

106TH CONGRESS  
2D SESSION

# H. R. 4861

To address the acid rain and greenhouse gas impacts of electric utility restructuring and to encourage the development of renewable energy resources, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2000

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

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## A BILL

To address the acid rain and greenhouse gas impacts of electric utility restructuring and to encourage the development of renewable energy resources, 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 “Clean Power Act”.

5       **SEC. 2. NITROGEN OXIDE AND CARBON DIOXIDE ALLOW-**  
6                               **ANCE TRADING PROGRAM.**

7       (a) DEFINITIONS.—In this section:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Environ-  
3           mental Protection Agency.

4           (2) AFFECTED FACILITY.—The term “affected  
5           facility” means—

6                   (A) a combustion unit in the 48 contiguous  
7                   States and the District of Columbia that serves  
8                   at least one electric generator with a nameplate  
9                   capacity of 25 megawatts or greater to generate  
10                  electricity and that combusts any fuel, including  
11                  biomass, or

12                   (B) a facility in the 48 contiguous States  
13                   and the District of Columbia generating 5 kilo-  
14                   watts of electricity or greater using wind, geo-  
15                   thermal, solar thermal, or photovoltaic energy.

16           (3) NO<sub>X</sub> ALLOWANCE.—The term “NO<sub>X</sub> allow-  
17           ance” means a limited authorization under sub-  
18           section (b)(3) to emit quantities of nitrogen oxide.

19           (4) CO<sub>2</sub> ALLOWANCE.—The term “CO<sub>2</sub> Allow-  
20           ance” means a limited authorization under sub-  
21           section (b)(4) to emit quantities of carbon dioxide.

22           (5) PROGRAM.—The term “Program” means  
23           the Nitrogen Oxide or a Carbon Dioxide Allowance  
24           Program established under subsection (b).

1           (6) TOTAL OUTPUT PRODUCTION.—The term  
2           “total output production” means the sum of elec-  
3           tricity and steam generated by all affected facilities  
4           in the 48 contiguous States and the District of Co-  
5           lumbia.

6           (b) IN GENERAL.—(1) Not later than 1 year after  
7           the date of enactment of this Act, the Administrator shall  
8           promulgate a final regulation to address interstate trans-  
9           port of nitrogen oxide and carbon dioxide pollution. Under  
10          such program, the Administrator shall establish a program  
11          to issue, record the sale or exchange of, and track NO<sub>x</sub>  
12          and CO<sub>2</sub> allowances and to monitor and track emissions  
13          of nitrogen oxide.

14          (2) After January 1, 2005, the total number of NO<sub>x</sub>  
15          allowances distributed each year under such Program shall  
16          not be greater than 2,750,000 and the total number of  
17          CO<sub>2</sub> allowances distributed each year shall not be greater  
18          than 1,914,000,000.

19          (3) Each NO<sub>x</sub> allowance issued under such Program  
20          shall authorize an affected facility to emit—

21                  (A) ½ ton of nitrogen oxide during the ozone  
22                  period of May 1 through September 30 of any year,  
23                  or

24                  (B) 1 ton of nitrogen oxide for any period of  
25                  any year not covered in subparagraph (A).

1       (4) Each CO<sub>2</sub> allowance issued under such program  
2 shall authorize an affected facility to emit 1 ton of carbon  
3 dioxide.

4       (5) The regulations under this section shall require  
5 affected facilities to report electric generation and other  
6 data the Administrator deems necessary to determine allo-  
7 cations and to ensure compliance with the Program. The  
8 owner or operator of an affected facility shall be required  
9 to install and operate continuous emissions monitoring  
10 systems at the facility or an alternative monitoring system  
11 approved by the Administrator.

12       (6) The regulation under this section shall establish  
13 a tracking system for NO<sub>x</sub> and CO<sub>2</sub> allowances. A NO<sub>x</sub>  
14 or CO<sub>2</sub> allowance allocation or transfer shall, on recorda-  
15 tion by the Administrator, be considered to be a part of  
16 any operating permit requirements of each affected facility  
17 involved in the allocation or transfer, without a require-  
18 ment for any further permit review or revision.

