

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2005

To amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 29, 1998

Mr. McCONNELL introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Power Act to ensure that certain Federal power customers are provided protection by the Federal Energy Regulatory Commission, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “TVA Customer Protec-  
5       tion Act of 1998”.

6       **SEC. 2. INCLUSION IN DEFINITION OF PUBLIC UTILITY.**

7       (a) IN GENERAL.—Section 201(e) of the Federal  
8       Power Act (16 U.S.C. 824(e)) is amended by inserting be-

1 fore the period at the end the following: “, and includes  
2 the Tennessee Valley Authority”.

3 (b) CONFORMING AMENDMENT.—Section 201(f) of  
4 the Federal Power Act (16 U.S.C. 824(f)) is amended by  
5 striking “foregoing, or any corporation” and inserting  
6 “foregoing (other than the Tennessee Valley Authority) or  
7 any corporation”.

8 **SEC. 3. DISPOSITION OF PROPERTY.**

9 Section 203 of the Federal Power Act (16 U.S.C.  
10 824b) is amended by adding at the end the following:

11 “(c) TVA EXCEPTION.—This section does not apply  
12 to a disposition of the whole or any part of the facilities  
13 of the Tennessee Valley Authority if—

14 “(1) the Tennessee Valley Authority discloses to  
15 the Commission (on a form, and to the extent, that  
16 the Commission shall prescribe by regulation) the  
17 sale, lease, or other disposition of any part of its fa-  
18 cilities that—

19 “(A) is subject to the jurisdiction of the  
20 Commission under this Part; and

21 “(B) has a value of more than \$50,000;  
22 and

23 “(2) all proceeds of the sale, lease, or other dis-  
24 position under paragraph (1) are applied by the

1 Tennessee Valley Authority to the reduction of debt  
2 of the Tennessee Valley Authority.”.

3 **SEC. 4. FOREIGN OPERATIONS; PROTECTIONS.**

4 Section 208 of the Federal Power Act (16 U.S.C.  
5 824g) is amended by adding at the end the following:

6 “(c) TENNESSEE VALLEY AUTHORITY.—

7 “(1) LIMIT ON CHARGES.—

8 “(A) NO AUTHORIZATION OR PERMIT.—

9 The Commission shall issue no order under this  
10 Act that has the effect of authorizing or permit-  
11 ting the Tennessee Valley Authority to make,  
12 demand, or receive any rate or charge, or im-  
13 pose any rule or regulation pertaining to a rate  
14 or charge, that includes any costs incurred by  
15 or for the Tennessee Valley Authority in the  
16 conduct of any activities or operations outside  
17 the United States.

18 “(B) UNLAWFUL RATE.—

19 “(i) IN GENERAL.—Any rate, charge,  
20 rule, or regulation described in subpara-  
21 graph (A) shall be deemed for the purposes  
22 of this Act to be unjust, unreasonable, and  
23 unlawful.

24 “(ii) NO LIMITATION ON AUTHOR-  
25 ITY.—Clause (i) does not limit the author-

1           ity of the Commission under any other pro-  
2           vision of law to regulate and establish just  
3           and reasonable rates and charges for the  
4           Tennessee Valley Authority.

5           “(2) ANNUAL REPORT.—The Tennessee Valley  
6           Authority shall annually—

7                   “(A) prepare and file with the Commission,  
8           in a form that the Commission shall prescribe  
9           by regulation, a report setting forth in detail  
10          any activities or operations engaged in outside  
11          the United States by or on behalf of the Ten-  
12          nessee Valley Authority; and

13                   “(B) certify to the Commission that the  
14          Tennessee Valley Authority has neither recov-  
15          ered nor sought to recover the costs of activities  
16          or operations engaged in outside the United  
17          States by or on behalf of the Tennessee Valley  
18          Authority in any rate, charge, rule, or regula-  
19          tion on file with the Commission.”.

