holder thereof
17 to vote in the direction or management of the affairs
18 of a company.

19 **SEC. 7043. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
20 **PANY ACT OF 1935.**

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

23 **SEC. 7044. FEDERAL ACCESS TO BOOKS AND RECORDS.**

24 (a) IN GENERAL.—Each holding company and each
25 associate company thereof shall maintain, and shall make



1 available to the Commission, such books, accounts, memo-
2 randa, and other records as the Commission deems to be
3 relevant to costs incurred by a public utility or natural
4 gas company that is an associate company of such holding
5 company and necessary or appropriate for the protection
6 of utility customers with respect to jurisdictional rates.

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

17 (c) HOLDING COMPANY SYSTEMS.—The Commission
18 may examine the books, accounts, memoranda, and other
19 records of any company in a holding company system, or
20 any affiliate thereof, as the Commission deems to be rel-
21 evant to costs incurred by a public utility or natural gas
22 company within such holding company system and nec-
23 essary or appropriate for the protection of utility cus-
24 tomers with respect to jurisdictional rates.



1 (d) CONFIDENTIALITY.—No member, officer, or em-
2 ployee of the Commission shall divulge any fact or infor-
3 mation that may come to his or her knowledge during the
4 course of examination of books, accounts, memoranda, or
5 other records as provided in this section, except as may
6 be directed by the Commission or by a court of competent
7 jurisdiction.

8 **SEC. 7045. STATE ACCESS TO BOOKS AND RECORDS.**

9 (a) In GENERAL.—Upon the written request of a
10 State commission having jurisdiction to regulate a public
11 utility company in a holding company system, the holding
12 company or any associate company or affiliate thereof,
13 other than such public utility company, wherever located,
14 shall produce for inspection books, accounts, memoranda,
15 and other records that—

16 (1) have been identified in reasonable detail by
17 the State commission;

18 (2) the State commission deems are relevant to
19 costs incurred by such public utility company; and

20 (3) are necessary for the effective discharge of
21 the responsibilities of the State commission with re-
22 spect to such proceeding.

23 (b) LIMITATION.—Subsection (a) does not apply to
24 any person that is a holding company solely by reason of
25 ownership of one or more qualifying facilities under the



1 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
2 2601 et seq.).

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

9 (d) EFFECT ON STATE LAW.—Nothing in this sec-
10 tion shall preempt applicable State law concerning the pro-
11 vision of books, accounts, memoranda, and other records,
12 or in any way limit the rights of any State to obtain books,
13 accounts, memoranda, and other records under any other
14 Federal law, contract, or otherwise.

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

19 **SEC. 7046. EXEMPTION AUTHORITY.**

20 (a) RULEMAKING.—Not later than 90 days after the
21 effective date of this subtitle, the Commission shall pro-
22 mulgate a final rule to exempt from the requirements of
23 section 7044 (relating to Federal access to books and
24 records) any person that is a holding company, solely with
25 respect to one or more—



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

4 (2) exempt wholesale generators; or

5 (3) foreign utility companies.

6 (b) OTHER AUTHORITY.—The Commission shall ex-
7 empt a person or transaction from the requirements of
8 section 7044 (relating to Federal access to books and
9 records) if, upon application or upon the motion of the
10 Commission—

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

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

18 **SEC. 7047. AFFILIATE TRANSACTIONS.**

19 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
20 ing in this subtitle shall limit the authority of the Commis-
21 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
22 to require that jurisdictional rates are just and reasonable,
23 including the ability to deny or approve the pass through
24 of costs, the prevention of cross-subsidization, and the pro-



1 mulgation of such rules and regulations as are necessary
2 or appropriate for the protection of utility consumers.

3 (b) RECOVERY OF COSTS.—Nothing in this subtitle
4 shall preclude the Commission or a State commission from
5 exercising its jurisdiction under otherwise applicable law
6 to determine whether a public utility company, public util-
7 ity, or natural gas company may recover in rates any costs
8 of an activity performed by an associate company, or any
9 costs of goods or services acquired by such public utility
10 company from an associate company.

11 **SEC. 7048. APPLICABILITY.**

12 Except as otherwise specifically provided in this sub-
13 title, no provision of this subtitle shall apply to, or be
14 deemed to include—

15 (1) the United States;

16 (2) a State or any political subdivision of a
17 State;

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

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

22 or

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



1 **SEC. 7049. EFFECT ON OTHER REGULATIONS.**

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

5 **SEC. 7050. ENFORCEMENT.**

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

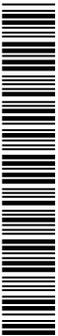
10 **SEC. 7051. SAVINGS PROVISIONS.**

11 (a) IN GENERAL.—Nothing in this subtitle prohibits
12 a person from engaging in or continuing to engage in ac-
13 tivities or transactions in which it is legally engaged or
14 authorized to engage on the date of enactment of this Act,
15 so long as that person continues to comply with the terms
16 of any such authorization, whether by rule or by order.

17 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
18 Nothing in this subtitle limits the authority of the Com-
19 mission under the Federal Power Act (16 U.S.C. 791a et
20 seq.) (including section 301 of that Act) or the Natural
21 Gas Act (15 U.S.C. 717 et seq.) (including section 8 of
22 that Act).

23 **SEC. 7052. IMPLEMENTATION.**

24 Not later than 12 months after the date of enactment
25 of this subtitle, the Commission shall—



1 (1) promulgate such regulations as may be nec-
2 essary or appropriate to implement this subtitle
3 (other than section 7045, relating to State access to
4 books and records); and

5 (2) submit to the Congress detailed rec-
6 ommendations on technical and conforming amend-
7 ments to Federal law necessary to carry out this
8 subtitle and the amendments made by this subtitle.

