To modernize the Public Utility Holding Company Act of 1935, the Federal Power Act, the Fair Packaging and Labeling Act, and the Public Utility Regulatory Policies Act of 1978 to promote competition in the electric power industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Electric Power Competition and Consumer Choice Act of 1997”.
SEC. 2. FINDINGS.

The Congress finds that equitable rates for electric consumers and increased efficiency in the use of technology and resources for the generation of electric power require—

(1) increased reliance on competition and market forces rather than traditional rate-of-return regulation of utility monopolies to generate the most efficient, low cost, and reliable electricity for ratepayers;

(2) access to transmission and distribution facilities for all suppliers and marketers of electricity with pricing and terms and conditions on a comparable basis with those who own or control such facilities;

(3) a program to promote fuel diversity and conservation and environmental protection through the encouragement of renewable technologies and other environmentally benign generation resources;

(4) State action to assure that electric utilities may seek to recover only those legitimate, verifiable, and nonmitigatable stranded costs for which there would have been a reasonable expectation of recovery, but for the implementation of retail competition;

(5) appropriate Federal and State regulation of electric utilities to promote development of a com-
petitive electric generation market and protect con-
sumers against excessive charges by electric utility
companies who exercise continued monopoly control
over electric power transmission and distribution;
and

(6) reform of certain Federal and State utility
regulatory laws and regulations, to promote competi-
tion and to prevent anticompetitive behavior by enti-
ties with market power, to avoid excessive concentra-
tions of market power, and to prohibit other activi-
ties which would undermine a competitive power
market.

**TITLE I—STANDARDS OF COMPETITION**

**Subtitle A—Application of PUHCA and PURPA**

**SEC. 101. PUHCA NOT APPLICABLE IN COMPETITIVE MAR-
KETS.**

The Public Utility Holding Company Act of 1935 (15
U.S.C. 79 and following) is amended by redesignating sec-
tions 34 and 35 as sections 35 and 36 respectively and
by inserting the following new section after section 33:
SEC. 34. UTILITIES WITH CERTIFICATION OF COMPETITION.

“(a) Application of Act to Companies With Certification.—With respect to a holding company system, the preceding provisions of this Act shall not, except as provided in subsection (b), apply to—

“(1) any company in the system, or

“(2) any affiliate of such a company,

if each such company and affiliate that is an electric utility company has received a certification of compliance with standards and requirements of competition under subtitle F of title I of the Public Utility Regulatory Policies Act of 1978 from all State regulatory authorities which have ratemaking authority over the electric utility company.

“(b) Withdrawal.—If the certification referred to in subsection (a) is withdrawn, unless the certification is reissued within 6 months after the date of the withdrawal, effective at the expiration of such 6-month period, the preceding provisions of this Act shall apply to each person referred to in paragraphs (1) and (2) of subsection (a).”.

SEC. 102. PURPA NOT APPLICABLE IN COMPETITIVE MARKETS.

(a) Application of PURPA.—Title II of the Public Utility Regulatory Policies Act of 1978 is amended by adding the following new sections at the end thereof:
“SEC. 214. UTILITIES WITH CERTIFICATION OF COMPETITION.

“(a) Certain Requirements of Section 210 Suspended.—The provisions of section 210 (requiring electric utilities to offer to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities) shall not apply to any contracts entered into by that electric utility during any period for which a certification of competition from a State regulatory authority in accordance with subtitle F of title I is in effect for any electric utility.

“(b) Protection of Existing Contractual Commitments.—Subsection (a) shall not affect any contract or other power purchase arrangement between a qualifying cogeneration facility or qualifying small power production facilities and an electric utility entered into during any period for which a certification referred to in subsection (a) is not in effect for such electric utility.

“(c) Terms.—For purposes of this section the terms ‘qualifying cogeneration facility’ and ‘qualifying small power production facility’ shall have the meaning provided for such terms by section 3(17) of the Federal Power Act.”.

(b) Certification of Competition.—Title I of the Public Utility Regulatory Policies Act of 1978 is amended by adding the following new subtitle at the end thereof:
“Subtitle F—Standards of Competition for Electric Utilities

SEC. 151. CERTIFICATION OF COMPETITION BY STATE REGULATORY AUTHORITIES.

“(a) Voluntary State Certification.—A State regulatory authority may elect to require any person selling electric energy, or distributing electric energy, or both, subject to the jurisdiction of such authority to comply with standards and requirements of competition under this subtitle. Such election shall be voluntary. Nothing in this subtitle prohibits any State regulatory authority from determining that it is not appropriate to require any such person to comply with such standards and requirements. Nothing in this subtitle prohibits or limits any State regulatory authority from implementing any other process regarding competition among such persons. Whenever any person selling electric energy or distributing electric energy, subject to the jurisdiction of a State regulatory authority that has made an election under this subsection has complied with standards and requirements of competition under this subtitle in accordance with rules established by such State regulatory authority, such authority shall issue a State certification of compliance to such person.
“(b) CRITERIA FOR CERTIFICATION.—After notice and opportunity for comment, the Commission shall establish, by rule, criteria for issuance by a State regulatory authority of a State certification of compliance with standards and requirements for competition under this subtitle. Such criteria shall provide that the State regulatory authority which has ratemaking authority over a person selling or distributing electric energy, or selling and distributing electric energy, may issue such a certificate only if such authority determines, after notice and opportunity for hearing, that such person meets—

“(1) the Federal retail competition standard set forth in section 152(a),

“(2) the public benefit certification requirements of section 152(b), and

“(3) such other requirements as the Commission prescribes consistent with the public interest and the purposes of this subtitle.

“(c) WITHDRAWAL OF CERTIFICATION.—(1) Certification of any person under this section shall be withdrawn if the State regulatory authority determines, after notice and opportunity for hearing, that such person has ceased to meet the standards and requirements of competition under this subtitle.
“(2) If any person petitions the State regulatory authority with ratemaking authority over a person certified under this section to withdraw such certification because such certified person has ceased to meet the standards and requirements of competition under this subtitle, and if such authority fails or refuses to act on such petition within 180 days after receiving the petition and adequate documentation supporting the petition, such petitioner may submit a request to the Commission to withdraw the certification of a person under this section, and the Commission shall withdraw such certification if the Commission determines, after notice and opportunity for hearing, that the certified person has ceased to meet the standards and requirements of competition under this subtitle.

