

105TH CONGRESS
2D SESSION

H. R. 4715

To remove Federal impediments to retail competition in the electric power industry, thereby providing opportunities within electricity restructuring.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1998

Mr. BURR of North Carolina introduced the following bill; which was referred to the Committee on Commerce

A BILL

To remove Federal impediments to retail competition in the electric power industry, thereby providing opportunities within electricity restructuring.

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 Power Bill”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
 - Sec. 2. Findings.
 - Sec. 3. Competitive retail electricity markets.
 - Sec. 4. PURPA.
 - Sec. 5. Public Utility Holding Company Act of 1935.
 - Sec. 6. Stranded cost.
 - Sec. 7. Disposition of property.
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Sec. 8. Savings clause.

Sec. 9. Study.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that:

3 (1) Many States have moved to retail competi-
4 tion.

5 (2) There are Federal barriers to full retail
6 competition.

7 (3) The executive branch projects that retail
8 competition will save the American taxpayer
9 \$20,000,000,000.

10 (4) If Congress acts to remove Federal impedi-
11 ments to retail competition, States will have greater
12 incentive to move to competition and should be en-
13 couraged to proceed expeditiously and with due care
14 to rely more on markets and less on regulation to
15 increase the quality and discipline the price of elec-
16 tric service.

17 **SEC. 3. COMPETITIVE RETAIL ELECTRICITY MARKETS.**

18 (a) CLARIFICATION OF STATE AUTHORITY TO
19 ORDER RETAIL WHEELING.—Subsection (h) of section
20 212 of the Federal Power Act (16 U.S.C. 824k(h)) is
21 amended by striking the last sentence and inserting the
22 following: “Nothing in this subsection shall affect any au-
23 thority of any State or local government under State law

1 concerning the transmission or sale of electric energy di-
2 rectly to an ultimate consumer.”.

3 (b) CLARIFICATION OF STATE AUTHORITY TO IM-
4 POSE CONDITIONS REGARDING SALES OF ELEC-
5 TRICITY.—Section 201 of the Federal Power Act is
6 amended by adding the following new subsections at the
7 end thereof:

8 “(h) RECIPROCITY CONDITION.—

9 “(1) A State may permit an electric utility sub-
10 ject to its jurisdiction to deny access to its trans-
11 mission and local distribution facilities within the
12 State’s borders to any seller of electric energy for
13 the sale of electric energy directly to an ultimate
14 consumer within the State’s borders if, as deter-
15 mined by certification to the Commission in a form
16 the Commission shall prescribe within 180 days of
17 the enactment of this paragraph, the predominance
18 of the electric energy sold by that seller directly to
19 ultimate consumers is produced in a State or States
20 that maintain exclusive franchise or market areas
21 for the sale of electric energy directly to ultimate
22 consumers.

23 “(2) NONREGULATED UTILITIES.—If, as of the
24 date of the enactment of this paragraph, a State has
25 not established ratemaking authority with respect to

1 an electric utility in the State, the State may not
2 prohibit the utility from selling electric energy at re-
3 tail in interstate commerce in any other State. Any
4 such utility may sell electric energy at retail in inter-
5 state commerce in another State only if the utility
6 provides nondiscriminatory open access (including
7 the functional unbundling of services) to the local
8 distribution facilities of the utility and to any trans-
9 mission facilities of the utility that are not subject
10 to the jurisdiction of the Federal Energy Regulatory
11 Commission under sections 205 and 206 of this Act.

12 “(i) COOPERATIVE CHOICE.—Notwithstanding any
13 other provision of law, cooperatively owned sellers or dis-
14 tributors of electricity shall have the right, as consumer-
15 owned cooperatives, to engage in any activity or provide
16 any service that is lawfully carried out by any other seller
17 or distributor of electricity in that State.

