

106TH CONGRESS
2D SESSION

S. 2098

To facilitate the transition to more competitive and efficient electric power markets, and to ensure electric reliability.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. MURKOWSKI (for himself and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To facilitate the transition to more competitive and efficient electric power markets, and to ensure electric reliability.

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 “Electric Power Market
5 Competition and Reliability Act”.

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1 **TITLE I—AMENDMENTS TO THE**
2 **FEDERAL POWER ACT**

3 **SEC. 101. CLARIFICATION OF STATE-FEDERAL JURISDIC-**
4 **TION.**

5 (a) DECLARATION.—Section 201(a) of the Federal
6 Power Act is amended by—

7 (1) inserting after “transmission of electric en-
8 ergy in interstate commerce” the following: “, in-
9 cluding the unbundled interstate transmission of
10 electric energy sold at retail”; and

11 (2) adding at the end thereof: “The bundled re-
12 tail sale of electric energy, unbundled local distribu-
13 tion service, unbundled retail sale of electric energy,
14 and facilities in such State related to each of the
15 foregoing, are subject to the jurisdiction of the State
16 in which the energy is consumed.”.

17 (b) APPLICATION.—Section 201(b) of the Federal
18 Power Act is amended by—

19 (1) inserting after “transmission of electric en-
20 ergy in interstate commerce” the following: “, in-
21 cluding the unbundled interstate transmission of
22 electric energy”;

23 (2) striking “sentence.” and inserting “sen-
24 tence, except with respect to determining, fixing, and
25 otherwise regulating the rates, terms, and conditions

1 for the transmission of electric energy in interstate
 2 commerce under this Part pursuant to subsection
 3 (e)(2)”; and

4 (3) adding at the end thereof:

5 “(3) The bundled retail sale of electric energy,
 6 unbundled local distribution service, unbundled retail
 7 sale of electric energy, and facilities in such State
 8 related to each of the foregoing, are subject to the
 9 jurisdiction of the State in which the energy is con-
 10 sumed. The Commission, after consulting with and
 11 giving deference to the views of the appropriate
 12 State regulatory authorities, shall determine, by rule
 13 or order, which facilities used for the transmission
 14 and delivery of electric energy are used for trans-
 15 mission in interstate commerce subject to the juris-
 16 diction of the Commission under this Part, and
 17 which are used for local distribution subject to State
 18 jurisdiction under this Part.”.

19 (c) DEFINITION OF INTERSTATE COMMERCE.—Sec-
 20 tion 201(c) of the Federal Power Act is amended by in-
 21 serting after “outside thereof” the following: “(including
 22 consumption in a foreign country)”.

23 (d) DEFINITIONS OF TYPES OF SALES.—Section
 24 201(d) of the Federal Power Act is amended by—

1 (1) inserting “(1)” after the subsection designa-
2 tion;

3 (2) adding at the end the following:

4 “(2) The term ‘bundled retail sale of electric
5 energy’ means the sale of electric energy to an ulti-
6 mate consumer in which the generation and trans-
7 mission service are not sold separately.

8 “(3) The term ‘unbundled local distribution
9 service’ means the delivery of electric energy to an
10 ultimate consumer if—

11 “(A) the electric energy and the service of
12 delivering it are sold separately, and

13 “(B) the delivery uses facilities for local
14 distribution.

15 “(4) The term ‘unbundled transmission of elec-
16 tric energy sold at retail’ means the transmission of
17 electric energy to an ultimate consumer if—

18 “(A) the electric energy and the service of
19 delivering it are sold separately, and

20 “(B) the transmission uses facilities for
21 transmission in interstate commerce.

22 “(5) The term ‘unbundled retail sale of electric
23 energy’ means the sale of electric energy to an ulti-
24 mate consumer if—

1 “(A) the electric energy and the service of
2 delivering it are sold separately, and

3 “(B) the electric energy is delivered
4 through transmission or local distribution facili-
5 ties.”.

