

105TH CONGRESS
2D SESSION

H. R. 4432

To enhance the reliability of the electric power supply system of the United States by reducing barriers to the construction of needed generation and transmission facilities, to increase the efficiency of the Nation's interstate transmission grid, and to reduce discrimination in the provision of transmission services.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. DELAY (for himself and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To enhance the reliability of the electric power supply system of the United States by reducing barriers to the construction of needed generation and transmission facilities, to increase the efficiency of the Nation's interstate transmission grid, and to reduce discrimination in the provision of transmission services.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Electric System Reliability Act of 1998”.

1 (b) TABLE OF CONTENTS.—The table of contents is
 2 as follows:

Sec. 1. Short title and table of contents.
 Sec. 2. Findings.

TITLE I—FERC AUTHORITY TO CERTIFY SELF-REGULATING
 RELIABILITY ORGANIZATIONS

Sec. 101. Electric reliability organization and oversight.
 Sec. 102. Statutory presumptions.

TITLE II—FERC AUTHORITY TO REQUIRE INDEPENDENT SYSTEM
 OPERATORS, TO REQUIRE DIVESTITURE OF GENERATION FA-
 CILITIES, AND TO PROHIBIT PREFERENTIAL TRANSMISSION
 SERVICE

Sec. 201. Authority to establish and require independent system operation.
 Sec. 202. Single siting authority and independent system operator siting au-
 thority.
 Sec. 203. Eminent domain.

TITLE III—INTERCONNECTION

Sec. 301. Interconnection.

TITLE IV—EXEMPT TRANSMITTING UTILITIES

Sec. 401. Exempt transmitting utilities.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) Electricity is used in virtually every home,
 6 commercial enterprise, and manufacturing facility in
 7 the United States; is a basic element of the inter-
 8 state and foreign commerce of the United States;
 9 and immediately, directly and substantially affects
 10 interstate and foreign commerce.

11 (2) The Nation’s interconnected electricity gen-
 12 eration, transmission, and local distribution systems
 13 critically affect the economy and productivity of the

1 United States, and the health, safety, welfare, and
2 security of all Americans.

3 (3) Difficulties associated with the siting of new
4 generation and transmission plants threaten to jeop-
5 ardize the future supply and reliability of the Na-
6 tion's electric bulk power supply system.

7 (4) The restructuring of the electric utility may
8 result in ambiguity regarding the ultimate respon-
9 sibility for maintenance of reliability.

10 (5) The retirement and early shut-down of nu-
11 clear plants has and is likely to continue to further
12 reduce the reserve margins and adequacy of generat-
13 ing capacity to satisfy regional demand for elec-
14 tricity.

15 (6) Maintaining an adequate and reliable supply
16 of electric power is vital for the preservation and
17 growth of the Nation's economy and the safety of its
18 citizens.

19 (7) The ability of private reliability associations
20 to promote and insure reliability of the Nation's
21 electric supply by establishing binding standards and
22 procedures may be hampered by exposure to anti-
23 trust liability;

24 (8) Granting additional authority to the Federal
25 Energy Regulatory Commission over the activities of

1 private reliability associations can avoid the risk of
2 such antitrust liability.

3 (9) Congestion and discrimination regarding the
4 use of the transmission systems of the nation's utili-
5 ties can threaten the reliability of electric supply and
6 result in economic inefficiency and higher costs of
7 electricity to consumers.

8 (10) Market concentration and vertical integra-
9 tion of the generation and transmission functions of
10 electric utilities can result in discrimination in favor
11 of the transmission owner's or its affiliate's genera-
12 tion and prices in excess of the prices that would be
13 charged in the competitive market.

14 (11) Preventing or curing such discrimination
15 can require the establishment of an Independent
16 System Operator or the divestiture of ownership of
17 generation facilities by utilities that own trans-
18 mission facilities.

19 (12) Constraints on the use of the Nation's
20 interstate transmission system imposed by regu-
21 latory policies that provide unfair advantages to ver-
22 tically integrated transmission owners have balkan-
23 ized the wholesale power marketplace and resulted in
24 power supply shortages and extreme price "spikes".