18 “(j) BYPASS.—(1) Notwithstanding any provision of
19 this Act or any other law, a State or a State regulatory
20 authority (in carrying out its authority to regulate facili-
21 ties used for the local distribution of electric energy or
22 for the provision of local distribution service) may require,
23 as a condition for the purchase by any person or munici-
24 pality of retail electric energy services, the payment of a

1 charge deemed necessary by the State or State regulatory
2 authority for any of the following:

3 “(A) To recover costs incurred by an electric
4 utility that become unrecoverable due to the avail-
5 ability of retail electric service choice.

6 “(B) To ensure that adequate electric service is
7 available to all customers served by the retail dis-
8 tribution system concerned.

9 “(C) To ensure and enhance the reliability of
10 retail electric service.

11 “(D) To fund assistance to low-income cus-
12 tomers.

13 “(E) To encourage environmental, renewable
14 energy, energy efficiency, conservation programs, or
15 any combination of such programs.

16 “(F) To provide for retraining of electric em-
17 ployees.

18 “(G) To provide payment of all reasonable costs
19 associated with Federal and State requirements re-
20 garding the decommissioning of nuclear generating
21 units.

22 “(H) Any combination of the purposes de-
23 scribed in subparagraphs (A) through (G).

24 “(2) For purposes of this subsection, the term ‘local
25 distribution service’ includes the receipt of electric energy

1 by an end user whether or not such receipt requires the
2 use of local distribution facilities.”.

3 **SEC. 4. PURPA.**

4 (a) FINDINGS.—The Congress finds that—

5 (1) implementation of section 210 of the Public
6 Utility Regulatory Policies Act of 1978 (16 U.S.C.
7 824a–3) resulted in many consumers paying exces-
8 sive rates for electricity;

9 (2) the Energy Policy Act of 1992 gives non-
10 regulated producers of electricity additional access to
11 the wholesale electric market through transmission
12 access and exemption from the Public Utility Hold-
13 ing Company Act of 1935; and

14 (3) in light of the competitive wholesale electric
15 marketplace brought about by the Energy Policy Act
16 of 1992, section 210 of the Public Utility Regulatory
17 Policies Act of 1978 need no longer exist.

18 (b) PROSPECTIVE REPEAL.—

19 (1) NEW CONTRACTS.—After January 1, 1999,
20 no electric utility shall be required to enter into a
21 new contract or obligation to purchase or to sell
22 electric energy or capacity pursuant to section 210
23 of the Public Utility Regulatory Policies Act of
24 1978.

1 (2) EXISTING RIGHTS AND REMEDIES NOT AF-
2 FECTED.—Nothing in this section affects the rights
3 or remedies of any party with respect to the pur-
4 chase or sale of electric energy or capacity from or
5 to a facility determined to be a qualifying small
6 power production facility or a qualifying cogenera-
7 tion facility under section 210 of the Public Utility
8 Regulatory Policies Act of 1978 pursuant to any
9 contract or obligation to purchase or to sell electric
10 energy or capacity in effect on January 1, 1999, in-
11 cluding the right to recover the costs of purchasing
12 such electric energy or capacity.

13 (3) INTERPRETATIONS AND ACTIONS TAKEN.—
14 Nothing in this Act may be deemed or construed as
15 implying congressional ratification of any interpreta-
16 tion of, or any action taken pursuant to, the Public
17 Utility Regulatory Policies Act of 1978.

18 (c) RECOVERY OF COSTS.—In order to assure recov-
19 ery by electric utilities purchasing electric energy or capac-
20 ity from a qualifying facility pursuant to any legally en-
21 forceable obligation entered into or imposed pursuant to
22 section 210 of the Public Utility Regulatory Policies Act
23 of 1978 prior to January 1, 1999, of all costs associated
24 with such purchases, the Commission shall promulgate
25 and enforce such regulations as may be required to assure

1 that no utility shall be required directly or indirectly to
2 absorb the costs associated with such purchases from a
3 qualifying facility. Such regulations shall be treated as a
4 rule enforceable under the Federal Power Act (16 U.S.C.
5 791a–825r).