9 **SEC. 7053. TRANSFER OF RESOURCES.**

10 All books and records that relate primarily to the
11 functions transferred to the Commission under this sub-
12 title shall be transferred from the Securities and Exchange
13 Commission to the Commission.

14 **SEC. 7054. EFFECTIVE DATE.**

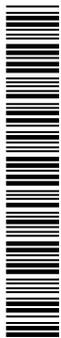
15 This subtitle shall take effect 12 months after the
16 date of enactment of this subtitle.

17 **SEC. 7055. AUTHORIZATION OF APPROPRIATIONS.**

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

20 **SEC. 7056. CONFORMING AMENDMENTS TO THE FEDERAL**
21 **POWER ACT.**

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



1 (b) DEFINITIONS.—(1) Section 201(g) of the Federal
2 Power Act (16 U.S.C. 824(g)) is amended by striking
3 “1935” and inserting “2003”.

4 (2) Section 214 of the Federal Power Act (16 U.S.C.
5 824m) is amended by striking “1935” and inserting
6 “2003”.

7 **Subtitle E—PURPA Amendments**

8 **SEC. 7061. REAL-TIME PRICING AND TIME-OF-USE METER-** 9 **ING STANDARDS.**

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

14 “(11) REAL-TIME PRICING.—(A) Each electric
15 utility shall, at the request of an electric consumer,
16 provide electric service under a real-time rate sched-
17 ule, under which the rate charged by the electric
18 utility varies by the hour (or smaller time interval)
19 according to changes in the electric utility’s whole-
20 sale power cost. The real-time pricing service shall
21 enable the electric consumer to manage energy use
22 and cost through real-time metering and commu-
23 nications technology.

24 “(B) For purposes of implementing this para-
25 graph, any reference contained in this section to the



1 date of enactment of the Public Utility Regulatory
2 Policies Act of 1978 shall be deemed to be a ref-
3 erence to the date of enactment of this paragraph.

4 “(C) Notwithstanding subsections (b) and (c) of
5 section 112, each State regulatory authority shall
6 consider and make a determination concerning
7 whether it is appropriate to implement the standard
8 set out in subparagraph (A) not later than 1 year
9 after the date of enactment of this paragraph.

10 “(12) TIME-OF-USE METERING.—(A) Each elec-
11 tric utility shall, at the request of an electric con-
12 sumer, provide electric service under a time-of-use
13 rate schedule which enables the electric consumer to
14 manage energy use and cost through time-of-use me-
15 tering and technology.

16 “(B) For purposes of implementing this para-
17 graph, any reference contained in this section to the
18 date of enactment of the Public Utility Regulatory
19 Policies Act of 1978 shall be deemed to be a ref-
20 erence to the date of enactment of this paragraph.

21 “(C) Notwithstanding subsections (b) and (c) of
22 section 112, each State regulatory authority shall
23 consider and make a determination concerning
24 whether it is appropriate to implement the standards



1 set out in subparagraph (A) not later than 1 year
2 after the date of enactment of this paragraph.”.

3 (b) SPECIAL RULES.—Section 115 of the Public Util-
4 ity Regulatory Policies Act of 1978 (16 U.S.C. 2625) is
5 amended by adding at the end the following:

6 “(i) REAL-TIME PRICING.—In a State that permits
7 third-party marketers to sell electric energy to retail elec-
8 tric consumers, the electric consumer shall be entitled to
9 receive the same real-time metering and communication
10 service as a direct retail electric consumer of the electric
11 utility.

12 “(j) TIME-OF-USE METERING.—In a State that per-
13 mits third-party marketers to sell electric energy to retail
14 electric consumers, the electric consumer shall be entitled
15 to receive the same time-of-use metering and communica-
16 tion service as a direct retail electric consumer of the elec-
17 tric utility.”.

18 **SEC. 7062. COGENERATION AND SMALL POWER PRODUC-**
19 **TION PURCHASE AND SALE REQUIREMENTS.**

20 (a) TERMINATION OF MANDATORY PURCHASE AND
21 SALE REQUIREMENTS.—Section 210 of the Public Utility
22 Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is
23 amended by adding at the end the following:

24 “(m) TERMINATION OF MANDATORY PURCHASE AND
25 SALE REQUIREMENTS.—



1 “(1) OBLIGATION TO PURCHASE.—After the
2 date of enactment of this subsection, no electric util-
3 ity shall be required to enter into a new contract or
4 obligation to purchase electric energy from a quali-
5 fying cogeneration facility or a qualifying small
6 power production facility under this section if the
7 Commission finds that—

8 “(A) the qualifying cogeneration facility or
9 qualifying small power production facility has
10 access to

11 “(i) independently administered, auc-
12 tion-based day ahead and real time whole-
13 sale markets for the sale of electric energy,
14 and

15 “(ii) long-term wholesale markets for
16 the sale of capacity and electric energy;

17 “(B) the qualifying cogeneration facility or
18 qualifying small power production facility has
19 access to a competitive wholesale market for the
20 sale of electric energy that provides such quali-
21 fying cogeneration facility or qualifying small
22 power production facility with opportunities to
23 sell electric energy that, at a minimum, are
24 comparable to the opportunities provided by the



1 markets, or some minimum combination there-
2 of, described in subparagraph (A); or

3 “(C) the qualifying cogeneration facility
4 does not meet criteria established by the Com-
5 mission pursuant to the rulemaking set forth in
6 subparagraph (n) and has not filed with the
7 Commission a notice of self-certification or an
8 application for Commission certification under
9 18 C.F.R. 292.207 prior to the date of enact-
10 ment of this subsection.