1 **TITLE I—FERC AUTHORITY TO**
2 **CERTIFY SELF-REGULATING**
3 **RELIABILITY ORGANIZATIONS**

4 **SEC. 101. ELECTRIC RELIABILITY ORGANIZATION AND**
5 **OVERSIGHT.**

6 (a) IN GENERAL.—The Federal Power Act is amend-
7 ed by adding the following new section after section 214
8 (16 U.S.C. 824m):

9 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION AND**
10 **OVERSIGHT.**

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

12 “(1) The term ‘bulk-power system’ means all
13 facilities and control systems necessary for operating
14 the interconnected transmission grids, including
15 high-voltage transmission lines; substations; control
16 centers; communications, data, and operations plan-
17 ning facilities; and generating units necessary to
18 maintain transmission system reliability.

19 “(2) The term ‘electric reliability organization’
20 or ‘organization’ means the organization registered
21 by the Commission under subsection (d)(4).

22 “(3) The term ‘system operator’ means any en-
23 tity that operates or is responsible for the operation
24 of the bulk-power system, including control area op-
25 erators, independent system operators, transmission

1 companies, transmission system operators, and re-
2 gional security coordinators.

3 “(4) The term ‘users of the bulk-power system’
4 means any entity that sells, purchases, or transmits
5 electric power over the bulk-power system; owns, op-
6 erates or maintains facilities of the bulk-power sys-
7 tem; or is a system operator.

8 “(b) COMMISSION AUTHORITY.—(1) The Commission
9 has jurisdiction over the electric reliability organization,
10 all system operators, and all users of the bulk-power sys-
11 tem for purposes of approving and enforcing compliance
12 with standards in the United States.

13 “(2) The Commission may register an electric reli-
14 ability organization and approve and oversee the activities
15 in the United States of that electric reliability organiza-
16 tion.

17 “(c) COMPLIANCE WITH EXISTING RELIABILITY
18 STANDARDS.—Users of the bulk-power system shall com-
19 ply with standards established by the North American
20 Electric Reliability Council and the regional reliability
21 councils that exist on the date of enactment of this section,
22 consistent with any agreement entered into under sub-
23 section (f). Each standard remains in effect until modified
24 under this subsection or superseded by standards ap-
25 proved under subsection (e). The Commission, upon its

1 own motions or upon request and consistent with any
2 agreements entered into pursuant to subsection (f), may
3 modify or suspend the application of a standard and may
4 enforce a standard exercising the same authority that the
5 electric reliability organization may exercise under sub-
6 section (k). The North American Electric Reliability Coun-
7 cil and the regional reliability councils may monitor com-
8 pliance with these standards.

9 “(d) ORGANIZATION REGISTRATION AND ESTABLISH-
10 MENT OF STANDARDS.—(1) Not less than 90 days after
11 the date of enactment of this section, the Commission
12 shall issue proposed rules specifying the procedures and
13 requirements for an organization to apply for registration
14 and file reliability standards. The Commission shall pro-
15 vide adequate opportunity for comment on the proposed
16 rules. The Commission shall issue final rules under this
17 subsection within 180 days after the date of enactment
18 of this section.

19 “(2) Following the issuance of final Commission rules
20 under paragraph (1), an electric reliability organization
21 may apply for registration with the Commission. The orga-
22 nization shall include in its application its governance,
23 procedures, and funding mechanism, and shall file the
24 standards in effect under subsection (c).

1 “(3) The Commission shall provide public notice of
2 the application and the standards filed under this sub-
3 section and afford interested parties an opportunity to
4 comment on the application and filing.