“SEC. 152. FEDERAL STANDARDS AND REQUIREMENTS OF COMPETITION.

“(a) RETAIL COMPETITION STANDARD.—A person selling electric energy, or distributing electric energy, or both, meets the Federal retail competition standard if the following conditions exist:

“(1) UNBUNDLED COMPETITIVE SALES.—All retail electric energy services, including retail electric metering and billing services, sold to electric consumers by any person are each sold and billed separately and such sales are open to competition.
“(2) Competition for new generating capacity.—The opportunity to build, own, and operate new generating capacity in the State in which such person sells or distributes electric energy is open to competition.

“(3) Absence of competitive advantage.—Such person does not gain any undue advantage over other competitors whether by virtue of ownership of a monopoly distribution franchise or its status as a regulated buyer and seller of electricity in a designated service territory or otherwise.

“(4) Open access tariffs for distribution.—(A) Except as provided in subparagraph (B), tariffs are in effect for transmission of electric energy through all local distribution facilities owned or controlled by such person and subject to State jurisdiction and such tariffs provide for rates for electric energy transmission that are comparable to the electric energy transmission rates for energy sold by such person.

“(B) If the person owning or controlling such local distribution facilities does not sell electric energy transmitted through such facilities, such tariffs must be approved by the State regulatory authority.
as just, reasonable, and not discriminatory or unduly preferential.

“(5) Access to Facilities.—If such person owns, operates, or controls local distribution facilities, such person permits reasonable and nondiscriminatory access to such facilities at the locations at which retail electric service is provided and at such other locations as may be necessary to enable other person to provide retail electric energy services, including retail electric metering and billing services, and related information and communications services, on a competitive basis.

“(b) Public Benefit Certification Requirements.—A person selling electric energy, or distributing electric energy, or both, meets the public benefit certification requirements if:

“(1) Energy Efficiency and Renewable Energy.—All suppliers of energy services to electric consumers to whom such person provides retail electric energy services in the State have both the incentive and opportunity to provide energy efficiency and renewable energy resources.

“(2) Charges.—(A) Except as provided in sub-paragraph (B), the State has imposed nonbypassable charges on use of, or access to, the electric energy
services or facilities of such person that are subject
to the jurisdiction of the State. Such charges shall
be adequate to ensure sustained and equitable allo-
cation of costs associated with low-income services
and other investments, including those in renewable
energy resources and energy efficiency, that deliver
system wide benefits in the form of equity among,
or reduced life-cycle costs of service to, electric con-
sumers served by such services or facilities. Such
charges shall include temporary charges necessary to
cover the costs of electric utility workforce transition
and retraining made necessary by reason of the re-
structuring of the utility.

“(B) In lieu of charges to ensure renewable en-
ergy resources and energy efficiency, the State may
establish minimum portfolio standards that ensure
maintenance or improvement of current levels of reli-
ance on renewable energy resources and energy effi-
ciency.

“(3) Recovery of stranded costs; price
increases.—Any rules or orders applicable to retail
competition among electric-service suppliers protect
customers from price discrimination or undue price
increases and ensure that if a State approved any
recovery of such person’s net legitimate, verifiable,
nonmitigatable stranded costs for which there would have been a reasonable expectation of recovery, but for the implementation of retail competition, no customer class can avoid paying its equitable share of such costs.

“(4) Continued operation of assets.—Under applicable State laws and regulations, any recovery of such stranded costs associated with existing generation assets is not contingent on continued operation of the generation assets for which recovery is approved.

“(5) Reliability and consumer protection.—State laws and regulations require all persons seeking to provide retail electric service, or to purchase electric energy for consumption by two or more electric consumers, to have met minimum qualifications to protect the public safety and welfare and ensure the continued reliability of the distribution system.

“(6) Aggregation of purchases.—(A) State laws and regulations provide retail electric customers of the person a reasonable opportunity to aggregate their electric energy purchases for the purpose of achieving lower rates.
“(B) Such person does not maintain any rule or contractual or operational practice that precludes the aggregation of such purchases.

“(7) NET METERING FOR RENEWABLE ENERGY.—Such person offers to purchase all electric energy generated at the retail service location by retail electric consumers served by such person if such consumers generate electric energy through the use of generation equipment using renewable energy resources that meets all applicable safety and power quality standards approved by the Commission, and the price for such purchases is based on net energy metering using either dual or single metering and using rates identical in all respects to the standard retail rates applicable to retail sales of electric energy to retail electric customers in the same area served by such persons.

“SEC. 153. COMPARABILITY IN RETAIL ELECTRIC SERVICE.

“(a) FEDERAL COMPARABILITY REQUIREMENT.—It shall be unlawful for any person or State or local governmental agency that has a designated retail electric energy service territory under State law to provide retail electric service, directly or through an affiliate, to any person not within such service territory if such service is not available on a competitive basis to all retail electric energy cus-
tomers within such service territory. Except for sales to persons receiving retail electric service from the Tennessee Valley Authority before the enactment of this Act, it shall be unlawful for the Tennessee Valley Authority to provide retail electric service to any person not within the area referred to in the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4) if such service is not available on a competitive basis to all retail electric energy customers within such area.

Except for sales to persons receiving retail electric service from a Federal Power Marketing Authority before the enactment of this Act, it shall be unlawful for any Federal Power Marketing Authority to provide retail electric service to any person not within the designated power marketing area of such agency if such service is not available on a competitive basis to all retail electric energy customers within such area.

“(b) ENFORCEMENT.—Any person may commence a civil action in the appropriate United States district court on his or her own behalf against any person or State or local government agency or the Tennessee Valley Authority or the Secretary of Energy for violation of subsection (a). In an action brought under this subsection, the court shall award to any substantially prevailing plaintiff the costs of litigation including reasonable attorney fees, un-
less the court finds such award to be inappropriate under
the circumstances.

“SEC. 154. DEFINITION.

“As used in this subpart, the term ‘renewable energy’
means solar heat, solar light, wind, geothermal energy,
and biomass, except for heat from the burning of munici-
pal solid waste.”.