6 (e) DEFINITION OF PUBLIC UTILITY.—Section 201
7 of the Federal Power Act is amended by striking sub-
8 section (e) and inserting the following:

9 “(e) The term ‘public utility’ means—

10 “(1) any person who owns or operates facilities
11 subject to the jurisdiction of the Commission under
12 this Part (other than facilities subject to such juris-
13 diction solely by reason of section 210, 211, or 212);
14 and

15 “(2) any electric utility or other entity that
16 owns or operates transmission facilities that provide
17 transmission services in interstate commerce not
18 otherwise subject to the jurisdiction of the Commis-
19 sion under this Part (other than a utility to which
20 section 212(k) applies) including, but not limited
21 to—

22 “(A) the Tennessee Valley Authority,

23 “(B) a Federal power marketing adminis-
24 tration,

1 “(C) a State or any political subdivision of
 2 a State, or any agency, authority, or instrumen-
 3 tality of a State or political subdivision thereof,

4 “(D) a person who has ever received a loan
 5 for the purpose of providing electric service
 6 from the Administrator of the Rural Electrifica-
 7 tion Administration or the Rural Utilities Serv-
 8 ice under the Rural Electrification Act of 1936,
 9 or

10 “(E) any corporation or other entity that
 11 is wholly owned directly or indirectly, by any
 12 one or more of the foregoing or by the Federal
 13 government—

14 but only with respect to the determining, fixing, and
 15 otherwise regulating the rates, terms, and conditions
 16 for the transmission of electric energy in interstate
 17 commerce under this Part.”.

18 (f) APPLICATION OF PART TO GOVERNMENT UTILI-
 19 TIES.—Section 201(f) of the Federal Power Act is amend-
 20 ed by striking “No provision” and inserting “Except as
 21 provided in subsection (e)(2) and section 3(23) no provi-
 22 sion”.

23 (g) DEFINITION OF TRANSMITTING UTILITY.—Sec-
 24 tion 3 of the Federal Power Act is amended by striking
 25 paragraph (23) and inserting the following:

1 “(23) TRANSMITTING UTILITY.—The term
 2 ‘transmitting utility’ means any public utility, as de-
 3 fined in section 201(e), that owns or operates elec-
 4 tric power transmission facilities that provide trans-
 5 mission services in interstate commerce and are used
 6 for the sale of electric energy, and any utility to
 7 which section 212(k) applies.”.

8 **SEC. 102. INTERSTATE TRANSMISSION TO SUPPORT STATE**
 9 **RETAIL COMPETITION.**

10 (a) FERC AUTHORITY.—

11 (1) Section 211(a) of the Federal Power Act
 12 amended by striking “for resale”.

13 (2) Section 212(a) of the Federal Power Act is
 14 amended by striking “wholesale transmission serv-
 15 ices” each place is appears and inserting “trans-
 16 mission services” in lieu thereof.

17 (b) LIMITATION ON FERC AUTHORITY.—Section
 18 212 of the Federal Power Act is amended by striking sub-
 19 section (h) and inserting in lieu thereof the following:

20 “(h) LIMITATION ON COMMISSION AUTHORITY.—No
 21 rule or order issued under this Act shall require or be con-
 22 ditioned upon the transmission of electric energy:

23 “(1) directly to an ultimate consumer in con-
 24 nection with a sale of electric energy to such con-
 25 sumer unless the seller of such energy is permitted

1 or required under applicable State law to make such
 2 sale to such consumer, or

3 “(2) to, or for the benefit of, an electric utility
 4 or other entity if such electric energy would be sold
 5 by such utility or entity directly to an ultimate con-
 6 sumer, unless the utility or entity is permitted or re-
 7 quired under applicable State law to sell electric en-
 8 ergy to such ultimate consumer.”.

9 (c) CONFORMING AMENDMENT.—Section 3 of the
 10 Federal Power Act is amended by striking paragraph (24)
 11 and inserting the following:

12 “(24) TRANSMISSION SERVICES.—The term
 13 ‘transmission services’ means the transmission of
 14 electric energy in interstate commerce.”.

15 **SEC. 103. STATE AUTHORITY TO PROTECT THE PUBLIC IN-**
 16 **TEREST.**

17 The Federal Power Act is amended by adding the fol-
 18 lowing:

19 **“SEC. 215. STATE AUTHORITY TO PROTECT CONSUMERS.**

20 “(a) Nothing in this Act precludes a State, in accord-
 21 ance with State law, from imposing a public interest re-
 22 quirement, on matters subject to State jurisdiction, the
 23 purposes of which may include but are not limited to—

24 “(1) distribution system reliability;

25 “(2) safety;

1 “(3) obligation to serve;

2 “(4) universal service;

3 “(5) assured service to low-income, rural and
4 remote consumers;

5 “(6) seller performance standards;

6 “(7) protection of retail consumers from unfair
7 business practices; and

8 “(8) any other matter affecting an ultimate
9 consumer in that State as may be in the public in-
10 terest pursuant to State law.