20   **SEC. 5. TVA POWER SALES.**

21           (a) IN GENERAL.—Part II of the Federal Power Act  
22   (16 U.S.C. 824 et seq.) is amended by adding at the end  
23   the following:

1 **“SEC. 215. TVA POWER SALES.**

2 “(a) IN GENERAL.—The Tennessee Valley Authority  
3 shall not sell electric power to a retail customer that will  
4 consume the power within the area that, on the date of  
5 enactment of this section, is assigned by law as the dis-  
6 tributor service area, unless—

7 “(1) the customer (or predecessor in interest to  
8 the customer) was purchasing electric power directly  
9 from the Tennessee Valley Authority as a retail cus-  
10 tomer on that date;

11 “(2) the distributor is purchasing firm power  
12 from the Tennessee Valley Authority in an amount  
13 that is equal to not more than 50 percent of the  
14 total retail sales of the distributor; or

15 “(3) the distributor agrees that the Tennessee  
16 Valley Authority may sell power to the customer.

17 “(b) RETAIL SALES.—Notwithstanding any other  
18 provision of law, the rates, terms, and conditions of retail  
19 sales of electric power by the Tennessee Valley Authority  
20 that are not prohibited by this section shall be subject to  
21 regulation under State law applicable to public utilities in  
22 the manner and to the extent that a State commission or  
23 other regulatory authority determines appropriate.”.

24 (b) TRANSITION.—

25 (1) FILING REQUIREMENT.—Not later than 180  
26 days after the date of enactment of this Act, the

1 Tennessee Valley Authority shall file all rates and  
 2 charges for the transmission or sale of electric en-  
 3 ergy and the classifications, practices, and regula-  
 4 tions affecting those rates and charges, together  
 5 with all contracts that in any manner affect or relate  
 6 to contracts that are required to be filed under Part  
 7 II of the Federal Power Act (16 U.S.C. 824 et seq.),  
 8 as amended by subsection (a), and that are in effect  
 9 as of the date of enactment of this Act.

10 (2) NO INITIAL REVIEW.—A filing under this  
 11 section that is timely made under subsection (a)  
 12 shall be accepted for filing without initial review by  
 13 the Federal Energy Regulatory Commission.

14 **SEC. 6. FILING AND FULL DISCLOSURE OF TVA DOCU-**  
 15 **MENTS.**

16 Part III of the Federal Power Act (16 U.S.C. 825  
 17 et seq.) is amended—

18 (1) by redesignating sections 319 through 321  
 19 as sections 320 through 322, respectively; and

20 (2) by inserting after section 318 the following:

21 **“SEC. 319. FILING AND FULL DISCLOSURE OF TVA DOCU-**  
 22 **MENTS.**

23 “(a) IN GENERAL.—The Tennessee Valley Authority  
 24 shall file and disclose the same documents and other infor-

1 mation that other public utilities are required to file under  
 2 this Act, as the Commission shall require by regulation.

3 “(b) REGULATION.—

4 “(1) TIMING.—The regulation under subsection  
 5 (a) shall be promulgated not later than 1 year after  
 6 the date of enactment of this section.

7 “(2) CONSIDERATIONS.—In promulgating the  
 8 regulation under subsection (a), the Commission  
 9 shall take into consideration the practices of the  
 10 Commission with respect to public utilities other  
 11 than the Tennessee Valley Authority.”

12 **SEC. 7. APPLICABILITY OF THE ANTITRUST LAWS.**

13 The Tennessee Valley Authority Act of 1933 (16  
 14 U.S.C. 831 et seq.) is amended by inserting after section  
 15 16 the following:

16 **“SEC. 17. APPLICABILITY OF THE ANTITRUST LAWS.**

17 “(a) DEFINITION OF ANTITRUST LAWS.—In this sec-  
 18 tion, the term ‘antitrust laws’ means—

19 “(1) an antitrust law (within the meaning of  
 20 section (1) of the Clayton Act (15 U.S.C. 12));

21 “(2) the Act of June 19, 1936 (commonly  
 22 known as the ‘Robinson Patman Act’) (49 Stat.  
 23 1526, chapter 323; 15 U.S.C. 13 et seq.); and

1           “(3) section 5 of the Federal Trade Commis-  
2           sion Act (15 U.S.C. 45), to the extent that the sec-  
3           tion relates to unfair methods of competition.