(c) CONSIDERATION AND DETERMINATION REGARD-
ING RETAIL COMPETITION STANDARDS.—(1) Section 111
(d) of the Public Utility Regulatory Policies Act of 1978
is amended by adding the following new paragraph at the
end thereof:

“(11) RETAIL COMPETITION STANDARDS.—
Each electric utility shall meet—

“(A) either the Federal retail competition
standard set forth in section 152(a) or the Fed-
eral divestiture standard set forth in section
152(b);

“(B) the public benefit certification re-
quirements of section 152(c); and

“(C) such other requirements as the Com-
mission shall prescribe consistent with the pub-
lic interest and the purposes of subtitle F.”.

(2) Section 112(b) of such Act is amended by insert-
ing after “of section 111(d)” in paragraphs (1) and (2)
the following “or after the enactment of the Electric Power Competition and Consumer Choice Act of 1997 in the case of the standards under paragraph (11) of section 111(d)”.

(3) Section 112(c) of such Act is amended by inserting “(or after the enactment of the Electric Power Competition and Consumer Choice Act of 1997 in the case of the standards under paragraph (11) of section 111(d))” after “enactment of this Act”.

(4) Section 124 of such Act is amended as follows:

(A) In the first and second sentences after “For purposes of” insert “any provision of”.

(B) In the first and second sentences, strike out “enactment of this Act” and insert “enactment of such provision”.

SEC. 103. ADDITIONAL PROVISIONS APPLICABLE TO ELECTRIC UTILITIES AND HOLDING COMPANIES.

(a) FERC Rules To Prevent Unfair Competitive Advantages.—(1) Part II of the Federal Power Act (16 U.S.C. 824 and following) is amended by adding the following section after section 214:

“SEC. 215. PREVENTION OF COMPETITIVE ADVANTAGE.

“Within 12 months after the enactment of this section, the President or his designee shall prescribe rules to assure that persons generating or providing electric en-
ergy for sale or for ultimate consumption cannot obtain any competitive advantage by reason of the ownership, control, use, or purchase of electric energy from facilities that are not subject to enforceable emission limitations for sulfur dioxide, oxides of nitrogen, and carbon dioxide that are as stringent as performance requirements for new electric generating facilities under the Clean Air Act. Such rule shall assure that total national or regional emissions of such pollutants are brought to levels which the Administrator of the Environmental Protection Agency certifies are sufficient to protect human health and the environment. Such standard may provide for trading of emission allowances as a compliance option.”.

(2) Section 201 of such Act is amended as follows:

(A) By striking “and 212” in subsection (b)(2) and inserting “212, and 215”.

(B) By striking “or 211” in subsection (b)(2) and inserting “, 211, or 215”.

(C) By striking “or 212” in subsection (e) and inserting “212, or 115”.

(b) STATE AND FEDERAL RATEMAKING AND OTHER REGULATORY AUTHORITIES.—(1) After the date of enactment of this Act, no provision of Federal law shall be construed to preempt otherwise applicable State authority to review the prudence of any wholesale or retail cost in-
curred by an electric utility, or to determine the recovery of costs for the sale or delivery of electric energy and related services to a retail customer regardless of the facilities used for such sales or delivery. The preceding sentence shall not apply to any wholesale or retail cost incurred by an electric utility the recovery of which in wholesale rates has been approved by the Federal Energy Regulatory Commission before the enactment of this Act.

(2) After the date of enactment of this Act, no Federal statute or rule shall be construed to affect the authority of the Federal Energy Regulatory Commission under the Federal Power Act to approve or disapprove the inclusion of existing contract or transaction costs of an affiliate or associate company (including costs approved under section 13(b) of the Public Utility Holding Company Act) in rates or charges imposed by an electric utility if such rates or charges are subject to the jurisdiction of the Commission.

(3) After the date of enactment of this Act, no provision of Federal law shall be construed to preempt any State authority to—

(A) impose nonbypassable charges on use of, or access to, the electric energy services or facilities of any person that are subject to the jurisdiction of the State to ensure sustained and equitable allocation of
costs associated with low-income services and other investments, including those in fuel diversity and energy efficiency, that deliver system wide benefits in the form of equity among, or reduced life-cycle costs of service to, electric consumers served by such services or facilities; and

(B) impose minimum portfolio standards that ensure maintenance or improvement of current levels of reliance on renewable energy resources.

Charges referred to in subparagraph (A) include temporary charges to cover the costs of electric utility workforce transition and retraining made necessary by reason of the restructuring of the utility.

(4) Section 309 of the Federal Power Act is amended by inserting after the second sentence thereof the following: “The Commission shall have the power to establish safety and power quality standards for purposes of section 152(b)(7) of the Public Utility Regulatory Policies Act of 1978 (relating to net metering for renewable energy).”.

(c) ENERGY SERVICE COMPANY DIVERSIFICATION.—Section 9 of the Public Utility Holding Company Act of 1935 is amended by adding the following new subsection after subsection (e):

“(d) The Commission may not use the authority of subsection (e)(3) or any other authority of this Act to ex-
empt from prior Commission approval under subsection (a)(1) and section 10 the acquisition by a registered holding company, or by any subsidiary company thereof, directly or indirectly, of any securities, utility assets, or any other interest in any energy-related company (as defined by the Commission by rule). After the date of the enactment of this subsection, any provision of any rule of the Commission that is inconsistent with this subsection shall cease to apply.”.

(d) Investments in Foreign Utility Companies.—Section 9 of the Public Utility Holding Company Act of 1935 is amended by adding the following new subsection after subsection (d):

“(e) The Commission may not permit a registered holding company to invest or maintain investments in foreign utility operations in excess of 50 percent of consolidated retained earnings (as defined by the Commission in part 250.53 of title 17 of the Code of Federal Regulations as in effect on April 30, 1997) unless a certification under section 151 of the Public Utility Regulatory Policies Act of 1978 is in effect for such registered holding company.”.
Subtitle B—Mergers, Acquisition, Market Concentration, Affiliate relationships and Diversification

SEC. 111. MERGERS AND ACQUISITIONS.

(a) Prohibition.—A person may not acquire any interest in a public utility company that results in ownership of a substantial interest and effective control of such company unless—

(1) the Commission makes the findings set forth in subsection (b); and

(2) such person has transmitted to the Commission the certifications set forth in subsection (c).

(b) Required Commission Findings.—The findings referred to in subsection (a)(1) are as follows:

(1) The acquisition described in subsection (a) will not create or maintain a situation inconsistent with effective competition in any market in which competition would benefit consumers.

