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S. 1526

To provide for retail competition among electric energy suppliers, to provide for recovery of stranded costs attributable to an open access electricity market, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1996

Mr. JOHNSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for retail competition among electric energy suppliers, to provide for recovery of stranded costs attributable to an open access electricity market, 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.**

4 This Act may be cited as the “Electricity Competition
5 Act of 1996”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act:

1 (1) The term “affiliate” means, with respect to
2 a person, any other person that controls, is con-
3 trolled by, or is under common control with such
4 person.

5 (2) The term “Commission” means the Federal
6 Energy Regulatory Commission.

7 (3) The term “electric consumer” has the
8 meaning given the term in section 3(5) of the Public
9 Utility Regulatory Policies Act of 1978 (16 U.S.C.
10 2602(5)).

11 (4) The term “electric utility” has the meaning
12 given the term in section 3(4) of the Public Utility
13 Regulatory Policies Act of 1978 (16 U.S.C.
14 2602(4)).

15 (5) The term “Federal agency” has the mean-
16 ing given the term in section 3(7) of the Public Util-
17 ity Regulatory Policies Act of 1978 (16 U.S.C.
18 2602(7)).

19 (6) The term “new contract electricity” means
20 electric energy or capacity which is sought to be pro-
21 duced from a party other than the purchaser for a
22 period exceeding 60 days.

23 (7) The term “new generating source” means
24 electric generating capacity requirements, planned to
25 be acquired by construction, which cannot be met

1 from existing resources or entitlements, and which
2 may be met through procurement of electric capac-
3 ity.

4 (8) The term “new renewable electric genera-
5 tion” means electric generation from solar, wind,
6 waste, biomass, hydroelectric or geothermal re-
7 sources constructed after the enactment of this Act.

8 (9) The term “nonregulated retail electric util-
9 ity” means any retail electric utility other than a
10 State regulated retail electric utility.

11 (10) The term “person” has the meaning given
12 the term in section 3(4) of the Federal Power Act
13 (16 U.S.C. 796(4)).

14 (11) The term “qualifying cogeneration facil-
15 ity” has the meaning given the term in section
16 3(18)(B) of the Federal Power Act (16 U.S.C.
17 796(18)(B)).

18 (12) The term “qualifying cogenerator” has the
19 meaning given the term in section 3(18)(C) of the
20 Federal Power Act (16 U.S.C. 796(17)(D)).

21 (13) The term “qualifying small power pro-
22 ducer” has the meaning given the term in section
23 3(17)(D) of the Federal Power Act (16 U.S.C.
24 796(17)(D)).

1 (14) The term “qualifying small power produc-
2 tion facility” has the meaning given the term in sec-
3 tion 3(17)(C) of the Federal Power Act (16 U.S.C.
4 796(17)(D)).

5 (15) The term “retail electric utility” means
6 any person, State agency, or Federal agency which
7 makes retail sales of electric energy to the public or
8 distributes such energy to the public.

9 (16) The term “State” means a State admitted
10 to the Union or the District of Columbia.

11 (17) The term “State agency” has the meaning
12 given the term in section 3(16) of the Public Utility
13 Regulatory Policies Act of 1978 (16 U.S.C.
14 2602(16)).

15 (18) The term “State regulated retail electric
16 utility” means any retail electric utility with respect
17 to which a State regulatory authority has rate-
18 making authority.

19 (19) The term “State regulatory authority”
20 means any State agency which has ratemaking au-
21 thority with respect to the rates of any retail electric
22 utility (other than such State agency), and in the
23 case of a retail electric utility with respect to which
24 the Tennessee Valley Authority has ratemaking au-

1 authority, such term means the Tennessee Valley Au-
2 thority.

3 (20) The term “unbundled local distribution
4 services” means local distribution services which are
5 offered by the seller of such services without the re-
6 quirement that the purchaser of such local distribu-
7 tion services also purchase electric energy as a con-
8 dition of the purchase of such local distribution
9 services.

