

104TH CONGRESS
2D SESSION

H. R. 4297

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

SEPTEMBER 28, 1996

Mr. DELAY 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; TABLE OF CONTENTS.**

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

6 (b) TABLE OF CONTENTS.—The table of Contents is
7 as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Consumer choice.
- Sec. 4. State authority.
- Sec. 5. Reliable and nondiscriminatory operation of transmission and distribution systems.
- Sec. 6. Federal transmission tariff reform.
- Sec. 7. Application of Public Utility Holding Company Act and Public Utility Regulatory Policies Act.
- Sec. 8. Transition planning.
- Sec. 9. Generating sources free to serve consumers and resellers.
- Sec. 10. Applicability.
- Sec. 11. Antitrust laws.
- Sec. 12. Judicial review.
- Sec. 13. Definitions.
- Sec. 14. Federal power act.
- Sec. 15. Effective date; savings provisions.
- Sec. 16. Evaluation of effectiveness.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Low-cost and reliable electric service is inte-
4 gral 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 \$200,000,000,000 a year, approximately half of
9 which is for residential purposes, making the month-
10 ly electric bill one of the largest expenses for most
11 households.

12 (3) The cost of electric service has a direct ef-
13 fect on the price, profitability, and competitiveness
14 of goods and services produced in the United States.

15 (4) Lower priced electric service can be realized
16 by giving all American consumers the right to choose
17 among suppliers of electric service in a competitive

1 market, while maintaining, if not improving the reli-
2 ability of service those consumers have come to ex-
3 pect.

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

6 (A) reduce the costs of electric service to
7 even the smallest consumers of electricity;

8 (B) reduce the costs to consumers benefit-
9 ing from today's lowest regulated rates;

10 (C) create jobs as American businesses are
11 able to lower costs and better compete in world
12 markets and against foreign competition here at
13 home;

14 (D) result in a more efficient utility indus-
15 try; and

16 (E) reduce environmental impacts.

17 (6) Monopoly cost-of-service regulation of elec-
18 tricity has failed. It has stifled competition, resulting
19 in high electric service rates for many consumers
20 and few incentives for technological innovation and
21 good customer service by utilities.

22 (7) High electric service rates are regressive,
23 placing a disproportionate burden on poor rate-
24 payers.

1 (8) High electric service rates divert consumer
2 dollars that would otherwise be spent for purchasing
3 necessary goods and services, savings, or invest-
4 ments that benefit the economy as a whole.

5 (9) Congress has authority to enact laws, under
6 the Commerce Clause of the United States Constitu-
7 tion, regarding the generation, transmission, dis-
8 tribution, and sale of electric energy in interstate
9 commerce at the wholesale and retail level. Only
10 Congress can ensure that a competitive retail market
11 is established throughout the United States on an
12 expeditious but orderly basis.

13 (10) Regional and State variations require that
14 State regulatory authorities should receive deference
15 in certain decisions relating to electric service.

16 (11) Consumers of all utilities, whether served
17 by regulated or nonregulated electric utilities (such
18 as municipally owned utilities or rural cooperatives),
19 should have the same rights to receive the benefits
20 of competition and consumer choice.

21 (12) Consumer choice needed to produce renew-
22 able energy development that is market driven ful-
23 fills customer desires for clean energy supplies and
24 encourages competition among different renewable
25 technologies. Subjecting renewable energy tech-

1 nologies to the discipline of the free market will bet-
2 ter allocate renewable resources and speed the com-
3 mercialization of renewable technologies than tradi-
4 tional centralized government resource planning.

5 **SEC. 3. CONSUMER CHOICE.**

6 (a) **FREEDOM OF CHOICE.**—(1) Each person has the
7 right to purchase electric service from any electric service
8 provider, notwithstanding any other law.

9 (2) A Federal, State, or local authority may not deny
10 or limit any person’s right to purchase such energy from
11 an electric service provider at a price and on terms and
12 conditions freely arrived at.

13 (3) A Federal, State, or local authority may not dis-
14 criminate, or authorize the discrimination, against any
15 person who exercises that person’s right to purchase such
16 energy, subject to subsection (b).

17 (b) **BAN ON EXIT FEES, SUBSIDIES, OR OTHER PEN-**
18 **ALTIES ON EXERCISING RIGHT OF CHOICE.**—A Federal,
19 State, or local authority may not grant any preference or
20 protection from competition to any electric service pro-
21 vider. For purposes of this subsection, the terms “pref-
22 erence” and “protection from competition” include—

23 (1) any direct or indirect subsidy; and

1 (2) any exit fee or other levy imposed in con-
2 nection with any purchaser who terminates a pur-
3 chasing relationship with any seller, other than—

4 (A) a charge levied pursuant to provisions
5 of a service contract that were specifically and
6 freely negotiated and agreed upon by both par-
7 ties (or generally applicable contract law) to
8 such contract; or

9 (B) a nondiscriminatory access charge for
10 funding service continuations under section 4(b)
11 (relating to lifeline source).