(2) Such acquisition will result in substantial cost reductions in the provision of electric energy (in the case of a person acquiring a substantial interest in an electric utility company) or natural gas (in the case of a person acquiring a substantial interest in
a gas utility company) that are greater than could be achieved without the acquisition.

(3) The acquisition will be entered into on an arm’s-length basis.

(c) PUBLIC UTILITY CERTIFICATION.—The certifications referred to in subsection (a)(2) are as follows:

(1) A certification by the person acquiring the substantial interest, where the merger involves an acquisition premium, that such person will not seek to recover such premium, either directly or indirectly (such as by failing to reduce rates by an amount equal to the full amount by which costs have been reduced as a result of the merger), in rates charged for any service for which there is not effective competition, to the extent such premium exceeds the amount which the Commission has determined to be just and reasonable.

(2) A certification that each State commission with jurisdiction over the public utility company has certified that it has (A) the authority and resources to prevent the acquisition from having an adverse effect on the rates charged to any retail customer of the public utility (or affiliate), and (B) the authority to prevent the acquisition from taking place.
The Commission shall promulgate regulations concerning the form of certification required by this subsection.

(d) CONDITIONS.—Simultaneously with making the findings under subsection (b), the Commission shall establish terms and conditions applicable to transactions between a public utility company and the person acquiring a substantial interest in such company under subsection (a) necessary to ensure the continuing validity of all findings made under subsection (b) and certifications made under subsection (c).

(e) DEFINITIONS.—For purposes of this section:

(1) The term “acquire” means acquire, merge with, or be a recipient of a merger.

(2) The term “substantial interest in a public utility” means any interest, whether in voting stock, nonvoting stock, securities, partnership share, or any evidence of indebtedness, where the value of the interest equals 10 percent or more of the book value of the public utility.

(f) CONFORMING AMENDMENT.—Section 203(b) of the Federal Power Act is amended by adding the following at the end thereof: “Any order of the Commission under this section shall require compliance with section 111 of the Electric Power Competition and Consumer Choice Act.
of 1977 in any case in which such section 111 is applica-
ble.’’.

**SEC. 112. MARKET CONCENTRATION AND AFFILIATE RELA-
TIONSHPES.**

(a) **IN GENERAL.**—A public utility company, or any
affiliate thereof, may not use its ownership or control of
any resource to create or maintain a situation inconsistent
with effective competition in the purchase and sale of elec-
tric energy or natural gas in any market in which such
company (or affiliate) has a designated service territory
for the retail distribution of electric energy or natural gas.

(b) **AUTHORIZED ACTIONS.**—Whenever the Commiss-
ion finds a violation of subsection (a), it may order a pub-
lic utility company, or any affiliate thereof, to take any
or all of the following actions:

(1) Sell or otherwise transfer assets to a non-
affiliated company on an arm’s-length basis.

(2) Sell or otherwise transfer assets to an affili-
ated company, on an arm’s-length basis.

(3) Conduct business activities involving the re-
source concerned on an arm’s-length basis (except in
such emergency circumstances as the Commission
may authorize by rule).
(4) Share access to assets on a nondiscriminatory basis at rates which are just and reasonable, and not unduly discriminatory or preferential.

SEC. 113. DIVERSIFICATION.

(a) IN GENERAL.—The Commission shall establish regulations which ensure each of the following with respect to diversification by any public utility company, or affiliate thereof:

(1) The diversification shall have no adverse impact on electric or natural gas customers of such company.

(2) There shall be an arm’s-length relationship between—

(A) the transmission service activities, distribution service activities, and retail sales activities of the public utility company or affiliate; and

(B) any other business activities of the public utility company or any affiliate thereof.

The Commission may, by rule, provide for an exemption from the arm’s-length relationship requirements of this paragraph for emergency circumstances.

(3) The Commission and each State commission having authority over retail sales of electric energy or natural gas by such company have such access to
books and records of the public utility company and all affiliates thereof as is necessary to ensure that the foregoing conditions are met and continue to be met.

The Commission shall not permit any diversification referred to in this subsection unless each State commission that has ratemaking authority over such company or any affiliate thereof has certified to the Commission that it has the authority and resources to prevent such diversification from having an adverse effect on retail customers of such public utility company or any affiliate thereof.

(b) CONTRACTS WITH AFFILIATES.—No contract entered into after the date of the enactment of this Act between any public utility company and an affiliate having a total value of $1,000,000 or more, shall be valid unless each State commission having authority over retail sales of electric energy or natural gas by such company or affiliate has found that—

(1) such contract will have no adverse effect on consumers; and

(2) such State commission has the authority and resources to prevent any such adverse effect.

(c) COSTS AND REVENUES.—No Federal law shall be interpreted to prevent a State commission or the Commis-
sion, when establishing rates for any type of electric service or natural gas subject to the jurisdiction of such State commission or the Commission, from disallowing any costs unreasonably incurred, or imputing any revenues unreasonably foregone, including costs incurred or revenues foregone as a result of an interaffiliate transaction. The previous sentence shall not apply to any cost incurred and recovered in rates or charges or revenues foregone prior to July 11, 1996, whether or not subject to refund or adjustment.

(d) Amendment of Section 318.—Section 318 of the Federal Power Act is amended as follows:

(1) By striking “shall apply to such person” and inserting “shall not apply to such person”.

(2) By striking “not be subject to the requirement of this Act, or of” and inserting “be subject to the requirement of this Act and of”.

(3) By striking “, unless the Securities” and all that follows down to the period at the end thereof.

SEC. 114. ENFORCEMENT.

Section 314 of the Federal Power Act is amended by inserting “or subtitle B of title I of the Electric Power Competition and Consumer Choice Act of 1997” after “this Act” in each place it appears in subsections (a) and (b).
SEC. 115. ANTITRUST LAWS NOT AFFECTED.

Nothing in this Act shall be construed to modify or supersede the application of the antitrust laws to any activity to which the provisions of this Act apply or to any public utility company, electric utility, or to any other person or entity to whom the provisions of this Act apply.

As used in this section the term “antitrust laws”—

(1) has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(2) includes any State law similar to the laws referred to in paragraph (1).

Subtitle C—Electric Energy Transmission and Distribution Policies

SEC. 121. TRANSMISSION ACCESS AND FACILITATION OF RETAIL COMPETITION.