11 “(b) Nothing in this Act precludes a State, in accord-
12 ance with State law, from imposing a public interest
13 charge, on matters subject to State jurisdiction, the pur-
14 pose of which may include but is not limited to—

15 “(1) assisting low-income consumers of elec-
16 tricity;

17 “(2) ensuring universal electric service, particu-
18 larly those consumers located in rural and remote
19 areas;

20 “(3) funding for environmental programs, re-
21 newable-energy programs, energy efficiency pro-
22 grams, and energy conservation programs;

23 “(4) providing recovery of industry transition
24 costs, including, but not limited to, stranded costs

1 resulting from any action by any unit of Federal,
2 State or local government;

3 “(5) providing transition costs of electricity
4 workers adversely affected by restructuring;

5 “(6) funding of research and development on
6 electric technologies; or

7 “(7) assisting any other program affecting ulti-
8 mate consumers in that State as may be authorized
9 pursuant to State law.”.

10 **SEC. 104. REGIONAL TRANSMISSION ORGANIZATIONS.**

11 The Federal Power Act is amended by adding the fol-
12 lowing:

13 **“SEC. 216. REGIONAL TRANSMISSION ORGANIZATIONS.**

14 “(a) RTO FORMATION.—One or more transmitting
15 utilities may file with the Commission an application to
16 form, implement or participate in a regional transmission
17 organization. After notice and an opportunity for a hear-
18 ing, the Commission shall approve an application by one
19 or more transmitting utilities to form, implement, or par-
20 ticipate in a regional transmission organization when the
21 Commission finds that the regional transmission organiza-
22 tion complies with the standards listed in subsection (b).
23 The Commission shall apply the standards set forth in
24 subsection (b) without regard to the specific structure type
25 or form of proposed regional transmission organization.

1 If a transmitting utility forms, or voluntarily agrees to
2 participate in, a regional transmission organization that
3 complies with the standards in subsection (b), the Com-
4 mission shall have no authority to compel the transmitting
5 utility to participate in a different regional transmission
6 organization directly or as a condition of the receipt of
7 any other approval from the Commission; nor shall the
8 Commission have the authority to add to or change the
9 terms or conditions of such application without affording
10 a transmitting utility the opportunity to withdraw from
11 the regional transmission organization if it finds such
12 terms and conditions to be unacceptable. The Commission
13 may also approve a regional transmission organization
14 that does not satisfy all such standards if the Commission
15 determines that the regional transmission organization
16 contains features that are consistent with or superior to
17 the standards listed in subsection (b).

18 “(b) RTO STANDARDS.—The standards for a re-
19 gional transmission organization are:

20 “(1) Independence: The regional transmission
21 organization must be independent of all market par-
22 ticipants. No market participant shall exercise con-
23 trol over the operation of the regional transmission
24 organization. For purposes of determining whether a
25 regional transmission organization is independent of

1 all market participants, ownership of passive, non-
2 voting interests in a regional transmission organiza-
3 tion, or ownership of five (5) percent or less of the
4 voting interests in the regional transmission organi-
5 zation, shall be deemed not to confer control over
6 the regional transmission organization for purposes
7 of this subsection. For purposes of this subsection,
8 the term ‘voting interest’ shall not include the right
9 to participate in major organic corporate changes to
10 the regional transmission organization that affect
11 the ownership status of the nonvoting interests.

12 “(2) Scope and Configuration: The regional
13 transmission organization must operate transmission
14 facilities that comprise an appropriate scope and re-
15 gional configuration. In determining whether a re-
16 gional transmission organization contains an appro-
17 priate scope and configuration, the Commission shall
18 employ a rebuttable presumption that the configura-
19 tion selected by the regional transmission organiza-
20 tion is in the public interest. This presumption can
21 be rebutted upon a demonstration, based on the pre-
22 ponderance of the evidence, that the proposed con-
23 figuration is not in the public interest.

24 “(3) Operational Authority: The regional trans-
25 mission organization must possess sufficient oper-

1 ational authority for all transmission facilities under
2 its control to maintain the security and stability of
3 the synchronous transmission grid.