12 (c) **EFFECTIVE DATE.**—The provisions of this section
13 shall take effect on January 1, 1998.

14 (d) **ALTERNATIVE CHOICES.**—Nothing in this Act
15 shall be construed to prohibit or otherwise restrict any
16 electric energy purchaser from having that electric energy
17 delivered through arrangements of the purchaser's choice.
18 Any such alternative shall be consistent with regional or
19 national reliability standards.

20 **SEC. 4. STATE AUTHORITY.**

21 (a) **LOCAL DISTRIBUTION SERVICE.**—Nothing in this
22 Act shall affect the authority and responsibility of any
23 State or local government concerning the obligation to
24 connect consumers to the local distribution system and to

1 ensure the adequate maintenance, safety, and reliability
2 of such local distribution system.

3 (b) LIFELINE SERVICE.—The authority under sub-
4 section (a) includes the authority to provide for the con-
5 tinuation of service to residential customers unable to af-
6 ford electric energy service, including the authority to es-
7 tablish nondiscriminatory local distribution access charges
8 on any power delivered sufficient to cover the cost of such
9 continuation.

10 (c) CERTIFICATION OF ELECTRIC SERVICE PROVID-
11 ERS.—No State may establish discriminatory require-
12 ments or other obligations for certification of electric serv-
13 ice providers within that State. Nothing in this subsection
14 shall affect the ability of a State to impose requirements
15 necessary to preserve universal service, protect the public
16 safety and welfare, ensure the continued reliability of the
17 distribution system, and safeguard the rights of consum-
18 ers.

19 (d) IF CONSUMERS MAKE NO SELECTION OF AN
20 ELECTRIC SERVICE PROVIDER.—In the case of a retail
21 customer who fails to select an electric service provider,
22 the State may establish rules under which the customer
23 shall be initially assigned on a nondiscriminatory basis to
24 one of a variety of electric service providers that have filed

1 service terms with an appropriate State authority and met
2 any requirements described in subsection (c).

3 (e) ASSURANCE OF APPROPRIATE RATES FOR TRAN-
4 SITION TO COMPETITION.—In order to ensure uninter-
5 rupted local distribution service, if nondiscriminatory
6 unbundled rates are not in effect by the effective date of
7 this section, interim rates prescribed in the transition plan
8 under section 7 shall apply for any local distribution serv-
9 ice until such time as State rates take effect.

10 (f) ADDITIONAL STATE AUTHORITY.—State and
11 local governments shall retain authority over any specific
12 matter not otherwise addressed in this Act, including—

- 13 (1) the continuation of universal service;
- 14 (2) conservation programs and initiatives;
- 15 (3) consumer choice with regard to renewable
16 energy;
- 17 (4) research and development programs and ini-
18 tiatives; and
- 19 (5) any other matter deemed appropriate by a
20 State or local government.

21 **SEC. 5. RELIABLE AND NONDISCRIMINATORY OPERATION**
22 **OF TRANSMISSION AND DISTRIBUTION SYS-**
23 **TEMS.**

24 (a) OPERATION OF TRANSMISSION AND DISTRIBU-
25 TION SYSTEMS.—The Nation’s transmission and distribu-

1 tion systems shall be operated to achieve the following ob-
2 jectives:

3 (1) Organizational separation within remaining
4 vertically integrated firms, between individuals, as-
5 sets, and systems dedicated to the operation of
6 transmission and distribution systems and those in-
7 volved in the provision of electric service.

8 (2) Nondiscriminatory access to the trans-
9 mission and distribution systems whether for whole-
10 sale or retail sale of electric service.

11 (3) The prevention of preferential treatment (or
12 protection from competition) by system operators to-
13 ward affiliated service providers.

14 (4) Access to information on a nondiscrim-
15 inatory basis concerning—

16 (A) availability of transmission and dis-
17 tribution service;

18 (B) operating conditions on transmission
19 and distribution systems; and

20 (C) rates, terms, and conditions of any ar-
21 rangement between, or information provided
22 from, the transmission and distribution system
23 operators and their affiliated electric service
24 provider, if any.

