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H. R. 3790

To give all American electricity consumers the right to choose among competitive providers of electricity, in order to secure lower electricity rates, higher quality services, and a more robust United States economy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1996

Mr. SCHAEFER introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To give all American electricity consumers the right to choose among competitive providers of electricity, in order to secure lower electricity rates, higher quality services, and a more robust United States economy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Electric Consumers’ Power to Choose Act of 1996”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

Sec. 2. Findings and purpose.

Sec. 3. Severability.

TITLE I—COMPETITIVE RETAIL ELECTRIC ENERGY SERVICE

- Sec. 101. Definitions.
- Sec. 102. Customer choice.
- Sec. 103. Retail competition for State regulated electric utilities.
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- Sec. 106. FERC authority for certain utilities.
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TITLE II—PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

- Sec. 201. Application of the Public Utility Holding Company Act of 1935.
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TITLE III—PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

- Sec. 301. Application of PURPA provisions.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that:

3 (1) Low cost and reliable electricity is integral
 4 to the vitality of the United States economy, the
 5 competitiveness of domestically made goods and the
 6 quality of life of all Americans.

7 (2) Americans consume electricity worth more
 8 than \$200 billion a year, approximately half of

1 which is for residential purposes, making the month-
2 ly electric utility bill one of the largest expenses for
3 most households.

4 (3) The cost of electricity has a direct effect on
5 the price, profitability, and competitiveness of goods
6 and services produced in the United States.

7 (4) Lower priced electricity can be realized by
8 giving all American consumers the right to choose
9 among suppliers of electricity in a competitive mar-
10 ket, while maintaining, if not improving, the reliabil-
11 ity of service those consumers have come to expect.

12 (5) The development of vibrant competition in
13 the retail market for electric energy will—

14 (A) reduce the costs of electric energy to
15 even the smallest consumers of electricity;

16 (B) create jobs as American businesses are
17 able to lower costs and better compete in world
18 markets and against foreign competition here at
19 home; and

20 (C) result in a more efficient utility indus-
21 try.

22 (6) Monopoly rate-of-return regulation of elec-
23 tricity has failed. It has stifled competition, resulting
24 in high electricity rates for many consumers and few

1 incentives for technological innovation and good cus-
2 tomer service by electric utilities.

3 (7) High electricity rates are regressive, placing
4 a disproportionate burden on poor ratepayers.

5 (8) High electricity rates divert consumer dol-
6 lars that would otherwise be spent for purchasing
7 necessary goods and services, savings, or invest-
8 ments that benefit the economy as a whole.

9 (9) Congress has authority to enact laws, under
10 the Commerce Clause of the United States Constitu-
11 tion, regarding the generation, transmission, dis-
12 tribution, and sale of electric energy in interstate
13 commerce at the wholesale and retail levels.

14 (10) Only Congress can ensure that a competi-
15 tive retail electricity market is established through-
16 out the United States on an expeditious but orderly
17 basis. Regional and State variations, however, re-
18 quire that State regulatory authorities should receive
19 deference in implementing competition and consumer
20 choice in retail electricity markets.

21 (11) Customers of all utilities, whether served
22 by regulated or nonregulated electric utilities (such
23 as municipally owned utilities or rural cooperatives)
24 should have the same rights to receive the benefits
25 of competition and consumer choice.

1 (12) In a competitive generation market, it is in
2 the national interest to continue to encourage the
3 development of renewable energy technologies in
4 order to ensure energy diversity and security and to
5 protect the environment.

6 (13) A national program is needed to promote
7 renewable energy development that is market driven
8 and encourages competition among different renew-
9 able technologies. This program should be limited in
10 scope and should be terminated when the goals of
11 the program are achieved.

12 (14) Subjecting renewable energy technologies
13 to the discipline of the free market will better allo-
14 cate renewable resources and speed the commer-
15 cialization of renewable technologies than traditional
16 centralized government resource planning.

17 (b) PURPOSE.—The purpose of this Act is to give all
18 American electricity consumers the right to choose among
19 competitive providers of electricity, in order to secure
20 lower electricity rates, higher quality services, and a more
21 robust United States economy.

22 **SEC. 3. SEVERABILITY.**

23 If any provision of this Act, or the application of such
24 provision to any person or circumstance, shall be held in-
25 valid, the remainder of the Act, and the application of

1 such provision to persons or circumstances other than
2 those as to which it is held invalid, shall not be affected
3 thereby.

4 **TITLE I—COMPETITIVE RETAIL** 5 **ELECTRIC ENERGY SERVICE**

6 **SEC. 101. DEFINITIONS.**

7 For purposes of this title:

8 (1) The term “Commission” means the Federal
9 Energy Regulatory Commission.

10 (2) The terms “State regulatory authority”,
11 “State regulated electric utility” and “nonregulated
12 electric utility” have the same meaning as such
13 terms have in the Public Utility Regulatory Policies
14 Act, as provided by section 3 of that Act.

15 (3) The term “retail electric energy services”
16 means each of the following:

17 (A) electric energy sold for ultimate con-
18 sumption.

19 (B) Aggregating or marketing electric en-
20 ergy for sale for ultimate consumption.

21 (C) Billing and metering services and
22 equipment for electric energy sold for ultimate
23 consumption.

1 (D) Energy management services and
2 equipment for electric energy sold for ultimate
3 consumption.

4 (E) Any other electric service or equipment
5 for which an alternative to that provided by an
6 electric utility is offered to an electric utility re-
7 tail customer of such utility by any person
8 other than such utility.

9 (4) The term “electric utility retail customer”
10 means a person who purchases retail electric energy
11 services.