11 “(2) COMMISSION REVIEW.—(A) Any electric
12 utility may file an application with the Commission
13 for relief from the mandatory purchase obligation
14 pursuant to this subsection on a utility-wide basis.
15 Such application shall set forth the reasons why
16 such relief is appropriate and describe how the con-
17 ditions set forth in subparagraphs (A) and (B) of
18 paragraph (1) of this subsection have been met.

19 “(B) After notice, including sufficient notice to
20 potentially affected qualifying facilities, and an op-
21 portunity for comment, and within 90 days of the
22 filing of an application under subparagraph (A), the
23 Commission shall make a final determination as to
24 whether the conditions set forth in subparagraphs
25 (A) and (B) of paragraph (1) have been met. The



1 Commission shall not be authorized to issue a tolling
2 order regarding such application or otherwise delay
3 a final decision regarding such application.

4 “(3) REINSTATEMENT OF OBLIGATION TO PUR-
5 CHASE.—(A) At any time after the Commission
6 makes a finding under paragraph (2) relieving an
7 electric utility of its obligation to purchase electric
8 energy, a qualifying cogeneration facility or a quali-
9 fying small power production facility may apply to
10 the Commission for an order reinstating the electric
11 utility’s obligation to purchase electric energy under
12 this section. Such application shall set forth the rea-
13 sons why such relief is no longer appropriate and de-
14 scribe how the tests set forth in subparagraphs (A)
15 and (B) of paragraph (1) of this subsection are no
16 longer met.

17 “(B) After notice, including sufficient notice to
18 potentially affected utilities, and opportunity for
19 comment, and within 90 days of the filing of an ap-
20 plication under subparagraph (A), the Commission
21 shall issue an order reinstating the electric utility’s
22 obligation to purchase electric energy under this sec-
23 tion if the Commission finds that the condition in
24 paragraph (1), which relieved the obligation to pur-
25 chase, is no longer met. The Commission shall not



1 be authorized to issue a tolling order regarding such
2 application or otherwise delay a final decision re-
3 garding such application.

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

10 “(A) competing retail electric suppliers are
11 willing and able to provide electric energy to the
12 qualifying cogeneration facility or qualifying
13 small power production facility, and

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

17 “(5) NO EFFECT ON EXISTING RIGHTS AND
18 REMEDIES.—Nothing in this subsection affects the
19 rights or remedies of any party under any contract
20 or obligation, in effect or pending approval before
21 the appropriate State regulatory authority or non-
22 regulated electric utility on the date of enactment of
23 this subsection, to purchase electric energy or capac-
24 ity from or to sell electric energy or capacity to a



1 facility under this Act (including the right to recover
2 costs of purchasing electric energy or capacity).

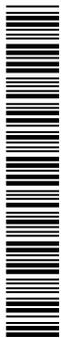
3 “(6) RECOVERY OF COSTS.—

4 “(A) REGULATION.—To ensure recovery
5 by an electric utility that purchases electric en-
6 ergy or capacity from a qualifying facility pur-
7 suant to any legally enforceable obligation en-
8 tered into or imposed under this section of all
9 prudently incurred costs associated with the
10 purchases, the Commission shall issue and en-
11 force such regulations as may be required to en-
12 sure that the electric utility shall recover the
13 prudently incurred costs associated with such
14 purchases.

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

20 “(n) RULEMAKING FOR NEW FACILITIES.—

21 “(1) IN GENERAL.—Not later than 180 days
22 after the date of enactment of this subsection, the
23 Commission shall issue a rule revising the criteria
24 for qualifying cogeneration facilities in 18 C.F.R.
25 292.205. In particular, the Commission shall evalu-



1 ate the rules regarding qualifying facility criteria
2 and revise such rules, as necessary, to ensure—

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

6 “(B) the electrical and thermal output of
7 the cogeneration facility is used predominantly
8 for commercial or industrial processes and not
9 intended predominantly for sale to an electric
10 utility; and

11 “(C) continuing progress in the develop-
12 ment of efficient electric energy generating
13 technology.

14 “(2) APPLICABILITY.—Any revisions made to
15 operating and efficiency standards shall be applica-
16 ble only to a cogeneration facility that—

17 “(A) was not a qualifying cogeneration fa-
18 cility, or

19 “(B) had not filed with the Commission a
20 notice of self-certification or an application for
21 Commission certification under 18 C.F.R.
22 292.207

23 prior to the date of enactment of this subsection.

24 “(3) DEFINITION.—For purposes of this sub-
25 section, the term ‘commercial processes’ includes



1 uses of thermal and electric energy for educational
2 and healthcare facilities.

3 “(o) RULES FOR EXISTING FACILITIES.— Notwith-
4 standing rule revisions under subsection (n), the Commis-
5 sion’s rules in effect prior to the effective date of any re-
6 vised rules prescribed under subsection (n) shall continue
7 to apply to any cogeneration facility or small power pro-
8 duction facility that—

9 “(1) was a qualifying cogeneration facility or a
10 qualifying small power production facility, or

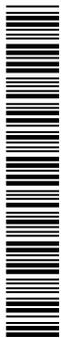
11 “(2) had filed with the Commission a notice of
12 self-certification or an application for Commission
13 certification under 18 C.F.R. 292.207

14 prior to the date of enactment of subsections (m) and
15 (n).”.

16 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

17 (1) Section 3(17)(C) of the Federal Power Act (16 U.S.C.
18 796(17)(C)) is amended to read as follows:

19 “(C) ‘qualifying small power production fa-
20 cility’ means a small power production facility
21 that the Commission determines, by rule, meets
22 such requirements (including requirements re-
23 specting minimum size, fuel use, and fuel effi-
24 ciency) as the Commission may, by rule, pre-
25 scribe.”.