10 **SEC. 3. PURPA REFORM.**

11 (a) DEFINITION.—For purposes of this section the
12 term “facility” means a facility for the generation of elec-
13 tric energy or an addition to or expansion of the generat-
14 ing capacity of such a facility.

15 (b) FACILITIES.—Section 210 of the Public Utility
16 Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) shall
17 not apply to any facility which begins commercial oper-
18 ation after the effective date of this Act, except a facility
19 for which a power purchase contract entered into under
20 such section was in effect on the effective date of this Act.

21 (c) CONTRACTS.—After the effective date of this Act,
22 no electric utility shall be required to enter into a new
23 contract or obligation to purchase or sell electric energy
24 pursuant to section 210 of the Public Utility Regulatory
25 Policies Act of 1978.

1 (d) SAVINGS CLAUSE.—Notwithstanding subsections
2 (b) and (c), nothing in this Act shall be construed:

3 (1) As granting authority to the Commission, a
4 State regulatory authority, electric utility, or electric
5 consumer, to reopen, force the renegotiation of, or
6 interfere with the enforcement of power purchase
7 contracts or arrangements in effect on the effective
8 date of this Act between a qualifying small power
9 producer and any electric utility or electric
10 consumer, or any qualifying cogenerator and any
11 electric utility or electric consumer.

12 (2) To affect the rights and remedies of any
13 party with respect to such a power purchase con-
14 tract or arrangement, or any requirement in effect
15 on the effective date of this Act to purchase or to
16 sell electric energy from or to a qualifying small
17 power production facility or qualifying cogeneration
18 facility.

19 **SEC. 4. COMPETITIVE ELECTRICITY PROCEEDINGS.**

20 (a) STATE REGULATORY AUTHORITIES.—

21 (1) COMPETITIVE OPTIONS.—Not later than six
22 months after the date of enactment of this Act, each
23 State regulatory authority not exempted from this
24 section by section 7 shall initiate proceedings appli-

1 cable to all State regulated retail electric utilities in
2 the State to examine and consider—

3 (A) requirements which establish competi-
4 tive electricity procurement markets that meet
5 the minimum requirements of section 5 of this
6 Act;

7 (B) a retail access plan which requires all
8 State regulated retail electric utilities in the
9 State to provide nondiscriminatory and
10 unbundled local distribution services to all elec-
11 tric consumers of such State regulated retail
12 electric utilities, in order that such electric con-
13 sumers may choose among competing electric
14 energy suppliers by January 1, 2002; and

15 (C) an alternative plan which meets the
16 minimum requirements of section 6.

17 (2) CRITERIA.—In selecting among competitive
18 options under paragraph (1), each State regulatory
19 authority not exempted from this section by section
20 7 shall determine which option best serves the public
21 interest, considering reliability, terms of service, and
22 price.

23 (3) DECISION AND IMPLEMENTATION.—Not
24 later than 18 months after the date of enactment of

1 this Act, each State regulatory authority not ex-
2 empted from this section by section 7 shall—

3 (A) select a competitive option provided for
4 in paragraph (1) based on the proceedings re-
5 quired under this subsection; and

6 (B) render a decision by rule or order
7 adopting such competitive option; and

8 (C) begin implementation of such competi-
9 tive option not later than 60 days after render-
10 ing such a decision.

11 (b) NONREGULATED RETAIL ELECTRIC UTILI-
12 TIES.—

13 (1) COMPETITIVE OPTIONS.—Not later than six
14 months after the date of enactment of this Act, each
15 nonregulated retail electric utility not exempted from
16 this section by section 7 shall examine and consider,
17 or where applicable, initiate proceedings to examine
18 and consider—

19 (A) procedures for the acquisition of new
20 contract electricity and new generating sources
21 by such nonregulated retail electric utility which
22 meet the minimum requirements of section 5;

23 (B) a retail access plan which provides
24 nondiscriminatory and unbundled local distribu-
25 tion services to all electric consumers of such

1 nonregulated retail electric utility, in order that
2 such electric consumers may choose among
3 competing electric energy suppliers by January
4 1, 2002; and

5 (C) an alternative plan which meets the
6 minimum requirements of section 6.