5 “(4) The Commission shall register the organization
6 if the Commission determines that the organization—

7 “(A) has the capacity to provide for an ade-
8 quate level of reliability of the bulk-power system;

9 “(B) permits voluntary membership to any
10 users of the bulk-power system or interested cus-
11 tomer class or public interest group;

12 “(C) assures fair representation of its members
13 in the selection of its directors and fair management
14 of its affairs, taking into account the need for effi-
15 ciency and effectiveness in decision making and op-
16 erations and the requirements for technical com-
17 petency in the development of standards and the ex-
18 ercise of oversight of the reliability system, and
19 assures that no single class of market participants
20 has the ability to control the organization’s dis-
21 charge of its responsibilities;

22 “(D) assesses reasonable dues, fees, or other
23 charges necessary to support the organization and
24 the purposes of this section and has a funding mech-
25 anism that is fair and not unduly discriminatory;

1 “(E) establishes procedures for standards devel-
2 opment that provide reasonable notice and oppor-
3 tunity for public comment, taking into account the
4 need for efficiency and effectiveness in decision mak-
5 ing and operations and the requirements for tech-
6 nical competency in the development of standards;

7 “(F) establishes fair and impartial procedures
8 for enforcement of standards, including penalties,
9 limitation of activity, function or operations; or other
10 appropriate sanctions;

11 “(G) establishes procedures for notice and op-
12 portunity for public observation of all meetings, ex-
13 cept that the procedures for public observation may
14 include alternative procedures for emergencies or for
15 the discussion of information the directors determine
16 should take place in closed session, including the dis-
17 cussion of information with respect to proposed en-
18 forcement or disciplinary action; and

19 “(H) addresses other matters that the Commis-
20 sion considers necessary or appropriate.

21 “(5) The Commission shall approve only one electric
22 reliability organization. If the Commission receives timely
23 applications from two or more applicants that satisfy the
24 requirements of this subsection, the Commission shall ap-

1 prove only the application that is most likely to provide
2 a reliable bulk-power system.

3 “(e) RESTRICTIONS ON ACTIVITIES.—A reliability or-
4 ganization shall not—

5 (1) establish or operate a market for the sale,
6 purchase or exchange of electric energy,

7 (2) file any standard under subsection (d)(2) or
8 (f)(3)(A) that directly or indirectly establishes com-
9 mercial terms for the sale, purchase or exchange of
10 electric energy, or

11 (3) impede effective competition.

12 “(f) REVIEW AND CHANGES OR MODIFICATIONS TO
13 STANDARDS.—(1) The Commission shall review the stand-
14 ards submitted under subsection (d)(2), concurrent with
15 its review of the application under subsection (d), and each
16 standard becomes effective if the Commission determines
17 that it is just, reasonable, and not unduly discriminatory
18 or preferential; is in the public interest; and provides for
19 an adequate level of reliability of the bulk-power system.

20 “(2) With respect to a standard that does not become
21 effective under paragraph (1), the Commission shall refer
22 that standard to the electric reliability organization for de-
23 velopment of a new or modified standard under the organi-
24 zation’s procedures for assuring notice and opportunity for

1 comment approved by the Commission under subsection
2 (d)(4)(E).

3 “(3)(A) The electric reliability organization shall file
4 with the Commission any standard developed under para-
5 graph (2) or a new standard or modification of a standard
6 effective under paragraph (1) for review and approval. A
7 new standard or modification does not take effect unless
8 the Commission determines, after notice and opportunity
9 for comment, that the standard or modification is just,
10 reasonable, and not unduly discriminatory or preferential;
11 is in the public interest; and provides for an adequate level
12 of reliability of the bulk-power system, taking into account
13 the purposes of this section to assure reliability of the
14 bulk-power system and giving due weight to the technical
15 competency of the registered electric reliability organiza-
16 tion, and is consistent with any agreement entered into
17 pursuant to subsection (f).

18 “(B) Any standard or modification that does not be-
19 come effective under this paragraph shall be referred to
20 the electric reliability organization for development of a
21 new or modified standard under the organization’s proce-
22 dures for assuring notice and opportunity for comment ap-
23 proved by the Commission under subsection (d)(4)(E).

24 “(C) The Commission, on its own motion, or upon
25 application or complaint, may require that the electric reli-

1 ability organization develop a new or revised standard if
2 the Commission considers a new or revised standard nec-
3 essary or appropriate to further the purposes of this sec-
4 tion. The organization shall file the new or revised stand-
5 ard in accordance with this paragraph.