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

3 “(B) ‘qualifying cogeneration facility’
4 means a cogeneration facility that the Commis-
5 sion determines, by rule, meets such require-
6 ments (including requirements respecting min-
7 imum size, fuel use, and fuel efficiency) as the
8 Commission may, by rule, prescribe.”.

9 **SEC. 7063. SMART METERING.**

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

13 “(11) (A) Not later than eighteen (18) months
14 after the date of enactment of this paragraph, each
15 electric utility shall offer each of its customer class-
16 es, and provide individual customers upon customer
17 request, a time-based rate schedule under which the
18 rate charged by the electric utility varies during dif-
19 ferent time periods and reflects the variance in the
20 costs of generating and purchasing electricity at the
21 wholesale level. The time-based rate schedule shall
22 enable the electric consumer to manage energy use
23 and cost through advanced metering and commu-
24 nications technology.



1 “(B) The types of time-based rate schedules
2 that may be offered under the schedule referred to
3 in subparagraph (A) include, among others, each the
4 following:

5 “(i) Time-Of-Use pricing whereby elec-
6 tricity prices are set for a specific time period
7 on an advance or forward basis, typically not
8 changing more often than twice a year. Prices
9 paid for energy consumed during these periods
10 shall be pre-established and known to con-
11 sumers in advance of such consumption, allow-
12 ing them to vary their demand and usage in re-
13 sponse to such prices and manage their energy
14 costs by shifting usage to a lower cost period or
15 reducing their consumption overall.

16 “(ii) Critical Peak Pricing whereby time-
17 of-use prices are in effect except for certain
18 peak days, when prices may reflect the costs of
19 generating and purchasing electricity at the
20 wholesale level and when consumers may receive
21 additional discounts for reducing peak period
22 energy consumption.

23 “(3) Real-Time pricing whereby electricity
24 prices are set for a specific time period on an



1 advanced or forward basis and may change as
2 often as hourly.

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

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

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

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



1 (b) STATE INVESTIGATION OF DEMAND RESPONSE
2 AND TIME-BASED METERING.—

3 Section 115 of the Public Utilities Regulatory Poli-
4 cies Act of 1978 (16 U.S.C. 2625) is amended by adding
5 the at the end the following:

6 “(i) TIME-BASED METERING AND COMMUNICA-
7 TIONS.—(1) Each State regulatory authority shall, not
8 later than twelve (12) months after enactment of this sub-
9 section, conduct an investigation and issue a decision
10 whether or not it is appropriate for electric utilities to pro-
11 vide and install time-based meters and communications
12 devices for each of their customers which enable such cus-
13 tomers to participate in time-based pricing rate schedules
14 and other demand response programs.”.

15 (c) FEDERAL ASSISTANCE ON DEMAND RE-
16 SPONSE.—Section 132 (a) of the Public Utility Regulatory
17 Polices Act of 1978 (16 U.S.C. 2642(a)) is amended by
18 striking “and” at the end of paragraph (3), striking the
19 period at the end of paragraph (4) and inserting “; and”,
20 and by adding the following at the end thereof:

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



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

4 “(d) DEMAND RESPONSE.—The Secretary shall be
5 responsible for each of the following:

6 “(1) Educating consumers on the availability,
7 advantages and benefits of advanced metering and
8 communications technologies.

9 “(2) Working with states, utilities, other energy
10 providers and advanced metering and communica-
11 tions experts to identify and address barriers to the
12 adoption of demand response programs, and

13 “(3) Within 6 months of enactment, provide the
14 Congress with a report that identifies and quantifies
15 the national benefits of demand response and pro-
16 vides policy recommendations as to how to achieve
17 specific levels of such benefits by January 1, 2005.”.

18 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
19 TION.—It is the policy of the United States to encourage
20 States to coordinate, on a regional basis, State energy
21 policies to provide reliable and affordable demand response
22 services to the public.

23 (2) TECHNICAL ASSISTANCE.—The Secretary
24 of Energy shall provide technical assistance to



1 States and regional organizations formed by two or
2 more States to assist them in—

3 (A) identifying the areas with the greatest
4 demand response potential;

5 (B) identifying and resolving problems in
6 transmission and distribution networks, includ-
7 ing through the use of demand response; and

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

11 (3) REPORT.—The Federal Energy Regulatory
12 Commission shall prepare and publish an annual re-
13 port, by appropriate region, that assesses demand
14 response resources, including those available from all
15 consumer classes, and which identifies and reviews
16 each of the following:

17 (A) Saturation and penetration rate of ad-
18 vanced meters and communications tech-
19 nologies, devices and systems.

20 (B) Existing demand response programs
21 and time-based rate programs.

22 (C) The annual resource contribution of
23 demand resources, including the prior year and
24 following years.



1 (D) The potential for demand response as
2 a quantifiable, reliable resource for regional
3 planning purposes.

4 (E) Steps taken to ensure that, in regional
5 transmission planning and operations, that de-
6 mand resources are provided equitable treat-
7 ment as a quantifiable, reliable resource relative
8 to the resource obligations of any load-serving
9 entity, transmission provider or transmitting
10 party.

11 (f) COST RECOVERY OF DEMAND RESPONSE DE-
12 VICES.—It is the policy of the United States that time-
13 based pricing and other forms of demand response, where-
14 by electricity customers are provided with electricity price
15 signals and the ability to benefit by responding to them,
16 shall be encouraged and the deployment of such tech-
17 nology and devices that enable electricity customers to
18 participate in such pricing and demand response systems
19 shall be facilitated. It is further the policy of the United
20 States that the benefits of such demand response that ac-
21 crue to those not deploying such technology and devices,
22 but who are part of the same regional electricity entity,
23 shall be recognized.