19       (7) The use of any NO<sub>x</sub> or CO<sub>2</sub> allowance before the  
20 calendar year for which the NO<sub>x</sub> or CO<sub>2</sub> allowance is allo-  
21 cated shall be prohibited.

22       (c) ALLOCATIONS.—The Administrator shall promul-  
23 gate regulations that shall—

24               (1) place 5 percent of the total quantity of NO<sub>x</sub>  
25               allowances and 5 percent of the total quantity of

1 CO<sub>2</sub> allowances available each year into a new  
2 source reserve,

3 (2) distribute to each affected facility the re-  
4 maining NO<sub>x</sub> and CO<sub>2</sub> allowances for each calendar  
5 year,

6 (3) distribute the allocations to each affected  
7 facility in proportion to each affected facility's share  
8 of total output production,

9 (4) distribute 2 years of allowances to each af-  
10 fected facility every 2 years, at least 6 months prior  
11 to the beginning of the relevant 2-year period,

12 (5) distribute to each new affected facility from  
13 the new source reserve prior to the relevant control  
14 period, and

15 (6) redistribute any allowances remaining in the  
16 new source reserve after the relevant control period  
17 to—

18 (A) affected sources in proportion to each  
19 facility's share of total output production, or

20 (B) the following year's new source re-  
21 serve, if the Administrator determines that the  
22 reserve will be insufficient to meet expected  
23 need.

24 (d) INSUFFICIENT ALLOWANCES.—If the Adminis-  
25 trator determines that the quantity of allowances in the

1 new source reserve in subsection (c) is insufficient to ac-  
2 commodate the operations of new facilities, the Adminis-  
3 trator shall promulgate a regulation to set a new percent-  
4 age of the total annual quantity of NO<sub>x</sub> or CO<sub>2</sub> allowances  
5 to place into the new source reserve, no later than 6  
6 months prior to the beginning of the next 2-year allocation  
7 period.

8 (e) ENFORCEMENT.—(1) An affected facility may not  
9 emit nitrogen oxides and carbon dioxide in excess of the  
10 amount permitted by the quantity of NO<sub>x</sub> or CO<sub>2</sub> allow-  
11 ances held by the designated representative of the affected  
12 facility in the NO<sub>x</sub> allowance tracking system starting in  
13 the calendar year 2005.

14 (2) If an affected facility emits nitrogen oxides in ex-  
15 cess of the amount permitted, the Administrator shall cal-  
16 culate the deficit of additional NO<sub>x</sub> allowances the af-  
17 fected facility would require to authorize the emitted quan-  
18 tity of nitrogen oxides. The affected facility shall—

19 (A) pay \$6,000 for each additional NO<sub>x</sub> allow-  
20 ance calculated, and

21 (B) offset in the following calendar year a  
22 quantity of NO<sub>x</sub> allowances equal to the number of  
23 NO<sub>x</sub> allowances calculated.

24 (3) If an affected facility emits carbon dioxide in ex-  
25 cess of the amount permitted, the Administrator shall cal-

1 culate the deficit of additional CO<sub>2</sub> allowances the affected  
2 facility would require to authorize the emitted quantity of  
3 carbon dioxide. The affected facility shall—

4 (A) pay \$100 for each additional CO<sub>2</sub> allowance  
5 calculated, and

6 (B) offset in the following year a quantity of  
7 CO<sub>2</sub> allowances equal to the number of CO<sub>2</sub> allow-  
8 ances calculated.

9 (4) For every year after 2005, the Administrator  
10 shall annually adjust the amount of the penalty in para-  
11 graphs (2)(A) and (3)(A) to reflect changes in the Con-  
12 sumer Price Index.

13 (f) REPEAL OF OTHER NO<sub>x</sub> LIMITATIONS.—Section  
14 407 of the Clean Air Act (42 U.S.C. 7651f) is repealed  
15 as of the date the provisions of this section related to NO<sub>x</sub>  
16 are implemented.

17 (g) CONSTRUCTION.—Neither a NO<sub>x</sub> allowance nor  
18 a CO<sub>2</sub> allowance shall be considered to be a property right.  
19 Notwithstanding any other provision of law, the Adminis-  
20 trator may terminate or limit a NO<sub>x</sub> or CO<sub>2</sub> allowance.