6 “(D) On its own motion or at the request of the elec-
7 tric reliability organization, the Commission may develop
8 and, consistent with any agreement under subsection (f),
9 require immediate implementation by the organization of
10 a new or revised standard if it determines that immediate
11 implementation is required to avoid a significant interrup-
12 tion of reliability that would affect public safety or welfare.
13 If immediate implementation is required, the Commission
14 shall not delay implementation for notice and comment
15 but shall publish the standard for notice and comment in
16 a timely manner.

17 “(g) COORDINATION WITH CANADA AND MEXICO.—
18 The United States shall enter into international agree-
19 ments with the governments of Canada and Mexico deter-
20 mined to be necessary or appropriate to provide for effec-
21 tive compliance with standards and to provide for the ef-
22 fectiveness of the electric reliability organization in carry-
23 ing out its mission and responsibilities.

24 “(h) CHANGES IN ORGANIZATION PROCEDURES,
25 GOVERNANCE, OR FUNDING.—(1) The electric reliability

1 organization shall file with the Commission any proposed
2 change in its procedures, governance, or funding and ac-
3 company the filing with an explanation of the basis and
4 purpose for the change.

5 “(2)(A) A proposed procedural change may take ef-
6 fect 90 days after filing with the Commission if the
7 change—

8 “(i) constitutes a statement of policy, practice,
9 or interpretation with respect to the meaning, ad-
10 ministration, or enforcement of an existing proce-
11 dure; or

12 “(ii) is concerned solely with administration of
13 the organization.

14 “(B) The Commission, by order, either upon com-
15 plaint or upon its own motion, may suspend an existing
16 procedure or procedural change if it determines the proce-
17 dure or the proposed change is unjust, unreasonable, un-
18 duly discriminatory or preferential, or is otherwise not in
19 the public interest.

20 “(3) A change in the organization’s governance and
21 funding does not take effect unless the Commission finds
22 that the change is consistent with any agreement under
23 subsection (f) and is just, reasonable, not unduly discrimi-
24 natory or preferential, and in the public interest.

1 “(4) The Commission may require that the electric
2 reliability organization amend its procedures, governance,
3 or funding if the Commission considers the amendment
4 necessary or appropriate to ensure the fair administration
5 of the organization, conform the organization to the re-
6 quirements of this section, or further the purposes of this
7 section, consistent with any agreement entered into under
8 subsection (f). The organization shall file the amendment
9 in accordance with paragraph (1).

10 “(i) ORGANIZATION DELEGATIONS OF AUTHORITY.—

11 (1) The organization may enter into an agreement under
12 which it may delegate some or all of its authority to any
13 person.

14 “(2) The organization shall file an agreement entered
15 into under this subsection with the Commission together
16 with the information on the delegated person that the
17 Commission may require. The Commission shall approve
18 the agreement, following public notice and an opportunity
19 for comment, if it finds that the agreement is consistent
20 with the requirements of this section. The Commission
21 shall disapprove and prevent the agreement from entering
22 into effect if the Commission finds that the agreement is
23 inconsistent with the requirements of this section. The
24 agreement takes effect upon Commission approval.

1 “(3) The Commission may direct a modification to
2 or suspend an agreement entered into under this sub-
3 section if it determines that the delegated person no longer
4 has the capacity to carry out its implementation respon-
5 sibilities under that agreement effectively and efficiently
6 or that the rules, practices, or procedures of the delegated
7 person no longer provide for the fair and impartial dis-
8 charge of its implementation responsibilities. The electric
9 reliability organization shall assume the previously dele-
10 gated responsibilities if the agreement is suspended.

11 “(j) ORGANIZATION MEMBERSHIP.—Every system
12 operator shall be a member of the electric reliability orga-
13 nization. The organization rules shall provide for vol-
14 untary membership to other users of the bulk-power sys-
15 tem and any interested customer class or public interest
16 group. A person required to become a member of the orga-
17 nization who fails to do so is subject to sections 314 and
18 316A of this Act upon notification from the organization
19 to the Commission.