4 “(4) Reliability: The regional transmission or-
5 ganization must have the responsibility for facili-
6 tating the commercial use of the transmission sys-
7 tem in a manner consistent with maintaining reli-
8 ability (adequacy and security) to end-use cus-
9 tomers. The regional transmission organization shall
10 have the authority to review and approve inter-
11 connections to the transmission system to ensure
12 that such interconnections do not threaten the reli-
13 ability of the transmission system under the oper-
14 ational control of the regional transmission organiza-
15 tion.

16 “(5) Transmission Tariff: The regional trans-
17 mission organization must administer a tariff that
18 will promote efficient use and expansion of trans-
19 mission facilities, and operate a single Open Access
20 Same Time Information System (as defined by the
21 Commission) for all transmission facilities under its
22 control, provided that nothing in this section shall
23 preclude a transmitting utility from filing with the
24 Commission’s original or amended rates concerning
25 transmission service on such utility’s facilities.

1 “(6) Ancillary Services: The regional trans-
2 mission organization must serve as a supplier of last
3 resort for the following ancillary services: (a) Sched-
4 uling, System Control and Dispatching Service; and
5 (b) Reactive Supply and Voltage Control from Gen-
6 eration Services. For purposes of this section,
7 ‘Scheduling, System Control and Dispatching Serv-
8 ice’ and 1 ‘Reactive Supply and Voltage Control
9 from Generation Services’ shall be defined by the
10 Commission.

11 “(7) Market Monitoring: The regional trans-
12 mission organization must monitor transmission-re-
13 lated markets, including ancillary services and con-
14 gestion management markets, to identify market de-
15 sign flaws. The market monitoring feature may pro-
16 vide for its automatic expiration within a fixed pe-
17 riod of time, provided that the fixed period of time
18 shall be no shorter than five years and that the
19 Commission may approve an extension of the moni-
20 toring feature provided that, absent the consent of
21 the regional transmission organization, such exten-
22 sion shall be for a period no longer than five years;
23 and

24 “(8) Expansion: The regional transmission or-
25 ganization must plan and coordinate necessary

1 transmission additions and upgrades in accordance
 2 with the provisions of section 217.

3 “(c) GOVERNMENT TRANSMITTING UTILITY PAR-
 4 TICIPATION.—The Tennessee Valley Authority, the Bon-
 5 neville Power Administration, the Southwestern Power
 6 Administration, or the Western Area Power Administra-
 7 tion are each authorized to participate in a regional trans-
 8 mission organization after conducting a public process in
 9 the relevant region to receive comments. Notwithstanding
 10 any other law, participation may include delegation of op-
 11 eration and control of the transmission system concerned
 12 to a regional transmission organization or other method
 13 of participation, under terms and conditions the Ten-
 14 nessee Valley Authority or the power marketing adminis-
 15 tration concerned determines necessary or appropriate, in-
 16 cluding being bound by operational and other orders of
 17 the regional transmission organization and by the results
 18 of arbitration of disputes with the organization or with
 19 other participants.

20 **“SEC. 217. ELECTRIC TRANSMISSION CONSTRUCTION AND**
 21 **EXPANSION.**

22 “(a) TRANSMISSION EXPANSION PLANNING PROC-
 23 ESS.—A regional transmission organization, a member of
 24 a regional transmission organization, or any other appli-
 25 cant (provided that the application is consistent with a

1 planning process approved by a regional transmission or-
 2 ganization or comparable regional transmission planning
 3 entity), may develop and submit for review and approval
 4 by the Commission a transmission expansion planning
 5 process for the construction and expansion of the trans-
 6 mission facilities it operates or proposes to operate. The
 7 Commission shall approve the transmission expansion
 8 planning process if the planning process—

9 “(1) permits the input of all market partici-
 10 pants and other persons in the region and other
 11 interconnected regions;

12 “(2) is designed to determine efficient solutions
 13 to relieve constraints in the transmission system
 14 without preference for either transmission or genera-
 15 tion solutions; and

16 “(3) provides for aggrieved market participants
 17 or other persons to contest the plans through an al-
 18 ternative dispute resolution process or through re-
 19 view by the Commission.