(a) Transmission Access.—Section 211 of the Federal Power Act is amended by adding the following at the end thereof:

“(f) Transmission Access.—Within 12 months after the date of enactment of this subsection, the Commission shall promulgate rules to establish tariffs applica-
ble in the largest region or regions feasible to carry out each of the following:

“(1) Ensure development and efficient operation of competitive electricity markets, while encouraging the economical and efficient use of existing generating facilities, and the economical location and use of future generating facilities.

“(2) Ensure the full recovery by owners of transmission facilities of all prudent transmission costs.

“(3) Prevent multiple charges for transmission service based on the number of transmission owners.

“(4) Prevent any person engaged in the sale of energy from gaining any advantage over competitors by reason of such person’s ownership or control of electric power transmission or distribution facilities.”.

(b) FACILITATION OF RETAIL COMPETITION.—Section 212(h) of such Act is amended to read as follows:

“(h) ORDERS TO FACILITATE RETAIL COMPETITION.—Notwithstanding any other provision of law, any order under this Act requiring a transmitting utility to provide wholesale transmission service shall also apply to retail transmission service provided by such utility or any other electric utility to the extent necessary to permit the
provision of retail competition in accordance with subtitle F of title I of the Public Utility Regulatory Policies Act of 1978.”.

SEC. 122. APPLICATION OF FERC OPEN ACCESS RULES TO NONJURISDICTIONAL UTILITIES.

Effective on the date one year after the date of enactment of this Act, all rules adopted by the Commission under section 201, 205, or 206 of the Federal Power Act that are applicable to wholesale or retail open access transmission services of public utilities shall apply to any such services provided by any transmitting utility (as defined in section 3(23) of such Act) that is not a public utility (as defined in section 201(e) of such Act) and to any Federal Power Marketing Agency in the same manner and to the same extent as such rules apply to public utilities (as so defined), except that the Commission may exempt any such transmitting utility from such rules, or modify the application of such rules to any such transmitting utility if the Commission finds that such action is in the public interest.

SEC. 123. ACCESS TO BOOKS AND RECORDS.

(a) STATE COMMISSIONS.—Section 201(g)(1) of the Federal Power Act is amended by adding the following at the end thereof: “A public utility, and each affiliate or associate thereof, shall produce for examination such person-
nel, books, accounts, memoranda, contracts, records, and
any other materials upon an order of any State commis-
sion finding that production of such materials will assist
the State commission in carrying out its responsibilities.
The cost of any audit ordered by a State commission
under either this section or under State law, shall be borne
by the public utility and its affiliates.”.

(b) FERC.—Section 301 is amended by adding the
following at the end thereof:

“(d) A public utility, and each affiliate or associate
thereof, shall produce for examination such personnel,
books, accounts, memoranda, contracts, records, and any
other materials upon an order of the Commission finding
that production of such materials will assist the Commiss-
ion in carrying out its responsibilities. The cost of any
audit ordered by the Commission under this section, shall
be borne by the public utility and its affiliates.”.

SEC. 124. ADDITIONAL AMENDMENTS TO PURPA.

Title II of the Public Utility Regulatory Policies Act
of 1978 is amended by adding the following after section
215:

“SEC. 216. ENCOURAGEMENT OF PARTICULAR GENERA-
TION TECHNOLOGIES.

“Nothing in this Act, the Federal Power Act, or any
other provision of Federal law prevents a State regulatory
authority, in making a determination for purposes of section 210 of the incremental cost to a purchasing electric utility of alternative electric energy, from establishing such incremental costs at levels which reflect avoided environmental costs that are not included in market rates. Where a State regulatory authority determines that an electric utility’s incremental cost of alternative electric energy shall be determined by competitive bidding, the State regulatory authority may segment the bid by generation technology or by groups of generation technologies.”.

SEC. 125. CONSUMER INFORMATION.

The Fair Packaging and Labeling Act (15 U.S.C. 1451 and following) is amended by inserting the following new sections after section 12:

“SEC. 13. CONSUMER INFORMATION DISCLOSURE.

“(a) Disclosure Rules.—Not later than January 1, 1999, the Federal Trade Commission, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Energy, shall issue rules prescribing the time, form, content, and frequency of supplier disclosure as required under subsections (b) and (c) of this section.

“(b) Disclosure to Electric Consumers.—In order to assist electric consumers in making informed purchasing decisions, each person that sells or offers to sell
electric energy to electric consumers in a State that has
adopted the retail competition standard under subtitle F,
shall provide to the electric consumer the following infor-
mation in accordance with rules under subsection (a):

“(1) Historic and projected generating source
data.

“(2) Historic and projected air and water emis-
sions data.

“(3) The following price information:

“(A) The price of electric energy expressed
in terms of the charge per billing unit.

“(B) The definition of the billing unit.

“(C) A description of any variable charges
and a statement identifying the factors that
would cause the charge per billing unit to vary.

The supplier shall provide support for any rep-
resentation made regarding the likelihood or
frequency of changes in the charge per billing
unit.

“(D) A description of all other charges or
costs that are associated with the service being
offered including, but not limited to, access
charges, exit charges, back-up service charges,
stranded benefits, and stranded cost recovery
charges and customer service charges.
“(4) Historic and projected reliability data.

“(5) A notice of any orders or other legal actions pending against such person for noncompliance with Federal, State, and local environmental and nuclear safety laws.

“(c) Generating Source Information Wholesale Transactions.—In every contract for the sale of electric energy for resale, the seller of electric energy shall provide to the purchaser of such generation source data and emissions data as may be required by rules under subsection (a).

“(d) Authority To Obtain Books and Records.—The Federal Trade Commission may use the authority of sections 3, 6, 9, and 20 of the Federal Trade Commission Act (15 U.S.C. 41 and following) to obtain any information necessary to carry out its duties under this section, without regard to the limitations contained in section 21(b) (15 U.S.C. 57b–2(b)).

“(e) Exempt Information.—The Commission may, by rule, exempt from subsection (b) any information that the Commission determines is not technologically or economically feasible to provide or that is not likely to assist consumers in purchasing decisions.

“(f) Prohibited Acts and Enforcement.—(1) It shall be unlawful for any person to fail to provide any of
the information required by this section or under the rules issued under subsection (a).