20 “(k) FAILURE TO APPLY FOR REGISTRATION.—(1)
21 If an organization fails to apply for registration with the
22 Commission within six months after the issuance date of
23 final Commission rules for such a filing, or the Commis-
24 sion does not register an agreement within twelve months
25 after the issuance date of final Commission rules for such

1 a filing, the Commission shall convene a process to register
2 an electric reliability organization.

3 “(2) Until an electric reliability organization is reg-
4 istered, the Commission has the same authority to enforce
5 existing standards or standards it amends that the electric
6 reliability organization has under subsection (k).

7 “(1) DISCIPLINARY ACTION AND PENALTIES.—(1)
8 The electric reliability organization may impose a civil
9 penalty and take injunctive action or impose other civil
10 disciplinary action the organization finds appropriate
11 against a user of the bulk-power system located in the
12 United States if the organization finds, after notice and
13 opportunity for a hearing, that the user has violated an
14 organization procedure or standard.

15 “(2) An action taken under subparagraph (1) takes
16 effect 30 days after the finding unless the Commission,
17 on its own motion or upon application by the user of the
18 bulk-power system who was the subject of the action, sus-
19 pends the action. The action shall remain in effect or re-
20 main suspended until the Commission, after notice and op-
21 portunity for comment, sets aside, modifies, or reinstates
22 the action.

23 “(m) ADEQUACY, RELIABILITY, AND REPORTS.—The
24 electric reliability organization shall conduct periodic as-
25 sessments of the reliability and adequacy of the inter-

1 connected bulk-power system in North America and shall
2 report annually to the Commission its findings and rec-
3 ommendations for monitoring or improving system reli-
4 ability or adequacy.”.

5 (b) CONFORMING AMENDMENTS.—Sections 316(c)
6 and 316A of the Federal Power Act (16 U.S.C. 825o(c)
7 and 825o–1) are amended by striking “or 214” each place
8 it appears and inserting “214, or 215”.

9 **SEC. 102. STATUTORY PRESUMPTIONS.**

10 (a) FEDERAL POWER ACT.—Any reliability standard
11 developed by the reliability organization, and any actions
12 taken in good faith to comply with such a reliability stand-
13 ard, under section 215 of the Federal Power Act, as added
14 by section 101 of this Act, are rebuttably presumed just
15 and reasonable and not unduly discriminatory or pref-
16 erential for purposes of that Act.

17 (b) ANTITRUST LAWS.—The following activities are
18 rebuttably presumed to be in compliance with the antitrust
19 laws of the United States:

20 (1) Activities undertaken by the electric reliabil-
21 ity organization under section 215 of the Federal
22 Power Act, as added by section 101 of this Act, or
23 a delegated person operating under an agreement in
24 effect under subsection (i) of such section 215.

1 (2) Activities of a member of the electric reli-
 2 ability organization in pursuit of organization objec-
 3 tives under such section 215 undertaken in good
 4 faith under the rules of the organization.

5 **TITLE II—FERC AUTHORITY TO**
 6 **REQUIRE INDEPENDENT SYS-**
 7 **TEM OPERATORS, TO RE-**
 8 **QUIRE DIVESTITURE OF GEN-**
 9 **ERATION FACILITIES, AND TO**
 10 **PROHIBIT PREFERENTIAL**
 11 **TRANSMISSION SERVICE**

12 **SEC. 201. AUTHORITY TO ESTABLISH AND REQUIRE INDE-**
 13 **PENDENT SYSTEM OPERATION.**

14 (a) ISSUANCE OF ORDERS.—Section 202 of the Fed-
 15 eral Power Act (16 U.S.C. 824a) is amended by adding
 16 at the end the following new subsections:

17 “(h)(1) The Commission shall order the establish-
 18 ment of an entity for the purpose of independent operation
 19 and control of interconnected transmission facilities for
 20 the broadest feasible geographic region and direct the
 21 transmitting utility to relinquish control over operation of
 22 its transmission facilities or other associated facilities to
 23 an entity established for the purpose of independent oper-
 24 ation and control of interconnected transmission facilities
 25 for the broadest feasible geographic region if the Commis-