1 **Subtitle F—Renewable Energy**

2 **SEC. 7071. NET METERING.**

3 (a) ADOPTION OF STANDARD.—Section 111(d) of the
4 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
5 2621(d)) is amended by adding at the end the following:

6 “(13) NET METERING.—(A) Each electric util-
7 ity shall make available upon request net metering
8 service to any electric consumer that the electric
9 utility serves.

10 “(B) For purposes of implementing this para-
11 graph, any reference contained in this section to the
12 date of enactment of the Public Utility Regulatory
13 Policies Act of 1978 shall be deemed to be a ref-
14 erence to the date of enactment of this paragraph.

15 “(C) Notwithstanding subsections (b) and (c) of
16 section 112, each State regulatory authority shall
17 consider and make a determination concerning
18 whether it is appropriate to implement the standard
19 set out in subparagraph (A) not later than 1 year
20 after the date of enactment of this paragraph.”.

21 (b) SPECIAL RULES FOR NET METERING.—Section
22 115 of the Public Utility Regulatory Policies Act of 1978
23 (16 U.S.C. 2625) is amended by adding at the end the
24 following:



1 “(k) NET METERING.—In undertaking the consider-
2 ation and making the determination under section 111
3 with respect to the standard concerning net metering es-
4 tablished by section 111(d)(13), the term ‘net metering
5 service’ shall mean a service provided in accordance with
6 the following standards:

7 “(1) RATES AND CHARGES.—An electric
8 utility—

9 “(A) shall charge the owner or operator of
10 an on-site generating facility rates and charges
11 that are identical to those that would be
12 charged other electric consumers of the electric
13 utility in the same rate class; and

14 “(B) shall not charge the owner or oper-
15 ator of an on-site generating facility any addi-
16 tional standby, capacity, interconnection, or
17 other rate or charge.

18 “(2) MEASUREMENT.—An electric utility that
19 sells electric energy to the owner or operator of an
20 on-site generating facility shall measure the quantity
21 of electric energy produced by the on-site facility
22 and the quantity of electric energy consumed by the
23 owner or operator of an on-site generating facility
24 during a billing period in accordance with normal
25 metering practices.



1 “(3) ELECTRIC ENERGY SUPPLIED EXCEEDING
2 ELECTRIC ENERGY GENERATED.—If the quantity of
3 electric energy sold by the electric utility to an on-
4 site generating facility exceeds the quantity of elec-
5 tric energy supplied by the on-site generating facility
6 to the electric utility during the billing period, the
7 electric utility may bill the owner or operator for the
8 net quantity of electric energy sold, in accordance
9 with normal metering practices.

10 “(4) ELECTRIC ENERGY GENERATED EXCEED-
11 ING ELECTRIC ENERGY SUPPLIED.—If the quantity
12 of electric energy supplied by the on-site generating
13 facility to the electric utility exceeds the quantity of
14 electric energy sold by the electric utility to the on-
15 site generating facility during the billing period—

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

20 “(B) the owner or operator of the on-site
21 generating facility shall be credited for the ex-
22 cess kilowatt-hours generated during the billing
23 period, with the kilowatt-hour credit appearing
24 on the bill for the following billing period.



1 “(5) SAFETY AND PERFORMANCE STAND-
2 ARDS.—An eligible on-site generating facility and
3 net metering system used by an electric consumer
4 shall meet all applicable safety, performance, reli-
5 ability, and interconnection standards established by
6 the National Electrical Code, the Institute of Elec-
7 trical and Electronics Engineers, and Underwriters
8 Laboratories.

9 “(6) ADDITIONAL CONTROL AND TESTING RE-
10 QUIREMENTS.—The Commission, after consultation
11 with State regulatory authorities and nonregulated
12 electric utilities and after notice and opportunity for
13 comment, may adopt, by rule, additional control and
14 testing requirements for on-site generating facilities
15 and net metering systems that the Commission de-
16 termines are necessary to protect public safety and
17 system reliability.

18 “(7) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) The term ‘eligible on-site generating
21 facility’ means—

22 “(i) a facility on the site of a residen-
23 tial electric consumer with a maximum
24 generating capacity of 10 kilowatts or less



1 that is fueled by solar energy, wind energy,
2 or fuel cells; or

3 “(ii) a facility on the site of a com-
4 mercial electric consumer with a maximum
5 generating capacity of 500 kilowatts or
6 less that is fueled solely by a renewable en-
7 ergy resource, landfill gas, or a high effi-
8 ciency system.

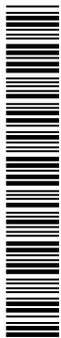
9 “(B) The term ‘renewable energy resource’
10 means solar, wind, biomass, or geothermal en-
11 ergy.

12 “(C) The term ‘high efficiency system’
13 means service fuel cells or combined heat and
14 power.

15 “(D) The term ‘net metering’ means serv-
16 ice to an electric consumer under which electric
17 energy generated by that electric consumer
18 from an eligible on-site generating facility and
19 delivered to the local distribution facilities may
20 be used to offset electric energy provided by the
21 electric utility to the electric consumer during
22 the applicable billing period.”

23 **SEC. 7072. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

24 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the
25 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is



1 amended by striking “and which satisfies” and all that
2 follows through “Secretary shall establish.” and inserting
3 “. If there are insufficient appropriations to make full pay-
4 ments for electric production from all qualified renewable
5 energy facilities in any given year, the Secretary shall as-
6 sign 60 percent of appropriated funds for that year to fa-
7 cilities that use solar, wind, geothermal, or closed-loop
8 (dedicated energy crops) biomass technologies to generate
9 electricity, and assign the remaining 40 percent to other
10 projects. The Secretary may, after transmitting to the
11 Congress an explanation of the reasons therefor, alter the
12 percentage requirements of the preceding sentence.”.