20 “(b) CONSTRUCTION CERTIFICATES.—The Commis-
 21 sion shall, after notice and opportunity for hearing, ap-
 22 prove a request of a regional transmission organization (or
 23 such member or other applicant) for a certificate of public
 24 convenience and necessity to construct any proposed
 25 transmission facilities developed through a transmission

1 expansion plan resulting from a transmission expansion
2 planning process approved by the Commission under sub-
3 section (a), if it finds:

4 “(1)(A) a State in which the transmission fa-
5 cilities are to be constructed or modified is without
6 authority to approve the siting of the facilities, or

7 “(B) any State commission or body in a State
8 in which the transmission facilities are to be con-
9 structed or modified has authority to approve the
10 siting of the facilities but has withheld approval,
11 modified or conditioned its approval in a manner
12 that materially alters the transmission expansion
13 plan, or delayed the final determination of its ap-
14 proval for more than one year after the filing of an
15 application seeking approval; and

16 “(2) the facilities to be authorized by the cer-
17 tificate are or will be required by the present or fu-
18 ture public convenience and necessity.

19 The Commission shall have the power to attach to the
20 issuance of such certificate and to the exercise of the
21 rights granted thereunder such reasonable terms and con-
22 ditions related to the construction of such facility as the
23 public convenience and necessity may require; provided
24 that the Commission shall have no authority to compel the
25 construction or enlargement of transmission facilities di-

1 rectly or indirectly, including as a condition of the receipt
2 of any other approval from the Commission. The Commis-
3 sion shall issue its final decision in the certificate pro-
4 ceeding within 180 days after the filing of the request for
5 a certificate.

6 “(c) APPLICATIONS FOR CERTIFICATES.—Applica-
7 tions for certificates under subsection (b) shall be made
8 in writing to the Commission, be verified under oath, and
9 shall be in such form, contain such information, and notice
10 thereof shall be served upon such interested parties and
11 in such manner as the Commission shall, by regulation,
12 require.

13 “(d) COMMENTS.—In any proceeding before the
14 Commission initiated under subsection (b), the Commis-
15 sion shall afford each State in which transmission facilities
16 covered by the certificate is or will be located and other
17 interested parties a reasonable opportunity to present
18 their views and recommendations with respect to the need
19 for and impact of any facilities covered by the certificate.

20 “(e) RIGHT OF EMINENT DOMAIN.—When any hold-
21 er of a certificate of public convenience and necessity for
22 electric transmission facilities issued by the Commission
23 pursuant to subsection (b) cannot acquire by contract, or
24 is unable to agree with the owner of the property to the
25 compensation to be paid for the necessary rights-of-way

1 to construct, operate and maintain such transmission fa-
 2 cility, it may acquire the same by the exercise of the right
 3 of eminent domain in the district court of the United
 4 States for the district in which such property may be lo-
 5 cated, or in the State courts. The practice and procedure
 6 in any action or proceeding for that purpose in the district
 7 court of the United States shall conform as nearly as may
 8 be with the practice and procedure in similar action or
 9 proceeding in the courts of the State where the property
 10 is situated.

11 “(f) COST RECOVERY.—All reasonable costs for the
 12 construction, operation and maintenance of transmission
 13 facilities developed through a transmission expansion
 14 planning process approved by the Commission under sub-
 15 section (a) shall be recoverable in the transmission rates
 16 charged by the regional transmission organization or other
 17 such applicant.

18 “(g) STATE LAW.—Nothing in this section shall pre-
 19 clude any person from constructing any transmission fa-
 20 cilities pursuant to State law.

21 **“SEC. 218. PRICING POLICIES FOR REGIONAL TRANS-**
 22 **MISSION ORGANIZATIONS.**

23 “(a) INNOVATIVE TRANSMISSION PRICING POLI-
 24 CIES.—The Commission shall encourage innovative trans-
 25 mission pricing policies for a regional transmission organi-

1 zation approved under section 216, a comparable trans-
2 mission organization approved by the Commission before
3 the enactment of this Act, or a transmitting utility whose
4 facilities are controlled but not owned by either such enti-
5 ty. Such transmission pricing policies shall:

6 “(1) Incentives for Voluntary Regional Trans-
7 mission Organizations: Provide incentives to trans-
8 mitting utilities to promote the voluntary participa-
9 tion and formation of regional transmission organi-
10 zations, without having the effect of forcing trans-
11 mitting utilities to join regional transmission organi-
12 zations and extend such incentives to transmitting
13 utilities that already have formed a regional trans-
14 mission organization;