1 sion, upon its own motion or upon application or com-
2 plaint and after notice and an opportunity for a hearing,
3 finds that—

4 “(A) this action is appropriate to promote com-
5 petitive electricity markets and efficient, economical
6 and reliable operation of the interstate transmission
7 grid;

8 “(B) the entity established for the purpose of
9 independent operation and control of interconnected
10 transmission facilities will operate the transmission
11 facilities in a manner that assures that ownership of
12 transmission facilities provides no advantage in com-
13 petitive electricity markets; and

14 “(C) the transmitting utility will receive just
15 and reasonable compensation for the use of its
16 transmission facilities.

17 “(2) Any order issued by the Commission under para-
18 graph (1) shall provide that the entity to which control
19 over operation of a transmitting utility’s transmission fa-
20 cilities is relinquished shall not establish or operate a mar-
21 ket for the sale, purchase or exchange of electric energy.

22 “(3) For purposes of this subsection, the entity estab-
23 lished for the purpose of independent operation and con-
24 trol of interconnected transmission facilities may be either
25 a nonprofit or a for-profit entity.

1 “(i)(1) The Commission shall order divestiture or
2 other transfer of control of the generation or transmission
3 facilities of an electric utility that result in the market
4 power described in this paragraph if the Commission
5 finds, upon its own motion or upon application or com-
6 plaint and after notice and an opportunity for a hearing,
7 that—

8 “(A) there are markets in which an electric util-
9 ity that owns or controls generation or transmission
10 facilities has market power in wholesale or retail
11 markets for electric energy;

12 “(B) such market power can result in prices for
13 electric energy that exceed the prices that would be
14 charged in a competitive market;

15 “(C) divestiture or transfer of control of some
16 or all of an electric utility’s generation or trans-
17 mission facilities is necessary to reduce or eliminate
18 such market power;

19 “(D) such divestiture or transfer of control
20 would not unreasonably impair the continued reli-
21 ability of electric systems affected by such divesti-
22 ture or transfer of control; and

23 “(E) there is no reasonable probability that the
24 market power of the utility can be constrained by
25 less intrusive means, including, but not limited to—

1 “(i) directing the electric utility to relin-
2 quish control of its transmission system to an
3 entity established for the purpose of independ-
4 ent operation and control of its transmission
5 system, pursuant to section 202(g)(h); or

6 “(ii) instituting a proceeding under section
7 206 to deny the opportunity of the electric util-
8 ity and any of its affiliates that is a public util-
9 ity to engage in sales at market-based rates.

10 “(2) Any order requiring such divestiture or transfer
11 of control shall be conditioned upon receipt by the electric
12 utility of just and reasonable compensation for such dives-
13 titure or transfer of control of such generation or trans-
14 mission facilities.

15 “(3) In the case of a transmitting utility that is an
16 affiliate of an electric utility that owns or controls genera-
17 tion facilities, upon making the findings in paragraph (1),
18 the Commission may require the person that directly or
19 indirectly owns the securities of the electric utility that
20 owns or controls generation facilities to sell or otherwise
21 dispose of such securities. However, any such divestiture
22 or disposition shall be conditioned upon receipt by such
23 person of just and reasonable compensation for such dives-
24 titure of disposition of securities. In the case of an electric
25 utility that owns or controls generation facilities and is

1 an affiliate of a transmitting utility, upon making the find-
2 ings in paragraph (1), the Commission may require the
3 person that directly or indirectly owns the securities of the
4 transmitting utility to sell or otherwise dispose of such se-
5 curities. However, any such divestiture or disposition shall
6 be conditioned upon receipt by such person of just and
7 reasonable compensation for such divestiture of disposition
8 of securities.”.