6 (d) DEFINITIONS.—For purposes of this section:

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

9 (2) The term “electric utility” means any per-
10 son, State agency, or Federal agency, which sells
11 electric energy.

12 (3) The term “qualifying small power produc-
13 tion facility” has the same meaning as provided in
14 section 3(17)(C) of the Federal Power Act.

15 (4) The term “qualifying cogeneration facility”
16 has the same meaning as provided in section
17 3(18)(A) of the Federal Power Act.

18 (5) The term “qualifying facility” means either
19 a small power production facility or a qualifying co-
20 generation facility.

21 **SEC. 5. PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

22 (a) FINDINGS.—The Congress finds that—

23 (1) the Public Utility Holding Company Act of
24 1935 was intended to facilitate the work of Federal

1 and State regulators by placing certain constraints
2 on the activities of holding company systems;

3 (2) developments since 1935, including changes
4 in other regulation and in the electric and gas indus-
5 tries, have called into question the continued rel-
6 evance of the model of regulation established by that
7 Act;

8 (3) there is a continuing need for limited Fed-
9 eral and State regulation in order to ensure the rate
10 protection of utility customers; and

11 (4) limited Federal regulation is necessary to
12 supplement the work of State commissions for the
13 continued rate protection of electric and gas utility
14 customers.

15 (b) PURPOSES.—The purposes of this section are—

16 (1) to eliminate unnecessary regulation, yet
17 continue to provide for consumer protection by facili-
18 tating existing rate regulatory authority through im-
19 proved Federal and State commission access to
20 books and records of all companies in a holding com-
21 pany system, to the extent that such information is
22 relevant to rates paid by utility customers, while af-
23 fording companies the flexibility required to compete
24 in the energy markets; and

1 (2) to address protection of electric and gas
2 utility customers by providing for Federal and State
3 access to books and records of all companies in a
4 holding company system that are relevant to utility
5 rates.

6 (c) DEFINITIONS.—For purposes of this section:

7 (1) The term “affiliate” of a company means
8 any company 5 percent or more of the outstanding
9 voting securities of which are owned, controlled, or
10 held with power to vote, directly or indirectly, by
11 such company.

12 (2) The term “associate company” of a com-
13 pany means any company in the same holding com-
14 pany system with such company.

15 (3) The term “Commission” means the Federal
16 Energy Regulatory Commission.

17 (4) The term “company” means a corporation,
18 partnership, association, joint stock company, busi-
19 ness trust, or any organized group of persons,
20 whether incorporated or not, or a receiver, trustee,
21 or other liquidating agent of any of the foregoing.

22 (5) the term “electric utility company” means
23 any company that owns or operates facilities used
24 for the generation, transmission, or distribution of
25 electric energy for sale.

1 (6) The terms “exempt wholesale generator”
2 and “foreign utility company” have the same mean-
3 ings as in sections 32 and 33, respectively, of the
4 Public Utility Holding Company Act of 1935, as
5 those sections existed on the day before the effective
6 date of this Act.

7 (7) The term “gas utility company” means any
8 company that owns or operates facilities used for
9 distribution at retail (other than the distribution
10 only in enclosed portable containers or distribution
11 to tenants or employees of the company operating
12 such facilities for their own use and not for resale)
13 of natural or manufactured gas for heat, light, or
14 power.

15 (8) The term “holding company” means—

16 (A) any company that directly or indirectly
17 owns, controls, or holds, with power to vote, 10
18 percent or more of the outstanding voting secu-
19 rities of a public utility company or of a holding
20 company of any public utility company; and

21 (B) any person, determined by the Com-
22 mission, after notice and opportunity for hear-
23 ing, to exercise directly or indirectly (either
24 alone or pursuant to an arrangement or under-
25 standing with one or more persons) such a con-

1 trolling influence over the management or poli-
2 cies of any public utility company or holding
3 company as to make it necessary or appropriate
4 for the rate protection of utility customers with
5 respect to rates that such person be subject to
6 the obligations, duties, and liabilities imposed
7 by this Act upon holding companies.