1 (5) Ensuring that the transmission and dis-
2 tribution system operator—

3 (A) receives adequate and timely informa-
4 tion from electric service providers regarding
5 physical flows and physical transactions on the
6 transmission and distribution system;

7 (B) has access to assets and resources it
8 needs to maintain system balance in the event
9 of unanticipated events or the failure of an elec-
10 tric service provider to perform; and

11 (C) has authority to implement Commis-
12 sion approved sanctions and penalties for the
13 failure of electric service providers to conform
14 to the tariffs governing access to the trans-
15 mission and distribution system.

16 (b) COMMISSION AUTHORITY.—In order to ensure
17 consumers' ability to access competing electric service pro-
18 viders, the Commission shall have the authority, by rule,
19 order, or decision, to provide for nondiscriminatory prices,
20 terms and conditions to transmission and distribution
21 services. With respect to distribution services, the Com-
22 mission shall defer to State authorities with respect to the
23 matter reserved to the States in section 4. The Commis-
24 sion shall also have the authority, by rule, order, or deci-

1 sion, to take the actions necessary to fulfill the obligations
2 imposed on it by this Act.

3 **SEC. 6. FEDERAL TRANSMISSION TARIFF REFORM.**

4 (a) INITIAL TARIFF REFORM.—By January 1, 1999,
5 the Commission shall promulgate and make effective, rules
6 which provide for nondiscriminatory access to trans-
7 mission and distribution service as provided in this Act
8 and which eliminate the barriers to competitive electric
9 service presented by existing contracts and arrange-
10 ments—

11 (1) between and among transmitting utilities
12 governing the pricing, terms, and conditions of ac-
13 cess to transmission and distribution facilities; and

14 (2) between transmitting utilities and any other
15 entities (directly connected to such transmitting util-
16 ity's transmission system) providing for the sale of
17 power by such transmitting utilities to any other en-
18 tities.

19 (b) CONTINUING REFORM.—The Commission shall
20 by rule, order, or decision ensure that the existing electric
21 utilities are not permitted to exercise market power in the
22 sale of electric service. The Commission shall initiate pro-
23 ceedings following enactment, to be concluded on or before
24 January 1, 1999, in order to determine the extent to
25 which existing utilities have market power in the sale of

1 electric services; and to consider and determine the means
2 for mitigating such market power. In making and enforce-
3 ing such determinations, the Commission shall have the
4 authority to—

5 (1) restrict the ability of the electric utility, or
6 its affiliates, to sell such services at market-deter-
7 mined rates, provided that such restrictions shall be
8 limited to those areas and services where the electric
9 utility has market power; and

10 (2) order the divestiture of assets and functions
11 which are the source of market power, to the extent
12 reasonably necessary to mitigate such market power,
13 provided that such divestiture may include a variety
14 of alternatives including outright sale, lease, or out-
15 put contracts.

16 **SEC. 7. APPLICATION OF PUBLIC UTILITY HOLDING COM-**
17 **PANY ACT AND PUBLIC UTILITY REGU-**
18 **LATORY POLICIES ACT .**

19 (a) PUHCA.—The Public Utility Holding Company
20 Act of 1935 shall cease to apply to an electric utility sub-
21 ject to this Act or to any holding company (as defined
22 in such Act) of such utility if each State in which such
23 utility is providing electric energy services—

24 (1) determines that the retail customers served
25 by such utility and its affiliates have the ability to

1 purchase electric energy services in accordance with
2 the provisions of section 3 of this Act; and

3 (2) notifies the Commission and the Securities
4 and Exchange Commission of such determination.

5 (b) PURPA.—The provisions of section 210 of the
6 Public Utility Regulatory Policies Act of 1978 requiring
7 electric utilities to offer to purchase electric energy from
8 qualifying cogeneration facilities and qualifying small
9 power production facilities at the incremental cost to the
10 utility of alternative electric energy shall cease to apply
11 to an electric utility if each State in which such utility
12 is providing electric services—

13 (1) determines that the retail customers served
14 by such utility have the ability to purchase electric
15 energy services in accordance with the provisions of
16 section 3 of this Act; and

17 (2) notifies the Commission of such determina-
18 tion.

19 Nothing in this subsection shall be construed to affect any
20 obligation under a binding contract to purchase electric
21 energy entered into before the date of enactment of this
22 Act.

23 **SEC. 8. TRANSITION PLANNING.**

24 (a) COMMISSION RECOMMENDATIONS.—Within 3
25 months of enactment, the Commission shall make a report

1 to Congress providing its plan for effectuating its obliga-
2 tions under this Act, including any potential obstacles it
3 identifies that could inhibit full and reasonably expeditious
4 implementation.