13 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
14 Section 1212(b) of the Energy Policy Act of 1992 (42
15 U.S.C. 13317(b)) is amended—

16 (1) by striking “a State or any political” and
17 all that follows through “nonprofit electrical cooper-
18 ative” and inserting “a not-for-profit electric cooper-
19 ative, a public utility described in section 115 of the
20 Internal Revenue Code of 1986, a State, Common-
21 wealth, territory, or possession of the United States
22 or the District of Columbia, or a political subdivision
23 thereof, or an Indian tribal government of subdivi-
24 sion thereof,”; and



1 (2) by inserting “landfill gas,” after “wind, bio-
2 mass,”.

3 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
4 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
5 amended by striking “during the 10-fiscal year period be-
6 ginning with the first full fiscal year occurring after the
7 enactment of this section” and inserting “after October
8 1, 2003, and before October 1, 2013”.

9 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
10 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
11 is amended by inserting “landfill gas,” after “wind, bio-
12 mass,”.

13 (e) SUNSET.—Section 1212(f) of the Energy Policy
14 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
15 “the expiration of” and all that follows through “of this
16 section” and inserting “September 30, 2023”.

17 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
18 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
19 13317(g)) is amended to read as follows:

20 “(g) AUTHORIZATION OF APPROPRIATIONS.—

21 “(1) IN GENERAL.—Subject to paragraph (2),
22 there are authorized to be appropriated such sums
23 as may be necessary to carry out this section for fis-
24 cal years 2003 through 2023.



1 “(2) AVAILABILITY OF FUNDS.—Funds made
2 available under paragraph (1) shall remain available
3 until expended.”.

4 **SEC. 7073. RENEWABLE ENERGY ON FEDERAL LANDS.**

5 (a) REPORT TO CONGRESS.—Within 24 months after
6 the date of enactment of this section, the Secretary of the
7 Interior, in cooperation with the Secretary of Agriculture,
8 shall develop and report to the Congress recommendations
9 on opportunities to develop renewable energy on public
10 lands under the jurisdiction of the Secretary of the Inte-
11 rior and National Forest System lands under the jurisdic-
12 tion of the Secretary of Agriculture. The report shall
13 include—

14 (1) 5-year plans developed by the Secretary of
15 the Interior and the Secretary of Agriculture, re-
16 spectively, for encouraging the development of wind
17 and solar energy consistent with applicable law and
18 management plans; and

19 (2) an analysis of—

20 (A) the use of rights-of-ways, leases, or
21 other methods to develop wind and solar energy
22 on such lands;

23 (B) the anticipated benefits of grants,
24 loans, tax credits, or other provisions to pro-



1 mote wind and solar energy development on
2 such lands; and

3 (C) any issues that the Secretary of the
4 Interior or the Secretary of Agriculture have
5 encountered in managing wind or solar energy
6 projects on such lands, or believe are likely to
7 arise in relation to the development of wind or
8 solar energy on such lands;

9 (3) a list, developed in consultation with the
10 Secretary of Energy and the Secretary of Defense,
11 of lands under the jurisdiction of the Department of
12 Energy or Defense that would be suitable for devel-
13 opment for wind or solar energy, and any rec-
14 ommended statutory and regulatory mechanisms for
15 such development; and

16 (4) any recommendations pertaining to the
17 issues addressed in the report.

18 (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

19 (1) IN GENERAL.—Within 90 days after the
20 date of the enactment of this Act, the Secretary of
21 the Interior shall contract with the National Acad-
22 emy of Sciences to—

23 (A) study the potential for the development
24 of wind, solar, and ocean energy on the Outer
25 Continental Shelf;



1 (B) assess existing Federal authorities for
2 the development of such resources; and

3 (C) recommend statutory and regulatory
4 mechanisms for such development.

5 (2) TRANSMITTAL OF RESULTS.—The results of
6 the study shall be transmitted to the Congress with-
7 in 24 months after the date of the enactment of this
8 Act.

9 **SEC. 7074. ASSESSMENT OF RENEWABLE ENERGY RE-**
10 **SOURCES.**

11 (a) RESOURCE ASSESSMENT.—Not later than 3
12 months after the date of enactment of this Act, and each
13 year thereafter, the Secretary of Energy shall review the
14 available assessments of renewable energy resources avail-
15 able within the United States, including solar, wind, bio-
16 mass, ocean, geothermal, and hydroelectric energy re-
17 sources, and undertake new assessments as necessary,
18 taking into account changes in market conditions, avail-
19 able technologies, and other relevant factors.

20 (b) CONTENTS OF REPORTS.—Not later than 1 year
21 after the date of enactment of this Act, and each year
22 thereafter, the Secretary shall publish a report based on
23 the assessment under subsection (a). The report shall
24 contain—



1 (1) a detailed inventory describing the available
2 amount and characteristics of the renewable energy
3 resources; and

4 (2) such other information as the Secretary be-
5 lieves would be useful in developing such renewable
6 energy resources, including descriptions of sur-
7 rounding terrain, population and load centers, near-
8 by energy infrastructure, location of energy and
9 water resources, and available estimates of the costs
10 needed to develop each resource, together with an
11 identification of any barriers to providing adequate
12 transmission for remote sources of renewable energy
13 resources to current and emerging markets, rec-
14 ommendations for removing or addressing such bar-
15 riers, and ways to provide access to the grid that do
16 not unfairly disadvantage renewable or other energy
17 producers.