21 (h) SAVINGS PROVISIONS.—Nothing in this section  
22 affects the application of, or compliance with, the Clean  
23 Air Act for an affected facility, including the provisions  
24 related to applicable national ambient air quality stand-  
25 ards and State implementation plans or requires a change

1 in, affects, or limits any State law regulating electric util-  
2 ity rates or charges, including prudency review under  
3 State law, affects the application of the Federal Power Act  
4 (16 U.S.C. 791a et seq.) or the authority of the Commis-  
5 sion under that Act, or interferes with or impairs any pro-  
6 gram for competitive bidding for power supply in any  
7 State.

8 **SEC. 3. SULFUR DIOXIDE ALLOWANCE PROGRAM REVI-**  
9 **SIONS.**

10 Section 402 of the Clean Air Act (42 U.S.C. 7651)  
11 is amended by striking paragraph (3) and inserting the  
12 following:

13 “(3) ALLOWANCE.—The term ‘allowance’  
14 means an authorization, allocated to an affected unit  
15 by the Administrator under this title, to emit, during  
16 or after a specified calendar year—

17 “(A) in the case of allowances allocated for  
18 calendars years 1997 through 2004, one ton of  
19 sulfur dioxide, and

20 “(B) in the case of allowances allocated for  
21 calendar year 2005 and each calendar year  
22 thereafter, ¼ ton of sulfur dioxide.”.

23 **SEC. 4. MERCURY EMISSION CONTROL.**

24 (a) EMISSION CONTROLS.—The Administrator shall  
25 promulgate regulations based on the protection of human



1 health and the environment controlling electric utility  
2 emissions of mercury in accordance with this section.

3 (b) NATIONWIDE STANDARD.—The nationwide  
4 standard under this section for calendar year 2005 and  
5 each year thereafter for electric utility emissions of mer-  
6 cury shall be not greater than 5 tons.

7 (c) FACTORS.—The regulations under this section  
8 shall take into account technological feasibility, cost, and  
9 the projected reduction in levels of mercury emissions that  
10 will result from implementation of this Act. Such regula-  
11 tions shall prevent localized adverse effects on public  
12 health and the environment and shall prohibit emission  
13 trading in mercury.

14 **SEC. 5. RENEWABLE PORTFOLIO STANDARD.**

15 (a) STANDARD.—Title II of the Public Utility Regu-  
16 latory Policies Act of 1978 (16 U.S.C. 2601 and following)  
17 is amended by adding after section 214 the following new  
18 section:

19 **“SEC. 215. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

20 “(a) EFFECTIVE DATE.—The Administrator of the  
21 Energy Information Administration in the Department of  
22 Energy shall publish a notice on or before January 1,  
23 2005, specifying the percentage of total electric energy  
24 generation in the United States that the Administrator es-  
25 timates to be supplied by renewable energy during the cal-

1 endar year 2004. If such percentage is less than 3 percent,  
2 this section shall take effect on January 1, 2005.

3       “(b) MINIMUM RENEWABLE GENERATION REQUIRE-  
4 MENT.—(1) For each calendar year beginning after the  
5 effective date of this section, and ending January 1, 2010,  
6 a retail electric supplier shall submit to the Secretary of  
7 Energy (referred to in this section as the ‘Secretary’) Re-  
8 newable Energy Credits in an amount equal to 3 percent  
9 of the total electric energy sold by the retail electric sup-  
10 plier to electric consumers in the calendar year. For each  
11 calendar year beginning January 1, 2010, a retail electric  
12 supplier shall submit to the Secretary Renewable Energy  
13 Credits in an amount equal to 6 percent of the total elec-  
14 tric energy sold by the retail electric supplier to electric  
15 consumers in the calendar year. The retail electric supplier  
16 shall make this submission before April 1 of the following  
17 calendar year.

18       “(2) For purposes of this section, a ‘renewable en-  
19 ergy’ resource means solar energy, wind, geothermal, or  
20 biomass.

21       “(3) This section does not preclude a State from re-  
22 quiring additional renewable energy generation in that  
23 State.