12 (5) The term “regulated electric utility retail
13 customer” means an electric utility retail customer
14 who is served by the local distribution system of a
15 State regulated electric utility.

16 (6) The term “nonregulated electric utility re-
17 tail customer” means an electric utility retail cus-
18 tomer who is served by the local distribution system
19 of a nonregulated electric utility.

20 (7) The term “affiliate” when used with respect
21 to an electric utility means any person that controls,
22 is controlled by, or is under common control with,
23 such utility.

24 (8) The term “renewable energy” means elec-
25 tricity generated from organic waste, biomass, dedi-

1 cated energy crops, landfill gas, geothermal, solar or
2 wind resources.

3 (9) The term “Renewable Energy Credit”
4 means a tradable certificate of proof that one unit
5 (as determined by the Commission) of renewable en-
6 ergy was generated by any person.

7 (10) The term “electric generator” means a
8 person generating electric energy.

9 (11) the term “State” means any State and the
10 District of Columbia.

11 **SEC. 102. CUSTOMER CHOICE.**

12 By no later than December 15, 2000, all electric util-
13 ity retail customers shall have the right to purchase retail
14 electric energy services from any person offering to pro-
15 vide those services to such customers.

16 **SEC. 103. RETAIL COMPETITION FOR STATE REGULATED**
17 **ELECTRIC UTILITIES.**

18 (a) STATE ELECTION.—A State may elect to estab-
19 lish, by no later than December 15, 2000, retail electric
20 service choice in accordance with this Act for retail cus-
21 tomers of State regulated electric utilities in such State.
22 Such election shall be made through submission by the
23 State regulatory authority exercising ratemaking jurisdic-
24 tion over such utilities of a notice to establish retail elec-
25 tric service choice to the Commission within 6 months

1 after the enactment of this section. If, within such 6-
2 month period, the State regulatory authority notifies the
3 Commission that additional legislative authority is needed
4 in order for the State regulatory authority to make such
5 an election, the 6 month date shall be extended to a date
6 2 years after the enactment of this section.

7 (b) CUSTOMER CHOICE AND NONDISCRIMINATORY
8 ACCESS.—If a State elects to establish retail electric serv-
9 ice choice for State regulated electric utility customers, the
10 State regulatory authority exercising ratemaking authority
11 over each State regulated electric utility in the State shall
12 establish such rules as will provide for each of the follow-
13 ing:

14 (1) All State regulated electric utility retail cus-
15 tomers of all State regulated utilities under the rate-
16 making jurisdiction of the State regulatory authority
17 shall be able to purchase retail electric energy serv-
18 ices from any person offering to provide those serv-
19 ices to such customers.

20 (2) Any person seeking to provide any retail
21 electric energy service to such customers shall have
22 reasonable and nondiscriminatory access on an
23 unbundled basis, for the purposes of providing such
24 service, to local distribution facilities owned or oper-
25 ated by all such State regulated utilities. Access to

1 local distribution facilities shall be provided under
2 rates, terms, and conditions that are just, reasonable
3 and not unduly discriminatory and that permit the
4 recovery by the facility owner or operator of all costs
5 incurred in connection with the local distribution
6 service and necessary ancillary services. The local
7 distribution services provided shall be at least equal
8 in quality to those provided by the utility to itself
9 or to any affiliate of the utility.

10 (3) The owner or operator of the local distribu-
11 tion facilities shall be prohibited from using any rev-
12 enue from such facilities to subsidize other services.
13 The State regulatory authority shall establish an effective
14 date for the application of the requirements set forth in
15 paragraphs (1) through (3) for all State regulated electric
16 utilities subject to the jurisdiction of such State regulatory
17 authority. Such date (hereinafter in this section referred
18 to as the “effective date for retail electric service choice”)
19 shall not be later than December 15, 2000.

20 (c) PRICING FLEXIBILITY; INCENTIVE-BASED RATE
21 REGULATION.—Each State regulatory authority that
22 makes an election to establish retail electric service choice
23 for State regulated electric utility retail customers shall
24 implement, on the effective date of retail electric service
25 choice for customers of State regulated utilities subject to

1 the jurisdiction of such State regulatory authority, appro-
2 priate flexible pricing procedures and incentive-based rate
3 regulation for each retail electric energy service provided
4 by each State regulated electric utility. Such procedures
5 shall afford the utility the opportunity to respond fairly
6 to competition.

7 (d) TERMINATION OF PRICE AND CERTAIN OTHER
8 REGULATION.—Each State regulatory authority that
9 makes an election to establish retail electric service choice
10 for State regulated electric utility retail customers shall,
11 on the effective date of retail electric service choice for
12 customers of State regulated utilities subject to the juris-
13 diction of such State regulatory authority, cease to carry
14 out each of the following with respect to any entity that
15 is not providing local distribution services to such cus-
16 tomers:

17 (1) Regulation of the prices for retail electric
18 energy services provided by such entity to such cus-
19 tomers.

20 (2) Requiring such entity to file a schedule of
21 charges for retail electric energy services provided by
22 such entity to such customers.

23 (3) Requiring such entity to file cost or revenue
24 projections for retail electric energy services provided
25 by such entity to such customers.

1 (4) Regulation of depreciation charges for facili-
2 ties used by such entity to provide retail electric en-
3 ergy services to such customers.

4 Each such State regulatory authority shall also cease to
5 carry out the activities referred to in paragraphs (1)
6 through (4), and cease to implement subsection (c), with
7 respect to any retail electric energy service provided within
8 a geographic area by a State regulated electric utility that
9 is providing local distribution services within such area if
10 the State regulatory authority determines that such serv-
11 ice is subject to effective competition.