“(2) Any person who fails to provide information required under the rules issued under subsection (a) of this section or who provides false or misleading information under subsection (a) of this section shall be subject to a civil penalty of not more than $1,000,000 for each violation.

“(3) Any person against whom a civil penalty is assessed under paragraph (2), above may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code (5 U.S.C. 701 et seq.). The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

“(4) Any violation of a rule under this section shall be treated as a violation of a rule respecting unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Com-

“(g) STATE AUTHORITY.—A State regulatory au-

thority may prescribe disclosure requirements in addition to those provided under this section.

“(h) ENFORCEMENT BY STATES.—

“(1) IN GENERAL.—Whenever an attorney gen-

eral of any State has reason to believe that the in-

terests of the residents of that State have been or are being threatened or adversely affected because any person is violating or has violated any rule of the Commission under this section, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such violating, to enforce compliance with such rule of the Commission, to ob-
tain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such

further and other relief as the court may deem ap-

propriate.

“(2) NOTICE.—The State shall serve prior writ-
ten notice of any civil action under this subsection upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice,
the State shall serve such notice immediately upon
instituting such action. Upon receiving a notice re-
specting a civil action, the Commission shall have
the right (A) to intervene in such action, (B) upon
so intervening, to be heard on all matters arising
therein, and (C) to file petitions for appeal.

“(3) CONSTRUCTION.—For purposes of bring-
ing any civil action under this subsection, nothing in
this section shall prevent an attorney general from
exercising the powers conferred on the attorney gen-
eral by the laws of such State to conduct investiga-
tions or to administer oaths or affirmations or to
compel the attendance of witnesses or the production
of documentary and other evidence.

“(4) ACTIONS BY COMMISSION.—Whenever a
civil action has been instituted by or on behalf of the
Commission for violation of any rule under this sec-
tion, no State may, during the pendency of such ac-
tion instituted by or on behalf of the Commission,
 institute a civil action under this subsection against
any defendant named in the complaint in such ac-
tion for violation of any rule as alleged in such com-
plaint.

“(5) VENUE; SERVICE OF PROCESS.—Any civil
action brought under this subsection in a district
court of the United States may be brought in the
district in which the defendant is found, is an inhab-
itant, or transacts business or wherever venue is
proper under section 1391 of title 28. Process in
such an action may be served in any district in
which the defendant is an inhabitant or in which the
defendant may be found.

“(6) ACTIONS BY OTHER STATE OFFICIALS.—

(A) Nothing contained in this section shall prohibit
an authorized State official from proceeding in State
court on the basis of an alleged violation of any civil
or criminal statute of such State.

“(B) In addition to actions brought by an attor-
ney general of a State under this subsection, such
an action may be brought by officers of such State
who are authorized by the State to bring actions in
such State on behalf of its residents.

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

“(1) GENERATION SOURCE DATA.—The term
‘generation source data’ for a sale of electric energy
means the fuel or source of energy for the facility
or facilities generating the electric energy, calculated
in such manner as the Commission, in consultation
with the Secretary shall, prescribe by rule.
“(2) EMISSIONS DATA.—The term ‘emissions data’ for a sale of electric energy means the emissions of criteria air pollutants, carbon dioxide, and any other air or water pollutant specified by the Commission, in consultation with the Administrator and the Secretary, by rule associated with a facility or facilities generating such energy calculated in such manner as the Administrator, in consultation with the Secretary, may prescribe by rule.

“(3) CRITERIA AIR POLLUTANT.—The term ‘criteria air pollutant’ means an air pollutant for which an ambient air quality standard has been prescribed under section 109 of the Clean Air Act.

“SEC. 14. PRIVACY OF CONSUMER PROPRIETARY INFORMATION.

“(a) Privacy Requirements.—Except as required by law or with the prior written affirmative approval of the consumer, any person that receives or obtains customer information by virtue of its provision of a retail electric service or metering and billing service shall only use, disclose, or permit access to individually identifiable consumer information in its provision of (1) a retail electric service or metering and billing service from which such information is derived, or (2) services necessary to, or used in, the provision of such service.
“(b) Disclosure on Request by Consumers.— An electric utility or metering and billing service provider shall disclose consumer information, upon affirmative written request by the consumer, to any person designated by the consumer.

“(c) Aggregate Consumer Information.—Any person that receives or obtains consumer information by virtue of its provision of retail electric service or metering and billing services may use, disclose, or permit access to aggregate consumer information other than for the purposes described in subsection (a). An electric utility or metering or billing service provider may use, disclose, or permit access to aggregate consumer information other than for purposes described in subsection (a) only if it provides such aggregate information to other retail electric service providers on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

“(d) Exceptions.—Nothing in this section prohibits an electric utility or metering and billing service provider from using, disclosing, or permitting access to consumer information obtained from its consumers, either directly or indirectly through its agents—

“(1) to initiate, render, bill, and collect for retail electric services or metering and billing services;
“(2) to protect the rights or property of the electric utility or metering and billing service provider, or to protect consumers of those services and other service providers from fraudulent, abusive, unlawful use of, or subscription to such services; or

“(3) for purposes of compliance with any other Federal or State law or regulation authorizing disclosure of information to a Federal or State agency.

“(e) DEFINITIONS.—As used in this section:

“(1) CONSUMER INFORMATION.—The term ‘consumer information’ means—

“(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a retail electric service subscribed to by any consumer, and that is made available to an electric utility or metering and billing service provider solely by virtue of its business relationship; and

“(B) information contained in the bills pertaining to retail electric service received by a consumer.

“(2) AGGREGATE CONSUMER INFORMATION.—The term ‘aggregate consumer information’ means collective data that relates to a group or category of services or consumers, from which individual
consumer identities and characteristics have been re-
moved.”

SEC. 126. FEDERAL RENEWABLES POLICY.

(a) MINIMUM RENEWABLE GENERATION REQUIRE-
MENT.—Every person who generates, and sells to any
other person, electric energy shall submit to the Secretary
of Energy renewable energy credits (computed in kilowatt-
hours) in an amount equal to a specified percentage of
its total of such sales in the preceding calendar year. The
specified percentage shall be 3 percent for calendar year
1998. The Secretary shall annually establish a gradually
increasing specified percentage for each calendar year
after calendar year 1998 according to a sliding scale such
that the specified percentage for the calendar year 2010
and thereafter is 10 percent. Nothing in this section shall
be construed to prohibit any State from requiring addi-
tional renewable energy generation in that State under
any program adopted by the State.