15 “(2) Limits on Certain Charges: Limit sepa-
16 rate, additive access charges for transmission service
17 over the transmission facilities operated by the re-
18 gional transmission organization, provided, however,
19 that a reasonable transition mechanism or period
20 may be used before eliminating such separate, addi-
21 tive access charges;

22 “(3) Limits on Cost Shifting: Minimize the
23 shifting of costs among existing customers of the
24 transmitting utilities within the regional trans-
25 mission organization, including permitting the use of

1 transmission rates based on a single transmitting
2 utility's costs for transmission service provided with-
3 in the regional transmission organization;

4 “(4) Innovative Management and Rates: En-
5 courage the efficient and reliable operation of the
6 transmission grid and supply of transmission serv-
7 ices through congestion management, performance-
8 based or incentive ratemaking, and other measures;
9 and

10 “(5) Efficient Transmission Investment: En-
11 courage efficient and adequate investment in and ex-
12 pansion of the transmission facilities owned and/or
13 controlled by the regional transmission organization.

14 “(b) NEGOTIATED RATES.—The Commission may
15 permit the charging of negotiated rates for transmission
16 services under this section without regard to costs when-
17 ever an individual company or companies are willing to
18 pay such negotiated rates, provided, however, that costs
19 associated with such negotiated rates shall not be recov-
20 ered from other transmission customers.

21 “(c) COMMISSION RULES.—Within 180 days of the
22 enactment of this section, the Commission shall establish
23 by rule definitions and standards to govern its approval
24 of performance-based or incentive pricing policies under
25 subsection (a) and negotiated rates under subsection (b).

1 With respect to performance-based or incentive rates, the
 2 definitions and standards shall include, but not be limited
 3 to, (1) a method for calculating initial transmission rates
 4 (including price caps that would include discounting); (2)
 5 an index mechanism for adjusting initial rates; (3) time
 6 periods for redetermining initial rates; and (4) costs to
 7 be excluded from performance-based rates.”.

8 **SEC. 105. STATE RECIPROCITY AUTHORITY.**

9 The Federal Power Act is amended by adding the fol-
 10 lowing:

11 **“SEC. 219. STATE AUTHORITY TO IMPOSE RECIPROCITY RE-**
 12 **QUIREMENTS.**

13 “A State or State commission may prohibit an elec-
 14 tric utility from selling electric energy to an ultimate con-
 15 sumer in such State if such electric utility or any of its
 16 affiliates owns or controls transmission or local distribu-
 17 tion facilities and is not itself providing unbundled local
 18 distribution service in a State in which such electric utility
 19 owns or operates a facility used for the generation of elec-
 20 tric energy.”.

21 **SEC. 106. APPLICATION OF STATE UTILITY LAWS TO RE-**
 22 **TAIL SALES TO FEDERAL FACILITIES.**

23 The Federal Power Act is amended by adding the fol-
 24 lowing:

1 **“SEC. 220. APPLICATION OF STATE UTILITY LAWS TO FED-**
2 **ERAL FACILITIES.**

3 “Neither this Act nor any other Act preempts the ap-
4 plication of State utility laws with respect to the retail sale
5 of electric energy to or the provision of local distribution
6 service to a facility of a department, agency or instrumen-
7 tality of the United States.”.

8 **SEC. 107. STRANDED COST RECOVERY.**

9 It is the sense of the Congress that public utilities
10 are entitled to fully recover all prudently incurred whole-
11 sale and retail costs that become stranded as a result of
12 changes in public policy with respect to competition and
13 industry structure.

14 **SEC. 108. SAVINGS CLAUSES.**

15 (a) STATE AUTHORITY TO ORDER RETAIL AC-
16 CESS.—Neither silence on the part of Congress nor any
17 Act of Congress shall be construed to preclude a State
18 or State commission, acting under authority of State law,
19 from requiring an electric utility subject to its jurisdiction
20 to provide unbundled local distribution service to any elec-
21 tric consumers within such state.

22 (b) EXISTING STATE PROGRAMS.—Nothing in this
23 Act nor any amendment to the Federal Power Act made
24 by this Act preempts, overrides or requires any change in
25 the terms of any State retail access plan enacted, adopted,

1 approved or promulgated prior to the enactment of this
2 Act.