12 (e) EARLIER ADOPTION OF CUSTOMER CHOICE.—
13 Nothing in this title shall be construed to prohibit any
14 State regulatory authority from establishing or enforcing
15 any rules or regulations relating to retail electric service
16 competition prior to December 15, 2000, or to require any
17 State regulatory authority to establish or enforce any rules
18 or regulations relating to retail electric service competition
19 prior to December 15, 2000.

20 (f) CONSIDERATION OF CERTAIN TERMS AND CONDI-
21 TIONS.—Each State regulatory authority that makes an
22 election to establish retail electric service choice for State
23 regulated electric utility retail customers shall consider
24 each of the following terms and conditions and make a
25 determination concerning whether or not it is appropriate

1 to apply such terms and conditions to the local distribution
2 or sale of retail electric energy services to carry out the
3 purposes of this Act:

4 (1) Terms and conditions intended to insure
5 that adequate electric service is available on a com-
6 petitively neutral and nondiscriminatory basis to all
7 customers served by the retail distribution system
8 concerned.

9 (2) Terms and conditions designed to ensure
10 and enhance the reliability of electric service to all
11 electric energy consumers.

12 (3) Terms and conditions allowing any electric
13 utility subject to the ratemaking jurisdiction of such
14 State regulatory authority to recover costs incurred
15 prior to July 11, 1996.

16 (4) Terms and conditions to promote electric
17 energy efficiency, conservation, and environmental
18 programs.

19 Such terms and conditions may only be imposed on a non-
20 discriminatory and competitively neutral basis.

21 **SEC. 104. RETAIL COMPETITION FOR NONREGULATED**
22 **ELECTRIC UTILITIES.**

23 (a) NONREGULATED UTILITY ELECTION.—A non-
24 regulated electric utility may elect to establish retail elec-
25 tric service choice for its customers. Such election shall

1 be made through submission of a notice to establish retail
2 electric service choice to the State regulatory authority for
3 the State in which such nonregulated utility is located
4 within 6 months after the enactment of this section. If,
5 within such 6-month period, the utility notifies the State
6 regulatory authority that additional legislative authority is
7 needed in order for the utility to make such an election,
8 the 6 month date shall be extended to a date 2 years after
9 the enactment of this section. If a nonregulated electric
10 utility does not elect to establish retail electric service
11 choice for its customers within the required period, such
12 utility shall be subject to the election made under section
13 103 by the State regulatory authority that has ratemaking
14 authority for State regulated electric utilities in the State.

15 (b) CUSTOMER CHOICE AND NONDISCRIMINATORY
16 ACCESS.—If a nonregulated electric utility elects to estab-
17 lish retail electric service choice for its retail electric cus-
18 tomers, the utility shall establish such rules as will provide
19 for each of the following:

20 (1) All nonregulated electric utility retail cus-
21 tomers of the utility shall be able to purchase retail
22 electric energy services from any person offering to
23 provide those services to such customers.

24 (2) Any person seeking to provide retail electric
25 energy services to such customers shall have reason-

1 able and nondiscriminatory access on an unbundled
2 basis, for the purposes of providing such services, to
3 all local distribution facilities owned or operated by
4 the utility. Access to local distribution facilities shall
5 be provided under rates, terms, and conditions that
6 are just, reasonable and not unduly discriminatory
7 and that permit the recovery by the utility of all
8 costs incurred in connection with the local distribu-
9 tion services and necessary associated services. The
10 local distribution services provided shall be at least
11 equal in quality to those provided by the utility to
12 itself or to any affiliate of the utility.

13 (3) The utility shall be prohibited from using
14 any revenue from local distribution facilities to sub-
15 sidize retail electric services provided by such utility
16 to any person.

17 The nonregulated electric utility shall establish an effec-
18 tive date for the application of the requirements set forth
19 in paragraphs (1) through (3). Such date (hereinafter in
20 this section referred to as the “effective date for retail
21 electric service choice”) shall not be later than December
22 15, 2000.

23 (c) EARLIER ADOPTION OF CUSTOMER CHOICE.—
24 Nothing in this title shall be construed to prohibit any
25 nonregulated utility from establishing or enforcing any

1 rules or regulations relating to retail electric service com-
2 petition prior to December 15, 2000, or to require any
3 nonregulated utility to establish or enforce any rules or
4 regulations relating to retail electric service competition
5 prior to December 15, 2000.

6 (d) CONSIDERATION OF CERTAIN TERMS AND CON-
7 DITIONS.—Each nonregulated electric utility that makes
8 an election to establish retail electric service choice for its
9 customers shall consider each of the following terms and
10 conditions and make a determination concerning whether
11 or not it is appropriate to apply such terms and conditions
12 to the local distribution or sale of retail electric energy
13 services to carry out the purposes of this Act:

14 (1) Terms and conditions intended to insure
15 that adequate electric service is available on a com-
16 petitively neutral and nondiscriminatory basis to all
17 customers served by the retail electric distribution
18 system concerned.

19 (2) Terms and conditions designed to ensure
20 and enhance the reliability of electric service to all
21 retail electric customers of the utility.

22 (3) Terms and conditions allowing the nonregu-
23 lated electric utility to recover investment costs in-
24 curred prior to July 11, 1996.

1 (4) Terms and conditions to promote electric
2 energy efficiency, conservation, and environmental
3 programs.

4 Such terms and conditions may only be imposed on a non-
5 discriminatory and competitively neutral basis.

6 (e) PREFERENCE POWER.—No person may resell
7 electric energy purchased by such person pursuant to a
8 long-term firm power contract from any Federal power
9 marketing authority to any other person not directly
10 served by retail distribution facilities owned or operated
11 by such person.