7 (2) CRITERIA.—In selecting a competitive op-
8 tion under paragraph (1), each nonregulated retail
9 electric utility not exempted from this section by sec-
10 tion 7 shall determine which option best serves the
11 public interest, considering reliability, terms of serv-
12 ice, and price.

13 (3) DECISION AND IMPLEMENTATION.—Not
14 later than 18 months after the date of enactment of
15 this Act each nonregulated retail electric utility not
16 exempted from this section by section 7 shall—

17 (A) select a competitive option provided for
18 in paragraph (1) based on the examination and
19 consideration required under this subsection;

20 (B) provide public notice of such selection;
21 and

22 (C) begin implementation of such competi-
23 tive option not later than 60 days after provid-
24 ing such notice.

1 **SEC. 5. PROCUREMENT MARKETS.**

2 (a) APPLICABILITY.—

3 (1) Requirements or procedures to be estab-
4 lished by a State regulatory authority or
5 nonregulated retail electric utility pursuant to this
6 section may apply to all or part of the new contract
7 electricity and new generating sources to be pro-
8 cured by State regulated retail electric utilities with-
9 in the State or, in the case of a nonregulated retail
10 electric utility, to all or part of the new contract
11 electricity and new generating sources to be pro-
12 cured by such nonregulated retail electric utility.

13 (2) If a State regulatory authority or
14 nonregulated retail electric utility establishes re-
15 quirements or procedures pursuant to this section
16 that apply to only a part of the new contract elec-
17 tricity and new electric generating capacity to be
18 procured by State regulated retail electric utilities
19 within the State or, in the case of a nonregulated re-
20 tail electric utility, to only a part of the new contract
21 electricity and new generating sources to be pro-
22 cured by such nonregulated retail electric utility,
23 such State regulatory authority or nonregulated re-
24 tail electric utility must ensure that any other meth-
25 od of procuring new contract electricity and new

1 generating sources meets the requirements for an al-
2 ternative plan pursuant to section 6.

3 (b) MINIMUM REQUIREMENTS.—Requirements or
4 procedures to be established by a State regulatory author-
5 ity or nonregulated retail electric utility pursuant to this
6 section shall, at a minimum—

7 (1) apply to all or part of the new contract elec-
8 tricity or new generating sources to be procured by
9 the State regulated retail electric utilities within the
10 State after the effective date of requirements adopt-
11 ed pursuant to section 4(a)(1)(A), or in the case of
12 a nonregulated retail electric utility, to all or part of
13 the new contract electricity or new generating
14 sources to be procured by such nonregulated retail
15 electric utility after the effective date of procedures
16 adopted pursuant to section 4(b)(1)(A);

17 (2) provide for public notice, by electronic bul-
18 letin board, electronic trading system, or otherwise,
19 of the purchaser's offer to acquire new contract elec-
20 tricity or new generating sources;

21 (3) provide an appropriate and reasonable time
22 for interested suppliers to respond to the notice of
23 the purchaser's offer to acquire, by electronic bul-
24 letin board, electronic trading system, or otherwise,

1 considering the size and complexity of the offer to
2 acquire;

3 (4) provide that no source or supplier of new
4 contract electricity and new generating sources is ex-
5 cluded from competing to supply such new contract
6 electricity or new generating source;

7 (5) provide that the purchaser is not excluded
8 from supplying new electric generating capacity to
9 itself, and that any affiliate of the purchaser is not
10 excluded from supplying new contract electricity or
11 new electric generating capacity to the purchaser;

12 (6) provide selection of the lowest cost supplier
13 that otherwise meets the terms and conditions of the
14 offer, consistent with reliability; and

15 (7) permit the purchaser to rescind or modify
16 the offer at any time prior to the execution of a con-
17 tract to supply electric energy.