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

11 (10) The term “jurisdictional rates” means
12 rates established by the Commission for the trans-
13 mission of electric energy in interstate commerce,
14 the sale of electric energy at wholesale in interstate
15 commerce, the transportation of natural gas in inter-
16 state commerce, and the sale in interstate commerce
17 of natural gas for resale for ultimate public con-
18 sumption for domestic, commercial, industrial, or
19 any other use.

20 (11) The term “natural gas company” means a
21 person engaged in the transportation of natural gas
22 in interstate commerce or the sale of such gas in
23 interstate commerce for resale.

24 (12) The term “person” means an individual or
25 company.

1 (13) The term “public utility” means any per-
2 son who owns or operates facilities used for trans-
3 mission of electric energy in interstate commerce or
4 sales of electric energy at wholesale in interstate
5 commerce.

6 (14) The term “public utility company” means
7 an electric utility company or a gas utility company.

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

14 (16) The term “subsidiary company” of a hold-
15 ing company means—

16 (A) any company, 10 percent or more of
17 the outstanding voting securities of which are
18 directly or indirectly owned, controlled, or held
19 with power to vote, by such holding company;
20 and

21 (B) any person, the management or poli-
22 cies of which the Commission, after notice and
23 opportunity for hearing, determines to be sub-
24 ject to a controlling influence, directly or indi-
25 rectly, by such holding company (either alone or

1 pursuant to an arrangement or understanding
2 with 1 or more other persons) so as to make it
3 necessary for the rate protection of utility cus-
4 tomers with respect to rates that such person
5 be subject to the obligations, duties, and liabil-
6 ities imposed by this Act upon subsidiary com-
7 panies of holding companies.

8 (17) The term “voting security” means any se-
9 curity presently entitling the owner or holder thereof
10 to vote in the direction or management of the affairs
11 of a company.

12 (d) REPEAL OF THE PUBLIC UTILITY HOLDING
13 COMPANY ACT OF 1935.—The Public Utility Holding
14 Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed,
15 effective 18 months after the date of enactment of this
16 Act.

17 (e) FEDERAL ACCESS TO BOOKS AND RECORDS.—

18 (1) IN GENERAL.—Each holding company and
19 each associate company thereof shall maintain, and
20 shall make available to the Commission, such books,
21 accounts, memoranda, and other records as the
22 Commission deems to be relevant to costs incurred
23 by a public utility or natural gas company that is an
24 associate company of such holding company and nec-
25 essary or appropriate for the protection of utility

1 customers with respect to jurisdictional rates for the
2 transmission of electric energy in interstate com-
3 merce, the sale of electric energy at wholesale in
4 interstate commerce, the transportation of natural
5 gas in interstate commerce, and the sale in inter-
6 state commerce of natural gas for resale for ultimate
7 public consumption for domestic, commercial, indus-
8 trial, or any other use.

9 (2) AFFILIATE COMPANIES.—Each affiliate of a
10 holding company or of any subsidiary company of a
11 holding company shall maintain, and make available
12 to the Commission, such books, accounts, memo-
13 randa, and other records with respect to any trans-
14 action with another affiliate, as the Commission
15 deems to be relevant to costs incurred by a public
16 utility or natural gas company that is an associate
17 company of such holding company and necessary or
18 appropriate for the protection of utility customers
19 with respect to jurisdictional rates.

20 (3) HOLDING COMPANY SYSTEMS.—The Com-
21 mission may examine the books, accounts, memo-
22 randa, and other records of any company in a hold-
23 ing company system, or any affiliate thereof, as the
24 Commission deems to be relevant to costs incurred
25 by a public utility or natural gas company within

1 such holding company system and necessary or ap-
2 propriate for the protection of utility customers with
3 respect to jurisdictional rates.