9 (b) PROHIBITION OF PREFERENTIAL TRANSMISSION
10 SERVICE.—Section 206 of the Federal Power Act (16
11 U.S.C. 824e) is amended by adding at the end the follow-
12 ing new subsection:

13 “(e) For purposes of subsection (a), any rate,
14 charges, or classification demanded, observed, charged, or
15 collected by any public utility for any transmission subject
16 to the jurisdiction of the Commission, or any rule, regula-
17 tion, or practice that provides for or has the effect of pro-
18 viding more favorable transmission service to any cus-
19 tomer or customer group than is provided to other cus-
20 tomers or customer groups shall be conclusively deemed
21 to constitute unduly discriminatory and preferential serv-
22 ice, which the Commission shall fix by order under sub-
23 section (a).”.

1 **SEC. 202. SINGLE SITING AUTHORITY AND INDEPENDENT**
2 **SYSTEM OPERATOR SITING AUTHORITY.**

3 (a) DEFINITIONS.—In this section:

4 (1) The term “Single Siting Authority” means
5 a State governmental agency that has the authority,
6 staffing and funding to issue, on a timely basis, all
7 permits, licenses, and authorizations required under
8 any State, county, municipal, or local law or regula-
9 tion or pursuant to any federally delegated or ap-
10 proved permit program for the construction and op-
11 eration of facilities used for the generation of elec-
12 tric energy (other than hydroelectric projects and
13 nuclear generating facilities) or transmission of elec-
14 tric energy (including facilities used to increase or
15 reduce voltage between the local distribution level
16 and the transmission level).

17 (2) The term “Independent System Operators”
18 means an entity established for the purpose of inde-
19 pendent operation and control of interconnected
20 transmission facilities pursuant to section 202(h) of
21 the Federal Power Act, as added by section 201(a)
22 of this Act.

23 (3) The term “State” means each of the several
24 States and the District of Columbia.

25 (b) AUTHORITY TO ESTABLISH SINGLE SITING AU-
26 THORITY.—Each State may elect to establish a Single

1 Siting Authority. The Governor of any State that elects
2 to establish a Single Siting Authority or that has already
3 created a Single Siting Authority shall notify each Inde-
4 pendent System Operator that has been established to op-
5 erate the transmission facilities of any transmitting utility
6 the transmission facilities of which are located in such
7 State.

8 (c) AUTHORITY OF INDEPENDENT SYSTEM OPERA-
9 TORS.—An Independent System Operator shall have the
10 authority, with respect to any State in which transmission
11 facilities that it has designated to operate are located, to
12 issue certificates of public convenience and necessity for
13 the construction and operation of facilities used for the
14 generation or transmission of electric energy in such State
15 until such time the Governor of such State submits the
16 notification under subsection (b). A certificate shall be
17 issued to any qualified applicant therefor, authorizing the
18 whole or any part of the construction or operation covered
19 by the application, if it is found that the applicant is able
20 and willing properly to do the acts and to perform the
21 activities proposed, and that the proposed construction or
22 operation, to the extent authorized by the certificate, is
23 or will be required by the present or future public conven-
24 ience and necessity; otherwise such application shall be de-
25 nied. The Independent System Operator shall have the

1 power to attach to the issuance of the certificate and to
2 the exercise rights granted thereunder such reasonable
3 terms and conditions as the public convenience and neces-
4 sity may require. Within 60 days of the issuance of a cer-
5 tificate, the Governor of the affected State may submit
6 to the Independent System Operator a written statement
7 expressing concurrence, rejection, or concurrence with
8 conditions regarding the certificate. If such a written
9 statement is submitted to the Independent System Opera-
10 tor within this time period, the Independent System Oper-
11 ator shall issue an order within 60 days of the submission
12 of such statement, which order shall conform with the con-
13 currence, rejection, or concurrence with conditions ex-
14 pressed in the written statement of such Governor.

15 **SEC. 203. EMINENT DOMAIN.**

16 (a) **AUTHORITY TO EXERCISE.**—When any holder of
17 a certificate of public convenience and necessity cannot ac-
18 quire by contract, or is unable to agree with the owner
19 of property to the compensation to be paid for, the nec-
20 essary site or right-of-way for the construction of genera-
21 tion, transmission, or associated equipment necessary to
22 the proper operation of such generation or transmission
23 facilities, it may acquire the same by the exercise of the
24 right of eminent domain in the district court of the United
25 States for the district in which such property may be lo-

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

7 (b) LIMITATION ON JURISDICTION.—The United
8 States district courts shall only have jurisdiction of cases
9 arising under subsection (a) when the amount claimed by
10 the owner of the property to be condemned exceeds
11 \$3,000.