18 **SEC. 6. ALTERNATIVE PLANS.**

19 (a) STATE REGULATORY AUTHORITIES.—

20 (1) Any alternative plan adopted by a State
21 regulatory authority must ensure that any State reg-
22 ulated retail electric utility within the State may not
23 unduly discriminate in favor of its own sources of
24 generation supply, or in favor of its affiliate's
25 sources of generation supply, or engage in other

1 forms of self dealing that could result in above mar-
2 ket prices to consumers; and

3 (2) Notwithstanding section 10, any alternative
4 plan adopted by a State regulatory authority shall
5 ensure that any above market costs of new renew-
6 able electric generation are allocated on a non-
7 discriminatory basis to all electric consumers of all
8 State regulated retail electric utilities within the
9 State, in order that no such electric consumer or
10 class of such electric consumers is required, without
11 its express consent, to subsidize the costs of such
12 new renewable electric generation to the advantage
13 of any other such electric consumer or class of such
14 electric consumers.

15 (b) NONREGULATED RETAIL ELECTRIC UTILI-
16 TIES.—Any alternative plan adopted by a nonregulated re-
17 tail electric utility must ensure that such nonregulated re-
18 tail electric utility does not unduly discriminate in favor
19 of its own sources of generation supply, or engage in other
20 forms of self dealing that could result in above market
21 prices to consumers.

22 **SEC. 7. EXEMPTIONS.**

23 (a) STATE REGULATORY AUTHORITIES.—A State
24 regulatory authority shall be exempt from the require-

1 ments of section 4(a) if such State regulatory, as of the
2 date of enactment of this Act—

3 (1) has adopted requirements which establish
4 competitive electricity procurement markets that
5 meet the minimum requirements of section 5 of this
6 Act; or

7 (2) has adopted a retail access plan which re-
8 quires all State regulated retail electric utilities in
9 the State to provide nondiscriminatory and
10 unbundled local distribution services to all electric
11 consumers of such regulated retail electric utilities,
12 in order that such electric consumers may choose
13 among competing electric energy suppliers by Janu-
14 ary 1, 2004.

15 (b) NONREGULATED RETAIL ELECTRIC UTILI-
16 TIES.—A nonregulated retail electric utility shall be ex-
17 empt from the requirements of section 4(b) if such
18 nonregulated retail electric utility, as of the date of enact-
19 ment of this Act—

20 (1) has adopted procedures for its acquisition of
21 new contract electricity and new generating sources
22 which meet the minimum requirements of section 5;
23 or

24 (2) has adopted a retail access plan which pro-
25 vides nondiscriminatory and unbundled local dis-

1 tribution services to all electric consumers of such
2 nonregulated retail electric utility, in order that such
3 electric consumers may choose among competing
4 electric energy suppliers by January 1, 2004.

5 (c) CERTIFICATION.—If a State regulatory authority
6 or nonregulated retail electric utility intends to attain ex-
7 empt status under this section, it shall certify its intention
8 by public notice no later than six months after the enact-
9 ment of this Act. Such notice shall specify the grounds
10 upon which the exemption is asserted. The notice shall
11 constitute a final decision of the State regulatory authority
12 or nonregulated retail electric utility for purposes of sec-
13 tion 9.

14 (d) VOLUNTARY RETAIL ACCESS.—Any State regu-
15 lated retail electric utility shall be exempt from any re-
16 quirement imposed under sections 4, 5, or 6(a)(1) if such
17 State regulated retail electric utility has filed a tariff for
18 nondiscriminatory and unbundled local distribution serv-
19 ices, approved by its State regulatory authority, which
20 provides such local distribution services to all electric con-
21 sumers of such State regulated retail electric utility, in
22 order that such electric consumers may choose among
23 competing electric energy suppliers.