4 (4) CONFIDENTIALITY.—No member, officer, or
5 employee of the Commission shall divulge any fact or
6 information that may come to his or her knowledge
7 during the course of examination of books, accounts,
8 memoranda, or other records as provided in this sec-
9 tion, except as may be directed by the commission
10 or by a court of competent jurisdiction.

11 (f) STATE ACCESS TO BOOKS AND RECORDS.—

12 (1) IN GENERAL.—Upon the written request of
13 a State commission having jurisdiction to regulate a
14 public utility company in a holding company system,
15 and subject to such terms and conditions as may be
16 necessary and appropriate to safeguard against un-
17 warranted disclosure to the public of any trade se-
18 crets or sensitive commercial information, the hold-
19 ing company or any associate company or affiliate
20 thereof, other than such public utility company,
21 wherever located, shall produce for inspection books,
22 accounts, memoranda, and other records that—

23 (A) have been identified in reasonable de-
24 tail in a proceeding before the State commis-
25 sion;

1 (B) the State commission deems are rel-
2 evant to costs incurred by such public utility
3 company; and

4 (C) are necessary for the effective dis-
5 charge of the responsibilities of the State com-
6 mission with respect to such proceeding.

7 (2) LIMITATION.—Paragraph (1) shall not
8 apply to any person that is a holding company solely
9 by reason of ownership of 1 or more qualifying fa-
10 cilities under the Public Utility Regulatory Policies
11 Act.

12 (3) CONFIDENTIALITY OF INFORMATION.—The
13 production of books, accounts, memoranda, and
14 other records under paragraph (1) shall be subject
15 to such terms and conditions as may be necessary
16 and appropriate to safeguard against unwarranted
17 disclosure to the public of any trade secrets or sen-
18 sitive commercial information.

19 (4) EFFECT ON STATE LAW.—Nothing in this
20 section shall preempt applicable State law concern-
21 ing the provision of books, records, or any other in-
22 formation, or in any way limit the rights of any
23 State to obtain books, records, or any other informa-
24 tion under any other Federal law, contract, or other-
25 wise.

1 (5) COURT JURISDICTION.—Any United States
2 district court located in the State in which the State
3 commission referred to in paragraph (1) is located
4 shall have jurisdiction to enforce compliance with
5 this section.

6 (g) EXEMPTION AUTHORITY.—

7 (1) RULEMAKING.—Not later than 90 days
8 after the date of enactment of this Act, the Commis-
9 sion shall promulgate a final rule to exempt from the
10 requirements of subsection (e) any person that is a
11 holding company, solely with respect to 1 or more—

12 (A) qualifying facilities under the Public
13 Utility Regulatory Policies Act of 1978;

14 (B) exempt wholesale generators; or

15 (C) foreign utility companies.

16 (2) OTHER AUTHORITY.—If, upon application
17 or upon its own motion, the Commission finds that
18 the books, records, accounts, memoranda, and other
19 records of any person are not relevant to the juris-
20 dictional rates of a public utility or natural gas com-
21 pany, or if the Commission finds that any class of
22 transaction is not relevant to the jurisdictional rates
23 of a public utility or natural gas company, the Com-
24 mission shall exempt such person or transaction
25 from the requirements of subsection (e).

1 (h) AFFILIATE TRANSACTIONS.—Nothing in this sec-
2 tion shall preclude the Commission or a State commission
3 from exercising its jurisdiction under otherwise applicable
4 law to determine whether a public utility company, public
5 utility, or natural gas company may recover in rates any
6 costs of an activity performed by an associate company,
7 or any costs of goods or services acquired by such public
8 utility company from an associate company.

9 (i) APPLICABILITY.—No provision of this section
10 shall apply to, or be deemed to include—

11 (1) the United States;

12 (2) a State or any political subdivision of a
13 State;

14 (3) any foreign governmental authority not op-
15 erating in the United States;

16 (4) any agency, authority, or instrumentality of
17 any entity referred to in paragraph (1), (2), or (3);
18 or

19 (5) any officer, agent, or employee of any entity
20 referred to in paragraph (1), (2), or (3) acting as
21 such in the course of his or her official duty.