12 **SEC. 105. JURISDICTION OF STATE COURTS.**

13 In addition to the prohibitions on Federal court juris-
14 diction set forth in section 1342 of title 28, notwithstand-
15 ing any other provision of law, no court of the United
16 States shall have jurisdiction over any action arising under
17 any provision of section 102, 103, 104, or 110 except for
18 review of any action in the Supreme Court of the United
19 States in accordance with sections 1257 and 1258 of title
20 28 of the United States Code. Any person may bring an
21 action in the appropriate State court to enforce the re-
22 quirements of sections 102, 103, 104, and 110. Except
23 for Supreme Court review, any appeal, review, or other
24 action in State court shall be pursuant to any applicable
25 State procedures.

1 **SEC. 106. FERC AUTHORITY FOR CERTAIN UTILITIES.**

2 (a) IN GENERAL.—If an election under section 103
3 or 104 to establish retail electric service choice is not made
4 by the date set forth in section 103(a) or 104(a) for a
5 State regulated or a nonregulated electric utility, the Com-
6 mission shall exercise the authorities that would otherwise
7 be exercised by the State regulatory authority or nonregu-
8 lated electric utility under section 103 and 104 as if such
9 election had been made by such date. The exercise of such
10 authorities pursuant to this section shall preempt any
11 State law that is inconsistent with the exercise of such
12 authorities.

13 (b) STATES WITHOUT STATE REGULATORY AU-
14 THORITIES.—For any State without a State regulatory
15 authority exercising ratemaking jurisdiction over State
16 regulated electric utilities, if a nonregulated electric utility
17 elects not to establish retail electric service choice for its
18 customers or fails to submit an election within the re-
19 quired period, the Commission shall exercise the authori-
20 ties of section 104 that would otherwise be exercised by
21 the nonregulated electric utility if the nonregulated elec-
22 tric utility had elected to establish retail electric service
23 choice.

24 (c) FEDERAL COURTS.—The provisions of section
25 105 (relating to jurisdiction of State courts) shall not
26 apply to any action arising under this section. Any person

1 aggrieved by any action of the Commission pursuant to
2 this section may bring an action in the appropriate United
3 States district court for appropriate relief.

4 **SEC. 107. ANTITRUST LAWS.**

5 Nothing in this title or the amendments made by this
6 title shall be construed to modify, impair, or supersede the
7 applicability of any of the antitrust laws. As used in this
8 section the term “antitrust laws” includes the Sherman
9 Antitrust Act (15 U.S.C. 1 et seq.) and amendments
10 thereto, the Clayton Act (15 U.S.C. 12 et seq.) and
11 amendments thereto, regulations promulgated under such
12 laws, and Federal court decisions interpreting such laws.

13 **SEC. 108. FERC AUTHORITY FOR TRANSMISSION.**

14 (a) IN GENERAL.—The Commission may, by rule or
15 order, require a transmitting utility (as defined in the
16 Federal Power Act) to provide transmission of electric en-
17 ergy in interstate commerce (including any enlargement
18 of transmission capacity necessary to provide such service)
19 under such terms and conditions as the Commission finds
20 are necessary and appropriate to ensure that customers
21 have access to transmission services under terms and con-
22 ditions (including charges) that are comparable to those
23 under which the transmitting utility uses its own system
24 and are otherwise in the public interest.

1 (b) LIMITATION.—The Commission may not exercise
2 the authority of subsection (a) to require the transmission
3 of electric energy to any electric utility retail customer
4 prior to the effective date for retail electric choice (as de-
5 termined under section 103 or 104) for the electric utility
6 that provides local distribution service to such customer.

7 **SEC. 109. EFFECT ON OTHER AUTHORITIES.**

8 Nothing in this title shall be construed to prohibit
9 the Commission from using any authority of the Commis-
10 sion under Part II of the Federal Power Act in fulfilling
11 the requirements of this title, to the extent that such au-
12 thority is not exercised in a manner inconsistent with the
13 provisions of this title.

14 **SEC. 110. BARRIERS TO ENTRY.**

15 (a) NONDISCRIMINATORY ACCESS.—After the effec-
16 tive date for retail electric choice (as determined under
17 section 103 or 104) for an electric utility, no State or local
18 legal requirement (other than a facility siting requirement)
19 may prohibit or have the effect of prohibiting any entity
20 from offering to any electric utility retail customer of such
21 utility any retail service related to electric energy or from
22 providing any retail electric energy service directly or indi-
23 rectly to any such customer.

24 (b) STATE REGULATORY AUTHORITY.—A State may,
25 under State law, impose requirements relating to retail

1 electric energy services necessary to preserve universal
2 service, protect public safety and welfare, ensure the con-
3 tinued quality of electric services and safeguard the rights
4 to consumers the extent such requirements are imposed
5 on a nondiscriminatory and competitively neutral basis.

6 (c) PARITY OF FRANCHISE AND OTHER CHARGES.—
7 A State or local government, under State law, may impose
8 or collect any franchise, license, permit fee, or equivalent
9 thereof, from any person providing any retail electric en-
10 ergy service as a condition for operating in the State or
11 locality, only to the extent such charge is imposed on a
12 nondiscriminatory and competitively neutral basis.

13 **SEC. 111. ILLEGAL CHANGES IN CUSTOMER SELECTIONS.**

14 (a) PROHIBITION.—No person shall submit or exe-
15 cute a change in the selection made by a regulated utility
16 retail customer or nonregulated utility retail customer of
17 a provider of electric energy services except in accordance
18 with such verification procedures as the Commission shall
19 prescribe. Nothing in this section shall preclude any State
20 regulatory authority from proscribing such additional pro-
21 cedures regarding changes in customer selection with re-
22 spect to intrastate retail electric energy services.