(b) SUBMISSION OF CREDITS.—A person generating
electric energy may satisfy the requirements of subsection
(a) through the submission of—

(1) renewable energy credits issued by the Sec-
retary of Energy under this section for renewable
energy generated by such person in such calendar
year;
(2) renewable energy credits issued by the Secretary of Energy under this section to any other person for renewable energy generated in such calendar year by such other person and acquired by such person; and

(3) any combination of the foregoing.

(c) Issuance of Renewable Energy Credits.—

(1) IN GENERAL.—The Secretary of Energy shall establish, by rule after notice and opportunity for hearing but not later than 120 days after the enactment of this Act, a program to issue renewable energy credits to generators of renewable energy. Renewable energy credits shall be identified by type of generation and facility location (State). Under such program, the Secretary of Energy shall issue one renewable energy credit to any person who generates in any State one unit of electric energy through the use of renewable energy.

(2) FEES.—The Secretary of Energy shall impose and collect a fee on recipients of renewable energy credits in an amount equal to the administrative costs of issuing, recording, monitoring the sale or exchange, and tracking of such credits. The failure or refusal of any person to pay such fee shall be subject to a civil penalty equal to $2½ times the
amount of the unpaid fees. The Secretary of Energy shall bring an action in the appropriate United States district court to collect any unpaid fees and to impose a civil penalty on any person who fails or refuses to pay such fee imposed under this section.

(3) PURPA CONTRACTS.—To the extent purchases are made by an electric utility from a generator pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, the electric utility shall be treated for purposes of this section as the generator of such energy unless such generator and utility agree to terminate such contract prior to the expiration date set forth in the contract.

(d) SALE OR EXCHANGE.—Renewable energy credits may be sold or exchanged by the person to whom issued or by any other person who acquires the credit. A renewable energy credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may not be carried forward for use in another year. The Secretary of Energy shall promulgate regulations to provide for the issuance, recording, monitoring the sale or exchange, and tracking of such credits and ensuring public disclosure of price information. The Secretary of Energy shall maintain records of all sales
and exchanges of credits. No such sale or exchange shall be valid unless recorded by the Secretary of Energy.

(c) ENFORCEMENT.—The Secretary of Energy shall bring an action in the appropriate United States district court to impose a civil penalty on any person who fails or refuses to comply with subsection (a). The failure or refusal of any person to submit any required quantity of renewable energy credits shall be subject to a civil penalty of not more than 2½ times the estimated national average market value (as determined by the Secretary of Energy) for the calendar year concerned of such quantity of renewable energy credits.

(f) RULES.—The Secretary of Energy shall promulgate such rules as may be necessary to carry out this section, including such rules requiring the submission of such information as may be necessary to verify the annual electric energy generation and renewable energy generation of any person applying for renewable energy credits under this section or to verify and audit the validity of renewable energy credits submitted by any person to the Secretary of Energy.

SEC. 127. UNIVERSAL SERVICE.

(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS.—
(1) Federal-state Joint Board on Universal Service.—Within one month after the date of enactment of this Act, the Commission shall establish a Federal-State Joint Board and institute and refer to the Joint Board a proceeding to recommend uniform universal service support mechanisms.

(2) State Action.—In order to support the public benefit certification requirements of section 152(b), each State shall consider the recommendations from the Joint Board required by paragraph (1) prior to making the certification of competition under subtitle F of the Public Utility Regulatory Policies Act of 1978. Thereafter, the States should complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) Universal Service Principles.—The Joint Board and the States should base policies for the preservation and advancement of universal service on the following principles:

(1) Quality and Rates.—Quality services should be available at just, reasonable, and affordable rates.
(2) Access to advanced services.—Access to advanced electric services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to electric services, including advanced services, that are reasonably comparable to those services provided in urban areas within the same region and that are available at rates that are reasonably comparable to rates charged for similar services in such urban areas. Nothing in this paragraph shall result in any preference for centralized generation or for the extension of existing retail distribution facilities.

(4) Equitable and nondiscriminatory contributions.—All providers of electric services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) Specific and predictable support mechanisms.—There should be specific, predictable and sufficient mechanisms to preserve and advance universal service.
(6) **ADDITIONAL PRINCIPLES.**—Such other principles as the Joint Board and the States determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

(c) **DEFINITION.**—

(1) **IN GENERAL.**—Universal service is an evolving level of electric services that the States shall establish periodically under this section, taking into account advances in technologies and services. The Joint Board in recommending, and the States in establishing, the definition of the services that are supported by universal service support mechanisms shall consider the extent to which such services—

(A) are essential to public health or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in transmission and distribution systems by electric service providers; and

(D) are consistent with the public interest, convenience, and necessity.
(2) ALTERATIONS AND MODIFICATIONS.—The Joint Board may, from time to time, recommend to the States modifications in the definition of the services that are supported by universal service support mechanisms.

(d) UTILITY CONTRIBUTION.—Every electric utility that provides interstate electric services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the States to preserve and advance universal service. Any State may exempt a utility or class of utilities from any requirement established by the State consistent with this subsection if the utility’s activities are limited to such an extent that the level of such utility’s contribution to the preservation and advancement of universal service would be de minimis. Any other provider of electric services may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

(e) STATE AUTHORITY.—A State may adopt regulations to preserve and advance universal service. Every electric utility that provides intrastate electric services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.
A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State.

(f) **Consumer Protection.**—The States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(g) **Subsidy of Competitive Services Prohibited.**—An electric utility may not use services that are not competitive to subsidize services that are subject to competition. The States shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

**Subtitle D—General and Miscellaneous Provisions**

**Sec. 131. Definitions.**

As used in this title:

(1) The term “Commission” means the Federal Energy Regulatory Commission, except as otherwise specifically provided.