1       “(c) SUBMISSION OF CREDITS.—A retail electric sup-  
2 plier may satisfy the requirements of subsection (a)  
3 through the submission of—

4           “(1) Renewable Energy Credits issued under  
5 subsection (d) for renewable energy generated by the  
6 retail electric supplier in the calendar year for which  
7 credits are being submitted or any previous calendar  
8 year,

9           “(2) Renewable Energy Credits issued under  
10 subsection (d) to any renewable energy generator for  
11 renewable energy generated in the calendar year for  
12 which credits are being submitted or a previous cal-  
13 endar year and acquired by the retail electric sup-  
14 plier, or

15           “(3) any combination of credits under para-  
16 graphs (1) and (2).

17       “(d) ISSUANCE OF CREDITS.—(1) The Secretary  
18 shall establish a program to issue, monitor the sale or ex-  
19 change of, and track Renewable Energy Credits.

20           “(2) Under the program, an entity that generates  
21 electric energy through the use of a renewable energy re-  
22 source may apply to the Secretary for the issuance of Re-  
23 newable Energy Credits. The application shall indicate—

24           “(A) the type of renewable energy resource used  
25 to produce the electricity,

1           “(B) the State in which the electric energy was  
2           produced, and

3           “(C) any other information the Secretary deter-  
4           mines appropriate.

5           “(3)(A) Except as provided in subparagraph (B), the  
6           Secretary shall issue to an entity 1 Renewable Energy  
7           Credit for each kilowatt-hour of electric energy the entity  
8           generates through the use of a renewable energy resource  
9           in any State in 2005 and any succeeding year.

10          “(B) To be eligible for a Renewable Energy Credit,  
11          the unit of electricity generated through the use of a re-  
12          newable energy resource may be sold or may be used by  
13          the generator. If both a renewable energy resource and  
14          a nonrenewable energy resource are used to generate the  
15          electric energy, the Secretary shall issue credits based on  
16          the proportion of the renewable energy resource used. The  
17          Secretary shall identify Renewable Energy Credits by type  
18          of generation and by the State in which the generating  
19          facility is located.

20          “(4) In order to receive a Renewable Energy Credit,  
21          the recipient of a Renewable Energy Credit shall pay a  
22          fee, calculated by the Secretary, in an amount that is  
23          equal to the administrative costs of issuing, recording,  
24          monitoring the sale or exchange of, and tracking the cred-  
25          it, or does not exceed 5 percent of the dollar value of the

1 credit, whichever is lower. The Secretary shall retain the  
2 fee and use it to pay these administrative costs.

3 “(5) When a generator sells electric energy generated  
4 through the use of a renewable energy resource to a retail  
5 electric supplier under a contract subject to section 210  
6 of this Act, the retail electric supplier is treated as the  
7 generator of the electric energy for the purposes of this  
8 section for the duration of the contract.

9 “(6) The Secretary shall disqualify an otherwise eligi-  
10 ble renewable energy generator from receiving a Renew-  
11 able Energy Credit if the generator has elected to partici-  
12 pate in net metering under section 216.

13 “(e) SALE OR EXCHANGE.—A Renewable Energy  
14 Credit may be sold or exchanged by the entity to which  
15 it was issued or by any other entity that acquires the cred-  
16 it. A Renewable Energy Credit for any year that is not  
17 used to satisfy the minimum renewable generation require-  
18 ment of subsection (a) for that year may be carried for-  
19 ward for use in another year.

20 “(f) RENEWABLE ENERGY CREDIT COST CAP.—Be-  
21 ginning on the effective date of this section, the Secretary  
22 shall offer Renewable Energy Credits for sale. The Sec-  
23 retary shall charge 1.5 cents for each Renewable Energy  
24 Credit sold during calendar year 2005, and on January  
25 1 of each following year, the Secretary shall adjust for

1 inflation, based on the Consumer Price Index, the price  
2 charged per credit for that calendar year.

3       “(g) RENEWABLE ENERGY AND ENERGY EFFI-  
4 CIENCY FUND.—The Secretary shall deposit in a separate  
5 account the amount received from a sale under subsection  
6 (f). Amounts in the separate account shall be available,  
7 without further appropriation, to the Secretary to be used  
8 for purposes of providing assistance for research and de-  
9 velopment of cleaner burning fuels, renewable energy, and  
10 energy efficiency.