23 (b) LIABILITY FOR CHARGES.—Any person who vio-
24 lates the verification procedures described in subsection

1 (a) and that collects charges from a customer shall be lia-
2 ble—

3 (1) to the customer in an amount equal to all
4 charges paid by such customer after violation; and

5 (2) to the provider of electric energy service
6 previously selected by the customer in an amount
7 equal to all charges paid by such customer after vio-
8 lation.

9 The Commission may prescribe procedures for the recov-
10 ery of the amounts referred to in paragraphs (1) and (2).

11 The remedies provided by this section are in addition to
12 any other remedies available by law.

13 **SEC. 112. RENEWABLE ENERGY.**

14 (a) **MINIMUM RENEWABLE GENERATION REQUIRE-**
15 **MENT.**—For calendar years after the effective date for re-
16 tail electric choice (as determined under section 103) for
17 State regulated electric utilities in any State, each electric
18 generator in the State that sells electric energy to any
19 other person shall submit to the Commission Renewable
20 Energy Credits in an amount equal to the required annual
21 percentage of the total electric energy generated by such
22 generator in the preceding calendar year. Nothing in this
23 section shall be construed to prohibit any State from re-
24 quiring additional renewable energy generation in that
25 State under any program adopted by the State.

1 (b) REQUIRED ANNUAL PERCENTAGE.—From the
 2 first calendar year following the effective date for retail
 3 electric choice (as determined under section 103) for State
 4 regulated electric utilities in a State through calendar year
 5 2004, the required annual percentage for each electric
 6 generator in the State shall be 2 percent. Thereafter the
 7 required annual percentage for each such generator shall
 8 be as set forth in the following table :

Calendar year:	Minimum Percentage:
2005	3
2010	4

9 (c) SUBMISSION OF CREDITS.—An electric generator
 10 may satisfy the requirements of subsection (a) through the
 11 submission of—

12 (1) Renewable Energy Credits issued by the
 13 Commission under this section for renewable energy
 14 generated by such electric generator in such cal-
 15 endar year.

16 (2) Renewable Energy Credits issued by the
 17 Commission under this section to any other electric
 18 generator for renewable energy generated in such
 19 calendar year by such other generator and acquired
 20 by such electric generator.

21 (3) Any combination of the foregoing.

1 A Renewable Energy Credit that is submitted to the Com-
2 mission for any year may not be used for any other pur-
3 poses thereafter.

4 (d) ISSUANCE OF RENEWABLE ENERGY CREDITS.—

5 (1) IN GENERAL.—The Commission shall estab-
6 lish, by rule after notice and opportunity for hearing
7 but not later than 120 days after the enactment of
8 this Act, a program to issue Renewable Energy
9 Credits to electric generators. Renewable Energy
10 Credits shall be identified by type of generation and
11 facility location (State). Under such program, the
12 Commission shall issue one Renewable Energy Cred-
13 it to any person who generates in any State (in any
14 year after the calendar year after the effective date
15 for retail electric choice (as determined under sec-
16 tion 103) for State regulated electric utilities in the
17 State) one unit of electric energy through the use of
18 renewable energy generation.

19 (2) FEES.—The Commission shall impose and
20 collect a fee on recipients of Renewable Energy
21 Credits in an amount equal to the administrative
22 costs of issuing, recording, monitoring the sale or ex-
23 change, and tracking of such credits. The failure or
24 refusal of any person to pay such fee shall be subject
25 to a civil penalty equal to 2 and one-half times the

1 amount of the unpaid fees. The Commission shall
2 bring an action in the appropriate United States dis-
3 trict court to collect any unpaid fees and to impose
4 a civil penalty on any person who fails or refuses to
5 pay such fee imposed under this section.

6 (3) PURPA CONTRACTS.—In the case of renew-
7 able energy sold by the generator to an electric util-
8 ity under a contract (including but not limited to a
9 contract entered into before the date of enactment of
10 this Act) that is subject to section 210 of the Public
11 Utility Regulatory Policies Act of 1978, for the du-
12 ration of such contract, the utility shall be treated
13 for purposes of the other provisions of this section
14 as the generator of such energy unless such genera-
15 tor and utility agree to terminate such contract prior
16 to the expiration date set forth in the contract.

17 (e) SALE OR EXCHANGE.—Renewable Energy Credits
18 may be sold or exchanged by the person to whom issued
19 or by any other person who acquires the credit. A Renew-
20 able Energy Credit for any year that is not used to satisfy
21 the minimum renewable generation requirement of sub-
22 section (a) for that year may be not be carried forward
23 for use in another year. The Commission shall promulgate
24 regulations to provide for the issuance, recording, monitor-
25 ing the sale or exchange, and tracking of such credits. The

1 Commission shall maintain records of all sales and ex-
2 changes of credits. No such sale or exchange shall be valid
3 unless recorded by the Commission.

4 (f) ENFORCEMENT.—The Commission shall bring an
5 action in the appropriate United States district court to
6 impose a civil penalty on any person who fails or refuses
7 to comply with subsection (a). The failure or refusal of
8 any person to submit any required quantity of Renewable
9 Energy Credits shall be subject to a civil penalty of not
10 more than 2 and one-half times the estimated national av-
11 erage market value (as determined by the Commission)
12 for the calendar year concerned of such quantity of Re-
13 newable Energy Credits.