(2) The term “public utility” has the meaning provided by section 201(e) of the Federal Power Act.
(3) Except as otherwise specifically provided in this Act, the term “affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(4) The term “arm’s-length relationship” means a relationship between—

(A) those business activities conducted by a public utility for its transmission service customers, distribution service customers, or retail electric customers; and

(B) any other business activities conducted by the same corporation or any affiliate or associate company, where—

(i) such business activities are conducted in compliance with Commission rules ensuring that—

(I) no business activity has any advantage over its competitors due to its affiliation with a business which serves transmission service customers, distribution service customers, or re-
tail electric customers who do not have the right to choose their own electric supplier; and

(II) no transmission service customer, distribution service customer or retail electric customer who do not have the right to choose his own electric supplier is disadvantaged due to its affiliation with a competitive enterprise; and

(ii) the public utility has certified that with respect to any resource (whether tangible or intangible) owned, or employees employed, by a public utility which is an affiliate or associate of such person, any cost of which has been recovered from the captive customers of such public utility (or, in the case of a registered holding company, from the captive customers of a public utility which is an affiliate or associate of such public utility), no use of such resources or employees shall be made by such public utility or any affiliate or associate thereof for any purpose other than serving such native load customers, nor
shall such resources or employees be sold or transferred to any affiliate or associate therefore, unless such public utility remits to such captive customers, through a procedure found satisfactory by each affected State commission responsible for setting the rates for such customers, the higher of the cost attributable to such use or the market value of such use.

(5) The term “diversification” refers to the conduct of any business activity other than the generation, transmission, distribution or sale of electric energy.

(6) The term “economic risk” includes the risk, in any form, that the cost of a resource borne by the consumer at any time in the life of the resource will be below the market value of the resource.

(7) The term “effective competition” refers to a market in which no profit-maximizing seller could profitably impose a significant and nontransitory increase in price, as determined by the Commission. In determining whether an action is inconsistent with effective competition, the Commission shall take into account the size of market share and the extent of any barriers to entry. For purposes of this para-
graph, behavior which is mandated by State law is not inconsistent with effective competition.

(8) The term “captive customers” means the group of customers of a public utility who do not have the right to choose their own supplier of electricity.

(9) The terms “public utility company”, “electric utility company” and “gas utility company” have the meanings provided by section 2(a) of the Public Utility Holding Company Act of 1935.

(10) The term “renewable energy” means solar heat, solar light, wind, geothermal energy, and biomass, except for heat from the burning of municipal solid waste.

**TITLE II—RELIABILITY**

**SEC. 201. ELECTRIC RELIABILITY COUNCILS.**

(a) In General.—Part II of the Federal Power Act is amended by adding after section 216 the following new section:

“**SEC. 217. ELECTRIC RELIABILITY COUNCILS.**

“(a) Definitions.—As used in this section:

“(1) The term ‘electric reliability council’ means a self-regulated organization whose membership is composed of electric utilities or transmitting utilities
and whose mission to promote the reliability of electricity supply and system.

“(2) The term ‘electric reliability system’ means the network of transmission lines and generating units in a given geographic area, operated collaboratively by or for their owners, in a manner that promotes the reliability of bulk electric systems.

“(b) Membership.—(1) Each electric utility and transmitting utility shall become a member of an electric reliability council.

“(2) An electric reliability council may condition membership on meeting standards of operation that the council establishes, and may bar from or suspend the membership of an electric utility or transmitting utility that fails to comply with a condition placed on its membership.

“(c) Rules.—An electric reliability council shall establish rules that—

“(1) permit open access to membership;

“(2) assure fair representation of its members in the selection of it directors and management of its affairs;

“(3) allocate equitably dues, fees, and other charges among its members;
“(4) include standards of utility operation designed to foster reliability of electric reliability systems; and

“(5) provide a procedure for discipline (including fines, suspension, expulsion, or other appropriate sanctions of members for violation of this section, rules and regulations issued under this section, and rules of the council.

“(d) OVERSIGHT OF ELECTRIC RELIABILITY COUNCILS.—

“(1) The Commission shall oversee the operations of an electric reliability council.

“(2) The Commission shall establish procedures for an electric reliability council to apply for registration, shall provide public notice of the application, and shall afford interested persons the opportunity to submit views on the application. The Commission shall register an applicant if the Commission determines that—

“(A) the applicant is so organized and has the capacity to carry out the purposes of this section and to comply and enforce compliance of its members with the provisions of this section, the rules and regulations issued under this section, and the rules of the applicant;
“(B) the applicant’s rules comply with subsection (e) of this section; and

“(C) the applicant’s rules do not impose a burden on effective competition that is not necessary or appropriate to further the purposes of this section.

“(3) An electric reliability council shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission shall establish procedures, in accordance with part III of this Act, to consider a proposed rule or proposed rule change. A proposed rule change takes effect upon Commission approval, except as specified in paragraphs (4) and (5).

“(4) A proposed rule or proposed rule change that an electric reliability council designates as—

“(A) a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

“(B) establishment or changes in dues or other council charges; or

“(C) concerned solely with administration of the council takes effect upon filing with the Commission.
“(5) An electric reliability council may put into effect summarily a proposed rule or proposed rule change that is necessary to protect an electric reliability system, subject to subsequent Commission approval.

“(6) The Commission may amend the rules of an electric reliability council if the Commission considers amendment necessary or appropriate to ensure the fair administration of the council, to conform the council rules to the requirements of this section or rules and regulations issued under this section, or to further the purposes of this section or promote effective competition. The Commission shall establish procedures in accordance with part III of this Act to implement this paragraph.

“(7) If an electric reliability council imposes a final disciplinary action on a council member, the council shall notify the Commission of that action. The Commission, on its own motion, or upon application by the member subject to the action, after notice and opportunity for hearing in accordance with part III of the Act, may affirm, set aside, or modify the action.

“(8) The Commission, by order, may suspend or revoke the registration of an electric reliability council.
council or limit the activities, functions, or operations of a council if it determines that action is necessary or appropriate to protect the electric reliability system. If the Commission responds or revokes the registration of a council, the Commission shall operate the council until the suspension expires, the revocation is reversed, or another council is in place.

“(9) The Commission, by order may suspend or expel a member from a council, or may remove from office an officer or director of the council if the Commission, on the record after notice and opportunity for hearing in accordance with part III of this Act finds that action necessary or appropriate to protect the electric reliability system.

“(10) A violation of this section is subject to section 316A, but not subject to section 316 of this Act.”.

(b) CONFORMING AMENDMENT.—Section 316A of the Federal Power Act is amended by striking “or 214” and inserting “214, 215, or 217”. Section 316A of such Act is amended by striking “or 214” in each place it appears subsections (a) and (b) and inserting “214, 215, or 217”.

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