4           “(b) APPLICABILITY.—Nothing in this Act modifies,  
5           impairs, or supersedes the antitrust laws.

6           “(c) ANTITRUST LAWS.—

7           “(1) TVA DEEMED A PERSON.—The Tennessee  
8           Valley Authority shall be deemed to be a person, and  
9           not government, for purposes of the antitrust laws.

10          “(2) APPLICABILITY.—Notwithstanding any  
11          other provision of law, the antitrust laws (including  
12          the availability of any remedy for a violation of an  
13          antitrust law) shall apply to the Tennessee Valley  
14          Authority notwithstanding any determination that  
15          the Tennessee Valley Authority is a corporate agen-  
16          cy or instrumentality of the United States or is oth-  
17          erwise engaged in governmental functions.”.

18 **SEC. 8. SAVINGS PROVISION.**

19          (a) DEFINITION OF TVA DISTRIBUTOR.—In this sec-  
20          tion, the term “TVA distributor” means a cooperative or-  
21          ganization or publicly owned electric power system that,  
22          on January 2, 1998, purchased electric power at wholesale  
23          from the Tennessee Valley Authority under an all-require-  
24          ments power contract.



1 (b) EFFECT OF ACT.—Nothing in this Act or any  
2 amendment made by this Act—

3 (1) subjects any TVA distributor to regulation  
4 by the Federal Energy Regulatory Commission; or

5 (2) abrogates or affects any law in effect on the  
6 date of enactment of this Act that applies to a TVA  
7 distributor.

8 **SEC. 9. PROVISION OF CONSTRUCTION EQUIPMENT, CON-**  
9 **TRACTING, AND ENGINEERING SERVICES.**

10 Section 4 of the Tennessee Valley Authority Act of  
11 1933 (16 U.S.C. 831c) is amended by adding at the end  
12 the following:

13 “(m) PROVISION OF CONSTRUCTION EQUIPMENT,  
14 CONTRACTING, AND ENGINEERING SERVICES.—

15 “(1) IN GENERAL.—Notwithstanding any other  
16 provision of this Act, except as provided in this sub-  
17 section, the Corporation shall not have power to—

18 “(A) rent or sell construction equipment;

19 “(B) provide a construction equipment  
20 maintenance or repair service;

21 “(C) perform contract construction work;

22 or

23 “(D) provide a construction engineering  
24 service;

25 to any private or public entity.

1           “(2) ELECTRICAL CONTRACTORS.—The Cor-  
2           poration may provide equipment or a service de-  
3           scribed in subparagraph (1) to a private contractor  
4           that is engaged in electrical utility work on an elec-  
5           trical utility project of the Corporation.

6           “(3) CUSTOMERS, DISTRIBUTORS, AND GOVERN-  
7           MENTAL ENTITIES.—The Corporation may provide  
8           equipment or a service described in subparagraph  
9           (1) to—

10                   “(A) a power customer served directly by  
11                   the Corporation;

12                   “(B) a distributor of Corporation power; or

13                   “(C) a Federal, State, or local government  
14                   entity;

15           that is engaged in work specifically related to an  
16           electrical utility project of the Corporation.

17           “(4) USED CONSTRUCTION EQUIPMENT.—

18                   “(A) DEFINITION OF USED CONSTRUCTION  
19                   EQUIPMENT.—In this paragraph, the term  
20                   ‘used construction equipment’ means construc-  
21                   tion equipment that has been in service for  
22                   more than 2,500 hours.

23                   “(B) IN GENERAL.—The Corporation may  
24                   dispose of used construction equipment by  
25                   means of a public auction conducted by a pri-

1 vate entity that is independent of the Corpora-  
2 tion.

3 “(C) DEBT REDUCTION.—The Corporation  
4 shall apply all proceeds of a disposition of used  
5 construction equipment under subparagraph  
6 (B) to the reduction of debt of the Corpora-  
7 tion.”.

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