1 **SEC. 8. MANDATORY RETAIL ACCESS.**

2 (a) EFFECTIVE DATE.—Beginning on January 1,
3 2010, no retail electric utility shall prohibit any electric
4 consumer from purchasing nondiscriminatory and
5 unbundled local distribution service or otherwise prohibit
6 such electric consumers from choosing among competing
7 electric energy suppliers.

8 (b) ENFORCEMENT.—If a State, State regulatory au-
9 thority, or retail electric utility fails to comply with the
10 requirements of this section, any aggrieved person may
11 bring an action against such person or persons to enforce
12 the requirements of this section in the appropriate Federal
13 district court, which court may grant appropriate relief.

14 **SEC. 9. REVIEW AND ENFORCEMENT.**

15 (a) STATE AUTHORITY.—Notwithstanding any other
16 provision of this section, neither the Commission nor any
17 court of the United States shall have jurisdiction to review
18 the selection by a State regulatory authority or a
19 nonregulated electric utility of a competitive option that
20 meets the requirements of sections 4(a)(1)(B), 4(b)(1)(B),
21 5, and 6. Appeal from such a decision may be taken in
22 accordance with applicable State law.

23 (b) COMMISSION REVIEW.—(1) Any person aggrieved
24 by—

1 (A) a final order of a State regulatory authority
2 or a nonregulated retail electric utility under section
3 4 or 7, or

4 (B) the failure of a State regulatory authority
5 or nonregulated retail electric utility to initiate a
6 proceeding or render a final decision in accordance
7 with section 4 or 7

8 may petition the Commission to enforce the requirements
9 of sections 4(a)(1)(B), 4(b)(1)(B), 5, and 6.

10 (2) In any proceeding under this section, the Com-
11 mission may—

12 (A) determine—

13 (i) whether the requirements or plan
14 adopted by a State regulatory authority or
15 nonregulated retail electric utility under sec-
16 tions 4(a)(1)(B), 4(b)(1)(B), 5, and 6 complies
17 with the requirements of this Act, or

18 (ii) whether any action taken by the State
19 regulatory authority or nonregulatory retail
20 electric utility to implement the requirements or
21 plan complies with the requirements of this Act;
22 and

23 (B) grant appropriate relief.

1 (c) REHEARING AND APPEAL.—Section 313 of the
2 Federal Power Act shall apply to orders of the Commis-
3 sion issued pursuant to this section.

4 **SEC. 10. RENEWABLE ELECTRIC GENERATION.**

5 Except as provided in subsection 6(a)(2), nothing in
6 this Act shall be construed to prohibit—

7 (1) a State from encouraging the production of
8 renewable electric generation under applicable State
9 law; or

10 (2) the voluntary purchase of renewable electric
11 generation by any electric utility or electric
12 consumer.

13 **SEC. 11. AMENDMENTS TO FEDERAL POWER ACT.**

14 (a) TRANSMISSION ACCESS.—Section 212(h) of the
15 Federal Power Act (16 U.S.C. 824k(h)) is amended by
16 striking the following: “Nothing in this subsection shall
17 affect any authority of any State or local government
18 under State law concerning the transmission of electric en-
19 ergy directly to an ultimate consumer.”, and inserting in
20 lieu thereof: “Notwithstanding the other provisions of this
21 subsection, the Commission may order, or condition orders
22 upon, the transmission of electric energy to an ultimate
23 consumer if the delivery of such electric energy would be
24 accomplished through the provision of unbundled local dis-
25 tribution services under sections 4(a)(1)(B), 4(b)(1)(B),

1 7(a)(2), or 7(d) of the Electricity Competition Act of
2 1996.”.

3 (b) RETAIL ACCESS AND STRANDED COSTS—The
4 Federal Power Act is amended further by adding the fol-
5 lowing new sections after section 214.