22 (j) EFFECT ON OTHER REGULATIONS.—Nothing in
23 this section precludes the Commission or a State commis-
24 sion from exercising its jurisdiction under otherwise appli-
25 cable law to protect utility customers.

1 (k) ENFORCEMENT.—The Commission shall have the
2 same powers as set forth in sections 306 through 317 of
3 the Federal Power Act (16 U.S.C. 825d–825p) to enforce
4 the provisions of this section.

5 (l) SAVINGS PROVISIONS.—

6 (1) IN GENERAL.—Nothing in this section pro-
7 hibits a person from engaging in or continuing to
8 engage in activities or transactions in which it is le-
9 gally engaged or authorized to engage on the effec-
10 tive date of this Act, if that person continues to
11 comply with the terms of any such authorization,
12 whether by rule or by order.

13 (2) EFFECT ON OTHER COMMISSION AUTHOR-
14 ITY.—Nothing in this section limits the authority of
15 the Commission under the Federal Power Act (16
16 U.S.C. 791a et seq.) (including section 301 of that
17 Act) or the Natural Gas Act (15 U.S.C. 717 et seq.)
18 (including section 8 of that Act).

19 (m) IMPLEMENTATION.—Not later than 18 months
20 after the date of enactment of this Act, the Commission
21 shall—

22 (1) promulgate such regulations as may be nec-
23 essary or appropriate to implement this section
24 (other than subsection (f)); and

1 (2) submit to the Congress detailed rec-
2 ommendations on technical and conforming amend-
3 ments to Federal law necessary to carry out this sec-
4 tion and the amendments made by this section.

5 (n) TRANSFER OF RESOURCES.—All books and
6 records that relate primarily to the functions transferred
7 to the Commission under this section shall be transferred
8 from the Securities and Exchange Commission to the
9 Commission.

10 (o) EFFECTIVE DATE.—This section shall take effect
11 18 months after the date of enactment of this Act.

12 (p) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated such funds as may be
14 necessary to carry out this section.

15 (q) CONFORMING AMENDMENT TO THE FEDERAL
16 POWER ACT.—Section 318 of the Federal Power Act (16
17 U.S.C. 825q) is repealed.

18 **SEC. 6. STRANDED COST.**

19 As a condition of receiving Federal energy assistance,
20 each State that has by law or regulation adopted provi-
21 sions to provide for the recovery of stranded costs as de-
22 fined by State law or regulation shall file all such provi-
23 sions with the Federal Energy Regulatory Commission
24 and shall not change, amend, modify or repeal such provi-
25 sions for 7 years after the date of filing with the Commis-

1 sion. The Commission shall determine by rule the scope
2 of Federal energy assistance covered by this section, tak-
3 ing care to encourage to the fullest extent stability con-
4 cerning the recovery of stranded costs. The Commission
5 also shall compile and make available to the public all such
6 provisions and may require any State, as a further condi-
7 tion of receiving energy assistance, to prepare and file an
8 explanation of the provision that it has placed on file.

9 **SEC. 7. DISPOSITION OF PROPERTY.**

10 Section 203 of the Federal Power Act is repealed.

11 **SEC. 8. SAVINGS CLAUSE.**

12 Nothing in this Act shall be construed to prohibit any
13 State from dealing with public welfare issues.

14 **SEC. 9. STUDY.**

15 The Secretary of Energy shall report to Congress
16 within 2 years after the enactment of this Act on the ex-
17 tent to which actions taken by the States have removed
18 regulatory and statutory barriers to interstate commerce
19 in electricity. The report shall describe any remaining bar-
20 riers to interstate commerce and shall make recommenda-
21 tions to the Congress for additional action that may be
22 necessary to lower and/or eliminate barriers to interstate
23 commerce in electricity consistent with the development of
24 a fully competitive marketplace.

○