18 **Subtitle G—Market Transparency,**
19 **Round Trip Trading Prohibi-**
20 **tion, and Enforcement**

21 **SEC. 7081. MARKET TRANSPARENCY RULES.**

22 Part II of the Federal Power Act is amended by add-
23 ing the following new section at the end thereof:



1 **“SEC. 218. MARKET TRANSPARENCY RULES.**

2 “(a) COMMISSION RULES.—Not later than 180 days
3 after the date of enactment of this section, the Commis-
4 sion shall issue rules establishing an electronic information
5 system to provide the Commission and the public with ac-
6 cess to such information as is necessary or appropriate
7 to facilitate price transparency and participation in mar-
8 kets subject to the Commission’s jurisdiction. Such sys-
9 tems shall provide information about the availability and
10 market price of sales of electric energy at wholesale in
11 interstate commerce and transmission of electric energy
12 in interstate commerce to the Commission, State commis-
13 sions, buyers and sellers of wholesale electric energy, users
14 of transmission services, and the public on a timely basis.
15 The Commission shall have authority to obtain such infor-
16 mation from any person, and any entity described in sec-
17 tion 201(f), who sells electric energy at wholesale in inter-
18 state commerce or provides transmission services in inter-
19 state commerce.

20 “(b) EXEMPTIONS.—The Commission shall exempt
21 from disclosure information it determines would, if dis-
22 closed, (1) be detrimental to the operation of an effective
23 market; or (2) jeopardize system security. This section
24 shall not apply to an entity described in section
25 212(k)(2)(B) with respect to transactions for the purchase



1 or sale of wholesale electric energy and transmission serv-
2 ices within the area described in section 212(k)(2)(A).

3 **SEC. 7082. PROHIBITION ON ROUND TRIP TRADING.**

4 Part II of the Federal Power Act is amended by add-
5 ing the following new section at the end thereof:

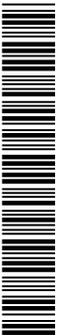
6 **“SEC. 219. PROHIBITION ON ROUND TRIP TRADING.**

7 “(a) PROHIBITION.—It shall be a violation of this Act
8 for any person, and any entity described in section 201(f),
9 willfully and knowingly to enter into any contract or other
10 arrangement to execute a round-trip trade for the pur-
11 chase or sale of electric energy at wholesale.

12 “(b) DEFINITION OF ROUND-TRIP TRADE.—For the
13 purposes of this section, the term “round-trip trade”
14 means a transaction, or combination of transactions, in
15 which a person or other entity—

16 “(1) enters into a contract or other arrange-
17 ment to purchase from, or sell to, any other person
18 or other entity electric energy at wholesale;

19 “(2) simultaneously with entering into the con-
20 tract described in paragraph (1), arranges a finan-
21 cially offsetting trade with such other person or enti-
22 ty for the same quantity of electric energy so that,
23 collectively, the purchase and sale transactions in
24 themselves result in no financial gain or loss; and



1 “(3) has a specific intent to distort reported
2 revenues, trading volumes, or prices.”.

3 **SEC. 7083. CONFORMING CHANGES.**

4 Sections 201(b)(2) and 201(e) of the Federal Power
5 Act are each amended by striking “or 212” and inserting
6 “212, 215, 216, 217, 218, or 219”. Section 201(b)(2) of
7 such Act is further amended by striking “and 212” and
8 inserting “, 212, 215, 216, 217, 218, and 219”.

9 **SEC. 7084. ENFORCEMENT.**

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

12 (1) inserting “electric utility,” after “Any per-
13 son,”; and

14 (2) inserting “, transmitting utility,” after “li-
15 censee” each place it appears.

16 (b) REVIEW OF COMMISSION ORDERS.—Section
17 313(a) of the Federal Power Act (16 U.S.C. 8251) is
18 amended by inserting “electric utility,” after “person,” in
19 the first place it appears and by striking “any person un-
20 less such person” and inserting “any entity unless such
21 entity”.

22 (c) CRIMINAL PENALTIES.—Section 316 of the Fed-
23 eral Power Act (16 U.S.C. 825o) is amended—



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

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

6 (3) by striking subsection (c).

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

9 (1) in subsections (a) and (b), by striking “sec-
10 tion 211, 212, 213, or 214” each place it appears
11 and inserting “Part II”; and

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

14 **Subtitle H—Consumer Protections**

15 **SEC. 7091. REFUND EFFECTIVE DATE.**

16 Section 206(b) of the Federal Power Act (16 U.S.C.
17 824e(b)) is amended by—

18 (1) striking “the date 60 days after the filing
19 of such complaint nor later than 5 months after the
20 expiration of such 60-day period” in the second sen-
21 tence and inserting “the date of the filing of such
22 complaint nor later than 5 months after the filing of
23 such complaint”;

24 (2) striking “60 days after” in the third sen-
25 tence and inserting “of”;



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

4 (4) in the fifth sentence after “rendered by the”
5 insert “date 60 days after the”.

6 **SEC. 7092. JURISDICTION OVER INTERSTATE SALES.**

7 (a) SCOPE OF AUTHORITY.—Section 206 of the Fed-
8 eral Power Act (16 U.S.C. 824e) is amended by adding
9 the following new subsection at the end thereof:

10 “(f)(1) If an entity that is not a public utility (includ-
11 ing an entity referred to in section 201(f)) voluntarily
12 makes a spot market sale of electric energy and such sale
13 violates Commission rules in effect at the time of such
14 sale, such entity shall be subject to the Commission’s re-
15 fund authority under this section with respect to such vio-
16 lation.

17 “(2) This section shall not apply to any entity that
18 is either—

19 “(A) an entity described in section 201(f); or

20 “(B) a rural electric cooperative

21 that does not sell more than 4,000,000 megawatt hours
22 of electricity per year.

23 “(3) For purposes of this subsection, the term ‘spot
24 market sale’ means an agreement for the sale of electric
25 energy at wholesale in interstate commerce that is for 24



1 hours or less and that is entered into the day of, or the
2 day prior to, delivery.”.