6 **“SEC. 215. STATE AUTHORITY TO ORDER RETAIL ACCESS.**

7 “Nothing in this Act shall preclude a State regulatory
8 authority, acting under authority of State law, from re-
9 quiring an electric utility to provide local distribution serv-
10 ice to any electric consumer.

11 **“SEC. 216. AUTHORITY TO PROVIDE FOR STRANDED COSTS.**

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

13 “(1) the term ‘utility’ shall include any public
14 utility, transmitting utility or electric utility;

15 “(2) the term ‘stranded cost’ shall be defined
16 by the Commission, and shall include any legitimate,
17 prudently incurred and verifiable cost previously in-
18 curred by a utility in order to provide service to an
19 electric consumer, which cost:

20 “(A) is not being, and except as provided
21 in this section would not otherwise be, recov-
22 ered in rates; and

23 “(B) the utility has made reasonable at-
24 tempts to mitigate.

1 “(b) **AUTHORITY.**—Notwithstanding any other provi-
2 sion of law, in determining or fixing rates, charges, terms
3 and conditions under sections 205 and 206 of this part,
4 the Commission shall provide for the recovery of all
5 stranded costs incurred by any utility transmitting or dis-
6 tributing electric energy not sold by such utility or any
7 of its affiliates (which electric energy is sold to a customer
8 and serves load of such customer previously served in
9 whole or in part by such utility), including costs incurred
10 to serve such customer not fully recovered at the time such
11 distribution or transmission service is undertaken.

12 “(c) **UNBUNDLED LOCAL DISTRIBUTION.**—In acting
13 pursuant to subsection (b) when determining or fixing
14 rates subject to its jurisdiction, the Commission shall per-
15 mit the recovery of all stranded costs to the extent a State
16 or State regulatory authority requiring the provision of
17 unbundled local distribution service has not permitted the
18 recovery of all such costs in rates or lacks the authority
19 under State law to permit such recovery.

20 “(d) **LIMITATION.**—The Commission shall have au-
21 thority to determine or fix rates or charges under sections
22 205 and 206 for the provision of unbundled local distribu-
23 tion service by a utility solely as necessary to permit the
24 recovery of stranded costs in accordance with this section.

1 **“SEC. 217. RECIPROCITY.**

2 “No retail electric utility or any affiliate of such util-
3 ity may sell electric energy to or for the benefit of an utili-
4 tate consumer if the delivery of such electric energy will
5 be accomplished through the provision of unbundled local
6 distribution service by another utility, unless such retail
7 electric utility is itself providing unbundled local distribu-
8 tion service under sections 4(a)(1)(B), 4(b)(1)(B),
9 7(a)(2), 7(b)(2) or 7(d) of the Electricity Competition Act
10 of 1996.”.

11 **SEC. 12. NUCLEAR DECOMMISSIONING COSTS.**

12 To ensure safety with regard to the public health and
13 safe decommissioning of nuclear generating units, the
14 Commission, and all State regulatory authorities, shall au-
15 thorize and ensure the recovery in rates subject to their
16 respective jurisdictions, of all costs associated with Fed-
17 eral and State requirements for the decommissioning of
18 such nuclear generating units.

19 **SEC. 13. AMENDMENTS TO BANKRUPTCY REFORM ACT.**

20 Section 503(b) of the Bankruptcy Reform Act of
21 1978, 11 U.S.C. 503(b), is amended by adding at the end
22 the following new paragraph:

23 “(7) costs incurred in complying with Nuclear
24 Regulatory Commission regulations or orders gov-
25 erning the decontamination and decommissioning of
26 nuclear power reactors licensed under section 103 or

1 104b. of the Atomic Energy Act of 1954, 42 U.S.C.
2 2133 and 2134(b), regardless of whether such costs
3 are reduced to a fixed amount.”.

○