14 (g) RULES AND REGULATIONS.—The Commission
15 shall promulgate such rules and regulations as may be
16 necessary to carry out this section, including such rules
17 and regulations requiring the submission of such informa-
18 tion as may be necessary to verify the annual electric en-
19 ergy generation and renewable energy generation of any
20 person applying for Renewable Energy Credits under this
21 section or to verify and audit the validity of Renewable
22 Energy Credits submitted by any person to the Commis-
23 sion.

24 (h) ANNUAL REPORTS.—The Commission shall gath-
25 er available data and devise measures to gauge compliance

1 with the requirements of this section and the success of
2 the National Renewable Energy Trading Program estab-
3 lished under this section. On an annual basis not later
4 than May 31 of each year, the Commission shall publish
5 a report for the previous year that includes compliance
6 data, National Renewable Energy Trading Program re-
7 sults, and steps taken to improve the Program results.

8 (i) SUNSET.—The requirements of this section shall
9 cease to apply 90 days after the Commission certifies in
10 the annual report under subsection (h) that for the preced-
11 ing year the market value of Renewable Energy Credits
12 or the number of credits traded or both has declined to
13 such nominal levels that the costs incurred by the Com-
14 mission for issuance, recording, monitoring sale or ex-
15 change, and tracking of credits is no longer justified.

16 **SEC. 113. JURISDICTIONAL DETERMINATIONS OF TRANS-**
17 **MISSION AND LOCAL DISTRIBUTION FACILI-**
18 **TIES.**

19 Section 201(b) of the Federal Power Act is amended
20 by inserting the following new paragraphs after paragraph
21 (1) and redesignating paragraph (2) as paragraph (7):

22 “(2)(A) Any person that provides unbundled retail
23 transmission or distribution of electric energy in interstate
24 commerce shall obtain a jurisdictional determination from
25 the Commission as to which facilities owned, controlled,

1 or operated by such person are or will be facilities used
2 for retail transmission in interstate commerce and there-
3 fore subject to Commission jurisdiction, and which facili-
4 ties are or will be used for local distribution and therefore
5 subject to State jurisdiction.

6 “(B) A person providing services referred to in sub-
7 paragraph (A) as of the date of enactment of this para-
8 graph shall file, within 90 days of the date of enactment
9 of this paragraph, an application for jurisdictional deter-
10 mination under this paragraph. The Commission, after
11 consultation with representatives of affected State com-
12 missions, shall make a jurisdictional determination with
13 respect to the facilities of such person no later than 18
14 months after the date the application is filed.

15 “(C) A person that first provides services referred to
16 in subparagraph (A) after the date of enactment of this
17 paragraph shall file an application for jurisdictional deter-
18 mination under this paragraph no later than 90 days prior
19 to the date that unbundled retail transmission or distribu-
20 tion service is to commence. The Commission, after con-
21 sultation with representatives of the affected State com-
22 missions, shall make a determination with respect to the
23 facilities of such person no later than 1 year after the date
24 the application is filed.

1 “(3) In making a jurisdictional determination under
2 paragraph (2), the Commission shall consider the follow-
3 ing nonexclusive list of factors as indicating that facilities
4 constitute local distribution facilities subject to State ju-
5 risdiction:

6 “(A) Local distribution facilities normally are in
7 close proximity to retail customers.

8 “(B) Local distribution facilities are primarily
9 radial in character.

10 “(C) Power flows into, but rarely out of, local
11 distribution systems.

12 “(D) When power enters a local distribution
13 system, it is not reconsigned or transported on to
14 some other market.

15 “(E) Power entering a local distribution system
16 is consumed in a comparatively restricted geographi-
17 cal area.

18 “(F) Meters are based at the transmission/local
19 distribution interface to measure flows into the local
20 distribution system.

21 “(G) Local distribution systems will be of re-
22 duced voltage.

23 The Commission shall also consider the historical uses of
24 facilities used to deliver electric energy to end users and
25 other technical factors that may be relevant to a jurisdic-

1 tional determination. The Commission shall give deference
2 to State commission recommendations that take into ac-
3 count the factors described in this subsection and shall
4 take into account other factors identified by a State com-
5 mission as relevant to a jurisdictional determination with
6 respect to facilities located in such State.

7 “(4) Once the Commission makes a jurisdictional de-
8 termination under paragraph (2), such determination may
9 not be modified unless the Commission determines there
10 is a material change in facts or circumstances since the
11 time the prior determination was made, or finds that prior
12 representations or facts were incorrect. The Commission
13 may modify a prior jurisdictional determination only after
14 consultation with representatives of the affected State
15 commission.

16 “(5) Any person, State, or State commission ag-
17 grieved by an order making a jurisdictional determination
18 under paragraph (2) may obtain a review of such order
19 in the Circuit Court of Appeals of the United States for
20 any circuit wherein the person to which the order relates
21 is located or has its principal place of business or in the
22 United States Court of Appeals for the District of Colum-
23 bia Circuit, pursuant to section 313.”

1 **TITLE II—PUBLIC UTILITY**
2 **HOLDING COMPANY ACT OF 1935**

3 **SEC. 201. APPLICATION OF THE PUBLIC UTILITY HOLDING**
4 **COMPANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935
6 shall cease to apply to any public utility company and to
7 any holding company of such public utility company if
8 each State in which such public utility company is provid-
9 ing retail electric or natural gas distribution service and
10 each State in which any subsidiary, affiliate, or associate
11 company of such public utility company and of such hold-
12 ing company is providing retail electric or natural gas dis-
13 tribution service—

14 (1) determines that the retail customers of such
15 public utility company and of each such subsidiary,
16 affiliate, or associate company are able to purchase
17 at retail electric energy services and natural gas
18 from any person offering those services to the pur-
19 chaser on a competitively neutral and nondiscrim-
20 inatory basis; and

21 (2) notifies the Commission and the Securities
22 and Exchange Commission of such determination.