5 (b) COMMISSION GUIDELINES.—The Commission
6 may publish preliminary, nonbinding guidelines to facili-
7 tate timely compliance with this Act by electric utilities.
8 Such guidelines shall be calculated to give notice of the
9 direction and substance of the Commission’s implementa-
10 tion of this Act to facilitate orderly transition and timely
11 compliance, but need not be entirely incorporated in the
12 Commission’s final rules.

13 (c) UTILITY COMPLIANCE.—Nothing in this Act shall
14 prevent utilities from submitting filings in advance of final
15 Commission rules, nor prevent the Commission from mak-
16 ing determinations on such filings subject to the final
17 rules.

18 **SEC. 9. GENERATING SOURCES FREE TO SERVE CONSUM-**
19 **ERS AND RESELLERS.**

20 No Federal, State, or local government authority
21 may—

22 (1) regulate the pricing, terms, or conditions of
23 service offerings by electric service providers; or

24 (2) except as provided in this Act, regulate who
25 may engage in selling electric energy.

1 **SEC. 10. APPLICABILITY.**

2 This Act shall apply with respect to electric energy
3 sold for use or resale within the 50 States and the District
4 of Columbia.

5 **SEC. 11. ANTITRUST LAWS.**

6 Nothing in this Act shall be construed to modify, im-
7 pair, or supersede the applicability of the Sherman Anti-
8 trust Act (15 U.S.C. 1 and following) and amendments
9 thereto, the Clayton Act (15 U.S.C. 12 and following), and
10 amendments thereto, regulations promulgated under such
11 laws, and United States court decisions interpreting such
12 laws.

13 **SEC. 12. JUDICIAL REVIEW.**

14 Judicial review of this Act, or any rule or order under
15 this Act, within the meaning of section 551(4) of title 5,
16 United States Code, may be obtained in the United States
17 Court of Appeals for any appropriate circuit pursuant to
18 the provisions of chapter 7 of title 5, United States Code,
19 except that the second sentence of section 705 thereof
20 shall not apply.

21 **SEC. 13. DEFINITIONS.**

22 For purposes of this Act—

23 (1) **COMMISSION.**—The term “Commission”
24 means the Federal Energy Regulatory Commission.

25 (2) **ELECTRIC SERVICE.**—The term “electric
26 service” shall mean the provision or sale of electric

1 energy and related goods and services including but
2 not limited to billing, metering, equipment for mon-
3 itoring, controlling, or managing the consumption or
4 quality of electric energy, generation of electric en-
5 ergy, ancillary services, and other competitively pro-
6 vided goods and services, but shall not include trans-
7 mission and distribution service.

8 (3) TRANSMITTING UTILITY.—The term “trans-
9 mitting utility” has the meaning given such term in
10 the Federal Power Act, including any Federal power
11 marketing agency, and any other person, engaged in
12 the business of electric energy transmission.

13 (4) UTILITY OR ELECTRIC UTILITY.—The
14 terms “utility” and “electric utility” shall mean any
15 entity which, as of the date of enactment, owns as-
16 sets for the transmission or distribution of electric
17 energy.

18 (5) TRANSMISSION AND DISTRIBUTION SYSTEM
19 OPERATOR.—The term “transmission and distribu-
20 tion system operator” shall mean the entity or part
21 thereof with responsibility for monitoring, contract-
22 ing, and operating the transmission and distribution
23 system.

1 **SEC. 14. FEDERAL POWER ACT.**

2 This Act shall supersede any provisions of part II of
3 the Federal Power Act that are inconsistent with the pro-
4 visions of this Act.

5 **SEC. 15. EFFECTIVE DATE; SAVINGS PROVISIONS.**

6 (a) **EFFECTIVE DATE.**—The provisions of this Act
7 shall take effect 30 days after the date of enactment of
8 this Act, except to the extent expressly provided otherwise
9 in this Act.

10 (b) **EXISTING CONTRACTS.**—Nothing in this Act shall
11 alter, diminish, or otherwise affect any rights or obliga-
12 tions under any contract existing as of the date of the
13 enactment of this Act.

14 **SEC. 16. EVALUATION OF EFFECTIVENESS.**

15 Not later than 30 months after the date of the enact-
16 ment of this Act, the Commission shall conduct, by rule,
17 an evaluation of this Act and submit a report on such eval-
18 uation to the Congress. Such evaluation shall include each
19 of the following:

20 (1) The extent to which electric energy rates
21 have been reduced, and the combined cost of electric
22 energy delivered to consumers, including the trans-
23 mission costs.

24 (2) The level of service reliability provided to
25 purchasers of electric energy.

- 1 (3) The extent of competition in the electric en-
- 2 ergy market.

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