3 (b) CONFORMING AMENDMENTS.—(1) Section 206 of
4 the Federal Power Act (16 U.S.C. 824e) is amended as
5 follows:

6 (A) In subsection (b), in the seventh sentence,
7 by striking “the public utility to make”.

8 (B) In the first sentence of subsection (a), by
9 striking “hearing had” and inserting “hearing held”.

10 (2) Section 201(b)(2) of such Act (16 U.S.C.
11 824(b)(2)) is amended as follows:

12 (A) In the first sentence by striking “section
13 210” and inserting “section 206(f), 210,”.

14 (B) In the second sentence by striking “section
15 210” and inserting “206(f), 210,”.

16 (3) Section 201(e) of the Federal Power Act is
17 amended by striking “section 210” and inserting
18 “section 206(f), 210”.

19 (c) UNIFORM INVESTIGATION AUTHORITY.—Section
20 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is
21 amended as follows:

22 (1) By inserting “, electric utility, transmitting
23 utility, or other entity” after “person” each time it
24 appears.



1 (2) By striking the period at the end of the
2 first sentence and inserting the following: “or in ob-
3 taining information about the sale of electric energy
4 at wholesale in interstate commerce and the trans-
5 mission of electric energy in interstate commerce.”.

6 (d) SANCTITY OF CONTRACT.—(1) The Federal En-
7 ergy Regulatory Commission shall have no authority to ab-
8 rogate or modify any provision of an existing contract, ex-
9 cept upon a finding, after notice and opportunity for a
10 hearing, that such action is necessary to protect the public
11 interest, unless such contract expressly provides for a dif-
12 ferent standard of review.

13 (2) For purposes of this subsection, an existing con-
14 tract is any agreement, in effect and subject to the juris-
15 diction of the Commission—

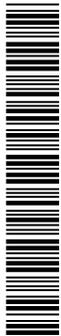
16 (A) under section 4 of the Natural Gas Act or
17 section 205 of the Federal Power Act; and

18 (B) that is not for sales in an organized ex-
19 change or auction spot market.

20 (3) This subsection shall not apply to any contract
21 executed before the date of enactment of this section.

22 **SEC. 7093. CONSUMER PRIVACY.**

23 (a) IN GENERAL.—The Federal Trade Commission
24 shall issue rules protecting the privacy of electric con-
25 sumers from the disclosure of consumer information ob-



1 tained in connection with the sale or delivery of electric
2 energy to electric consumers. The Federal Trade Commis-
3 sion shall proceed in accordance with section 553 of title
4 5, United States Code, when prescribing a rule under this
5 section.

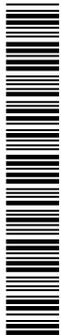
6 (b) STATE AUTHORITY.—If the Federal Trade Com-
7 mission determines that a State's regulations provide
8 equivalent or greater protection than the provisions of this
9 section, such State regulations shall apply in that State
10 in lieu of the regulations issued by the Commission under
11 this section.

12 **SEC. 7094. UNFAIR TRADE PRACTICES.**

13 (a) SLAMMING.—The Federal Trade Commission
14 shall issue rules prohibiting the change of selection of an
15 electric utility except with the informed consent of the
16 electric consumer or if approved by the appropriate State
17 regulatory authority.

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

22 (c) RULEMAKING.—The Federal Trade Commission
23 shall proceed in accordance with section 553 of title 5,
24 United States Code, when prescribing a rule under this
25 section.



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

7 **Subtitle I—Merger Review Reform**
8 **and Accountability**

9 **SEC. 7101. MERGER REVIEW REFORM AND ACCOUNT-**
10 **ABILITY.**

11 (a) MERGER REVIEW REFORM.—Within 180 days
12 after the date of enactment of this act, the Secretary of
13 Energy, in consultation with the Federal Energy Regu-
14 latory Commission and the Department of Justice, shall
15 prepare, and transmit to the Committee on Energy and
16 Commerce of the House of Representatives and the Com-
17 mittee on Energy and Natural Resources of the Senate
18 each of the following:

19 (1) A study of the extent to which the authori-
20 ties vested in the Federal Energy Regulatory Com-
21 mission under section 203 of the Federal Power Act
22 are duplicative of authorities vested in—

23 (A) other agencies of Federal and State
24 government; and



1 (B) the Federal Energy Regulatory Com-
2 mission, including under sections 205 and 206
3 of the Federal Power Act.

4 (2) Recommendations on reforms to the Fed-
5 eral Power Act that would eliminate any unneces-
6 sary duplication in the exercise of regulatory author-
7 ity or unnecessary delays in the approval (or dis-
8 approval) of applications for the sale, lease, or other
9 disposition of public utility facilities.

10 “(b) MERGER REVIEW ACCOUNTABILITY.—Not later
11 than 1 year after the date of enactment of this Act and
12 annually thereafter, with respect to all orders issued with-
13 in the preceding year that impose a condition on a sale,
14 lease, or other disposition of public utility facilities under
15 section 203(b) of the Federal Power Act, the Federal En-
16 ergy Regulatory Commission shall transmit a report to the
17 Committee on Energy and Commerce of the House of
18 Representatives and the Committee on Energy and Nat-
19 ural Resources of the Senate explaining each of the fol-
20 lowing:

21 (1) The condition imposed.

22 (2) Whether the Commission could have im-
23 posed such condition by exercising its authority
24 under any provision of the Federal Power Act other
25 than under section 203(b).



1 (3) If the Commission could not have imposed
2 such condition other than under section 203(b), why
3 the Commission determined that such condition was
4 consistent with the public interest.