12 **TITLE III—INTERCONNECTION**

13 **SEC. 301. INTERCONNECTION.**

14 The Federal Power Act is amended as follows:

15 (1) By striking section 3(23) (16 U.S.C.
16 796(23)) and inserting the following:

17 “(23) TRANSMITTING UTILITY.—The term
18 ‘transmitting utility’ means any electric utility,
19 qualifying cogeneration facility, qualifying small
20 power production facility, or Federal power market-
21 ing agency which owns or operates, or proposes to
22 own or operate, electric power transmission or dis-
23 tribution facilities, including facilities used for the
24 transformation of electric energy between the trans-
25 mission and distribution level or to enhance the ca-

1 pability of transmission or distribution facilities to
2 operate efficiently.

3 (2) In section 210(a)(1) (16 U.S.C.
4 824i(a)(1))—

5 (A) by inserting “transmitting utility,”
6 after “electric utility,” ;

7 (B) by inserting “any transmitting utility,”
8 after “small power production facility,” in sub-
9 paragraph (A); and

10 (C) by inserting “or distribution” after
11 “transmission” in subparagraph (D).

12 (3) In section 210(b)(2) (16 U.S.C. 824i(b)(2))
13 by striking “an evidentiary hearing” and inserting
14 “a hearing”.

15 **TITLE IV—EXEMPT** 16 **TRANSMITTING UTILITIES**

17 **SEC. 401. EXEMPT TRANSMITTING UTILITIES.**

18 (a) DEFINITIONS.—Subsection (a) of section 32 of
19 the Public Utility Holding Company Act of 1935 (15
20 U.S.C. 79z–5a) is amended by adding at the end the fol-
21 lowing new paragraphs:

22 “(5) EXEMPT TRANSMITTING UTILITY.—The
23 term ‘exempt transmitting utility’ means any person
24 determined by the Federal Energy Regulatory Com-
25 mission to be engaged directly, or indirectly through

1 one or more affiliates as defined in section
2 2(a)(11)(B), and exclusively in the business of own-
3 ing or operating, or both owning and operating, all
4 or part of one or more eligible transmission facili-
5 ties. No person shall be deemed to be an exempt
6 transmitting utility unless such person has applied
7 to the Federal Energy Regulatory Commission for a
8 determination under this paragraph. A person apply-
9 ing in good faith for such a determination shall be
10 deemed an exempt transmitting utility under this
11 section, until the Federal Energy Regulatory Com-
12 mission makes such determination. The Federal En-
13 ergy Regulatory Commission shall make such deter-
14 mination within 60 days of its receipt of such appli-
15 cation and shall notify the Securities and Exchange
16 Commission whenever a determination is made
17 under this paragraph that any person is an exempt
18 transmitting utility. Not later than 12 months after
19 the date of enactment of this section, the Federal
20 Energy Regulatory Commission shall promulgate
21 rules implementing the provisions of this paragraph.
22 Applications for determination filed after the effec-
23 tive date of such rules shall be subject thereto.

1 “(6) ELIGIBLE TRANSMISSION FACILITY.—The
2 term ‘eligible transmission facility’ means a facility,
3 wherever located—

4 “(A) which is used for the transmission or
5 distribution of electric energy, and

6 “(B) construction of which commenced on
7 or after the date of enactment of this para-
8 graph.”.

9 (b) USE OF DEFINED TERM.—Subsections (d)
10 through (l) of such section are amended—

11 (1) by striking “exempt wholesale generator”
12 each place it appears and inserting “exempt whole-
13 sale generator or exempt transmitting utility”; and

14 (2) by striking “exempt wholesale generators”
15 each place it appears and inserting “exempt whole-
16 sale generators or exempt transmitting utilities”.

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