23 **SEC. 202. DEFINITIONS.**

24 For purposes of this title:

1 (1) The term “person” means an individual or
2 company.

3 (2) The term “company” means a corporation,
4 joint stock company, partnership, association, busi-
5 ness trust, organized group of persons, whether in-
6 corporated or not, or a receiver or receivers, trustee
7 or trustees of any of the foregoing.

8 (3) The term “electric utility company” means
9 any company that owns or operates facilities used
10 for the generation, transmission, or distribution of
11 electric energy for sale.

12 (4) The term “gas utility company” means any
13 company that owns or operates facilities used for the
14 distribution at retail (other than the distribution
15 only in enclosed portable containers) of natural or
16 manufactured gas for heat, light, or power.

17 (5) The term “public utility company” means
18 an electric utility company or a gas utility company
19 but does not mean a qualifying facility as defined in
20 the Public Utility Regulatory Policies Act of 1978,
21 or an exempt wholesale generator or a foreign utility
22 company as defined by the Energy Policy Act of
23 1992.

24 (6) The term “holding company” means (A)
25 any company that directly or indirectly owns, con-

1 trols, or holds with power to vote, 10 percent or
2 more of the outstanding voting securities of a public
3 utility company or of a holding company of any pub-
4 lic utility company; and (B) any person, determined
5 by the Commission, after notice and opportunity for
6 hearing, to exercise directly or indirectly (either
7 alone or pursuant to an arrangement or understand-
8 ing with 1 or more other persons) such a controlling
9 influence over the management or policies of any
10 public utility or holding company as to make it nec-
11 essary or appropriate for the protection of consum-
12 ers with respect to rates that such person be subject
13 to the obligations, duties, and liabilities imposed in
14 this title upon holding companies.

15 (7) The term “subsidiary company” of a hold-
16 ing company means (A) any company 10 percent or
17 more of the outstanding voting securities of which
18 are directly or indirectly owned, controlled, or held
19 with power to vote, by such holding company; and
20 (B) any person the management or policies of which
21 the Commission, after notice and opportunity for
22 hearing, determines to be subject to a controlling in-
23 fluence, directly or indirectly, by such holding com-
24 pany (either alone or pursuant to an arrangement or
25 understanding with 1 or more other persons) so as

1 to make it necessary or appropriate for the protec-
2 tion of consumers with respect to rates that such
3 person be subject to the obligations, duties, and li-
4 abilities imposed in this title upon subsidiary compa-
5 nies of holding companies.

6 (8) The term “holding company system” means
7 a holding company together with its subsidiary com-
8 panies.

9 (9) The term “associate company” of a com-
10 pany means any company in the same holding com-
11 pany system with such company.

12 (10) The term “affiliate” of a company means
13 (A) any company 5 percent or more of whose out-
14 standing voting securities are owned, controlled, or
15 held with power to vote, directly or indirectly, by
16 such company; and (B) any person or class of per-
17 sons that the Commission determines, after appro-
18 priate notice and opportunity for hearing, to stand
19 in such relation, directly or indirectly, to such com-
20 pany that there is likely to be such an absence of
21 arm’s length bargaining in transactions between
22 them as to make it necessary or appropriate in the
23 public interest or for the protection of consumers
24 that such person be subject to the obligations, du-

1 ties, and liabilities imposed in this title upon affili-
2 ates of a company.

3 (11) The term “voting security” means any se-
4 curity presently entitling the owner or holder thereof
5 to vote in the direction or management of the affairs
6 of a company.

7 (12) The term “Commission” means the Fed-
8 eral Energy Regulatory Commission.

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

15 **SEC. 203. APPLICATION OF TITLE.**

16 No provision in this title shall apply to, or be deemed
17 to include—

18 (1) the United States,

19 (2) a State or any political subdivision of a
20 State,

21 (3) any foreign governmental authority not op-
22 erating in the United States,

23 (4) any agency, authority, or instrumentality of
24 any of the foregoing, or of any corporation that is

1 wholly owned, directly or indirectly by 1 or more of
2 the foregoing, or

3 (5) any officer, agent, or employee of any of the
4 foregoing acting as such in the course of his official
5 duty.

6 **SEC. 204. EXEMPTION AUTHORITY.**

7 (a) RULEMAKING.—Not later than 90 days after the
8 enactment of this Act, the Commission shall promulgate
9 a final rule to exempt from the requirements of section
10 205 any person that is a holding company, solely with re-
11 spect to—

12 (1) one or more qualifying facilities under the
13 Public Utility Regulatory Policies Act of 1978;

14 (2) one or more exempt wholesale generators;
15 or

16 (3) one or more foreign utility companies.

17 (b) OTHER AUTHORITY.—If, upon application or
18 upon its own motion, the Commission finds that the books,
19 records, accounts, memoranda, and other records of any
20 person are not relevant to the jurisdictional rates of a pub-
21 lic utility company, or if the Commission finds that any
22 class of transactions is not relevant to the jurisdictional
23 rates of a public utility company, the Commission shall
24 exempt such person or transaction from the requirements
25 of section 205.

1 **SEC. 205. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) **HOLDING COMPANIES AND SUBSIDIARIES.**—

3 Every holding company and associate company thereof
4 shall maintain, and make available to the Commission,
5 such books, records, accounts, and other documents as the
6 Commission deems relevant to costs incurred by a public
7 utility company that is an associate company of such hold-
8 ing company and necessary or appropriate for the protec-
9 tion of consumers with respect to rates.