11       “(h) ENFORCEMENT.—The Secretary may bring an  
12 action in the appropriate United States district court to  
13 impose a civil penalty on a retail electric supplier that does  
14 not comply with subsection (b). A retail electric supplier  
15 that does not submit the required number of Renewable  
16 Energy Credits under subsection (b) is subject to a civil  
17 penalty of not more than 3 times the value of the Renew-  
18 able Energy Credits not submitted. For purposes of this  
19 subsection, the value of a Renewable Energy Credit is the  
20 price of a credit determined under subsection (f) for the  
21 year the credits were not submitted.

22       “(i) INFORMATION COLLECTION.—The Secretary  
23 may collect the information necessary to verify and  
24 audit—

1           “(1) the annual electric energy generation and  
2           renewable energy generation of any entity applying  
3           for Renewable Energy Credits under this section,

4           “(2) the validity of Renewable Energy Credits  
5           submitted by a retail electric supplier to the Sec-  
6           retary, and

7           “(3) the quantity of electricity sales of all retail  
8           electric suppliers.

9           “(j) SUNSET.—This section expires December 31,  
10 2015.”.

11          (b) DEFINITIONS.—Section 3 of the Public Utility  
12 Regulatory Policies Act of 1978 (16 U.S.C. 2602) is  
13 amended by adding after paragraph (24) the following  
14 new paragraph:

15           “(25) The term ‘retail electric supplier’ means  
16           a person, State agency, or Federal agency that sells  
17           electric energy to an electric consumer.”.

18          (c) TABLE OF CONTENTS.—The table of contents for  
19 title II of the Public Utility Regulatory Policies Act of  
20 1978 (16 U.S.C. 2601 and following) is amended by add-  
21 ing the following at the end thereof:

          “Sec. 215. Federal renewable portfolio standard.”.

22 **SEC. 6. NET METERING.**

23          (a) AMENDMENT OF PURPA.—The Public Utility  
24 Regulatory Policies Act of 1978 (16 U.S.C. 2601 and fol-

1 lowing) is amended by adding the following new section  
2 after section 215, as added by section 5 of this Act:

3 **“SEC. 216. NET METERING FOR RENEWABLE ENERGY.**

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

5 “(1) The term ‘eligible on-site generating facil-  
6 ity’ means a facility on the site of an electric con-  
7 sumer with a peak generating capacity of 100 kilo-  
8 watts or less that is fueled solely by a renewable en-  
9 ergy resource.

10 “(2) The term ‘renewable energy resource’  
11 means solar energy, wind, geothermal, or biomass.

12 “(3) The term ‘net metering service’ means  
13 service to an electric consumer under which elec-  
14 tricity generated by that consumer from an eligible  
15 on-site generating facility and delivered to the dis-  
16 tribution system through the same meter through  
17 which purchased electricity is received may be used  
18 to offset electricity provided by the retail electric  
19 supplier to the electric consumer during the applica-  
20 ble billing period so that an electric consumer is  
21 billed only for the net electricity consumer during  
22 the billing period, but in no event shall the net be  
23 less than zero during the applicable billing period.

24 “(b) REQUIREMENT TO PROVIDE NET METERING  
25 SERVICE.—Each retail electric supplier shall make avail-



1 able upon request net metering service to any retail elec-  
2 tric consumer that the supplier currently serves or solicits  
3 for service.

4 “(c) STATE AUTHORITY.—This section does not pre-  
5 clude a State from imposing additional requirements con-  
6 sistent with the requirements in this section, including the  
7 imposition of a cap limiting the amount of net metering  
8 available in the State. Nothing in this Act or any other  
9 Federal law preempts or otherwise affects authority under  
10 State law to require a retail electric supplier to make avail-  
11 able net metering service to a retail electric consumer  
12 which the supplier serves or offers to serve.”.

13 (c) TABLE OF CONTENTS.—The table of contents for  
14 title II of the Public Utility Regulatory Policies Act of  
15 1978 (16 U.S.C. 2601 and following) is amended by add-  
16 ing the following at the end thereof:

“Sec. 216. Net metering for renewable energy.”.

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