10 (b) **AFFILIATES AND SUBSIDIARIES.**—Every affiliate

11 of a holding company or of any subsidiary company there-
12 of shall maintain, and make available to the Commission,
13 such books, records, accounts, and other documents with
14 respect to any transaction that is subject to this title, as
15 the Commission deems relevant to costs incurred by a pub-
16 lic utility company that is an associate company of such
17 holding company and necessary or appropriate for the pro-
18 tection of consumers with respect to rates.

19 (c) **AUTHORITY TO EXAMINE.**—The Commission

20 may examine the books, records, accounts, and other docu-
21 ments of any company in a holding company system, or
22 any affiliate thereof, as the Commission deems relevant
23 to costs incurred by a public utility company within such
24 holding company system and necessary or appropriate for
25 the protection of consumers with respect to rates. No
26 member, officer, or employee of the Commission shall di-

1 vulge any fact or information that may come to his knowl-
2 edge during the course of examination of books, records,
3 accounts, or other documents as hereinbefore provided, ex-
4 cept insofar as he may be directed by the Commission or
5 by a court.

6 (d) OTHER AUTHORITY.—Nothing in this section
7 shall be construed to limit the Commission’s authority
8 under section 301 of the Federal Power Act.

9 **SEC. 206. STATE ACCESS TO BOOKS AND RECORDS.**

10 (a) AUTHORITY.—Upon the written request of a
11 State commission having jurisdiction to regulate a public
12 utility company in a holding company system, and subject
13 to such terms and conditions as may be necessary and ap-
14 propriate to safeguard against unwarranted disclosure to
15 the public of any trade secrets or sensitive commercial in-
16 formation, a holding company or its associate company or
17 affiliate thereof, wherever located, shall produce for in-
18 spection such books, records, accounts, and other docu-
19 ments as have been identified in reasonable detail in a pro-
20 ceeding before the State commission and as are relevant
21 to costs incurred by such public utility company and are
22 necessary for the effective discharge of the State commis-
23 sion’s responsibilities with respect to such proceeding.

24 (b) SAVINGS.—Nothing in this section shall preempt
25 applicable State law concerning the provision of books,

1 records, accounts, and other documents, or in any way
2 limit State's rights to obtain books, records, accounts, and
3 other documents under Federal law, contracts, or other-
4 wise.

5 **SEC. 207. AFFILIATE TRANSACTIONS.**

6 Nothing in this Act shall preclude the Commission
7 or a State commission from exercising its jurisdiction
8 under otherwise applicable law to determine whether a
9 public utility company may recover in rates any costs of
10 an activity performed by an associate company, or any
11 costs of goods or services acquired by such public utility
12 company from an associate company.

13 **SEC. 208. EFFECT ON OTHER REGULATION.**

14 Nothing in this title shall preclude a State commis-
15 sion from exercising its jurisdiction under otherwise appli-
16 cable law to protect utility consumers.

17 **SEC. 209. ENFORCEMENT.**

18 The Commission shall have the same powers as set
19 forth in sections 206 through 317 of the Federal Power
20 Act (16 U.S.C. 825d–825p) to enforce the provisions of
21 this Act.

22 **SEC. 210. SAVING PROVISION.**

23 Nothing in this title prohibits a person from engaging
24 in activities in which it is legally engaged or authorized
25 to engage on the date on which the Public Utility Holding

1 Company Act of 1935 ceases to apply to such person pur-
2 suant to this title, provided that it complies with the terms
3 of any authorization, whether by rule or by order.

4 **SEC. 211. IMPLEMENTATION.**

5 The Commission shall promulgate regulations nec-
6 essary or appropriate to implement this title not later than
7 one year after the date of enactment of this title.

8 **SEC. 212. TRANSFERS.**

9 All books, records, accounts, and other documents
10 that relate primarily to the functions hereby vested in this
11 Commission shall be transferred from the Securities and
12 Exchange Commission to the Commission.

13 **SEC. 213. CONFORMING CHANGE.**

14 Section 318 of the Federal Power Act, (16 U.S.C.
15 825q), is repealed.

16 **TITLE III—PUBLIC UTILITY REG-**
17 **ULATORY POLICIES ACT OF**
18 **1978**

19 **SEC. 301. APPLICATION OF PURPA PROVISIONS.**

20 Section 210 of the Public Utility Regulatory Policies
21 Act of 1978 is amended by adding the following new sub-
22 section at the end thereof:

23 “(m) UTILITIES SUBJECT TO RETAIL COMPETI-
24 TION.—

1 “(1) IN GENERAL.—The preceding provisions of
2 this section requiring electric utilities to offer to pur-
3 chase electric energy from qualifying cogeneration
4 facilities and qualifying small power production fa-
5 cilities at the incremental cost to the utility of alter-
6 native electric energy shall not apply to an electric
7 utility if the State—

8 “(A) determines that the retail customers
9 of such utility are able to purchase retail elec-
10 tric energy services (as defined in the Electric
11 Consumers’ Power to Choose Act of 1996) from
12 any person offering those services to the pur-
13 chaser on a competitively neutral and non-
14 discriminatory basis; and

15 “(B) notifies the Commission of such de-
16 termination.

17 “(2) RIGHTS AND REMEDIES NOT AFFECTED.—
18 Nothing in the Electric Consumers’ Power to Choose
19 Act of 1996 affects the rights or remedies of any
20 party with respect to the purchase or sale of electric
21 energy or capacity from or to a facility determined
22 to be a qualifying small power production facility or
23 a qualifying cogeneration facility pursuant to this

1 Act pursuant to any contract in effect on July 11,
2 1996.”.

○