3 (c) EXISTING CONTRACTS AND AGREEMENTS.—

4 Nothing in this Act nor any amendment to the Federal
5 Power Act made by this Act expressly or impliedly pre-
6 empts the continuing applicability, according to its terms,
7 of any contract, tariff, rate schedule, certificate, license,
8 settlement, intra-corporate transfer or sale of electricity
9 or other services or products, or any other valid agreement
10 for any wholesale or retail sale or purchase of electricity
11 in effect on the date of enactment of this Act.

12 (d) PRIOR PRUDENCE DETERMINATIONS.—Nothing
13 in this Act nor any amendment to the Federal Power Act
14 made by this Act affects, reopens, modifies, reverses, or
15 invalidates any determination, finding, order, or ruling
16 made by, or any agreement entered into or approved by,
17 the Federal Energy Regulatory Commission or any State
18 regulatory authority, made prior to the date of enactment
19 of such amendments regarding—

20 (1) the prudence of any cost incurred by an
21 electric utility to provide service to any consumer;

22 (2) any cost allowed to be recovered, or to be
23 recovered, or deferred in the rates of an electric util-
24 ity whether under rule, regulation or order of the
25 Commission or a State regulatory authority; or

1 (3) the allocation of any cost among two or
 2 more associate companies of a public utility holding
 3 company system.

4 **TITLE II—REPEAL OF PURPA**
 5 **MANDATORY PURCHASE RE-**
 6 **QUIREMENT**

7 **SEC. 201. PROSPECTIVE REPEAL OF PURPA MANDATORY**
 8 **PURCHASE REQUIREMENT.**

9 (a) NEW CONTRACTS.—No electric utility shall be re-
 10 quired to enter into a new contract or obligation to pur-
 11 chase or to sell electricity or capacity under section 210
 12 of the Public Utility Regulatory Policies Act of 1978.

13 (b) EXISTING RIGHTS AND REMEDIES.—Nothing in
 14 this Title affects the rights or remedies of any party with
 15 respect to the purchase or sale of electricity or capacity
 16 from or to a facility determined to be a qualifying small
 17 power production facility or a qualifying congeneration fa-
 18 cility under section 210 of the Public Utility Regulatory
 19 Policies Act of 1978, under any contract or obligation to
 20 purchase or to sell electricity or capacity in effect on the
 21 date of enactment of this Act, including the right to re-
 22 cover the costs of purchasing the electricity of capacity.

23 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
 24 ing in this Title implies Congressional ratification of any

1 interpretation of, or any action taken under, the Public
2 Utility Regulatory Policies Act of 1978.

3 **SEC. 202. RECOVERY OF PURPA COSTS.**

4 (a) REGULATION.—To ensure recovery by any elec-
5 tric utility that purchases electricity or capacity from a
6 qualifying facility pursuant to any legally enforceable obli-
7 gation entered into or imposed under section 210 of the
8 Public Utility Regulatory Policies Act of 1978 before the
9 date of enactment of this Act of all costs associated with
10 such purchases, the Federal Regulatory Commission shall
11 promulgate and enforce such regulations, pursuant to its
12 authority under the Federal Power Act, as are required
13 to ensure that no electric utility shall be required directly
14 or indirectly to absorb the costs associated with such pur-
15 chases.

16 (b) TREATMENT.—A regulation under subsection (a)
17 shall be treated as a rule enforceable under the Federal
18 Power Act.

19 **SEC. 203. DEFINITIONS.**

20 For the purposes of this Title—

21 (1) The term “electric utility” has the same
22 meaning given the term in section 3(4) of the Public
23 Utility Regulatory Policies Act of 1978.

1 (2) The term “qualifying cogeneration facility”
 2 has the meaning given the term in section 3 of the
 3 Federal Power Act.

4 (3) The term “qualifying small power produc-
 5 tion facility” has the meaning given the term in sec-
 6 tion 3 of the Federal Power Act.

7 (4) The term “qualifying facility” means—

8 (A) a qualifying cogeneration facility; or

9 (B) a qualifying small power production
 10 facility.

11 **TITLE III—ELECTRIC** 12 **RELIABILITY**

13 **SEC. 301. ELECTRIC RELIABILITY ORGANIZATION AND** 14 **OVERSIGHT.**

15 (a) The Federal Power Act is amended by adding the
 16 following:

17 **“SEC. 221. ELECTRIC RELIABILITY ORGANIZATION.**

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

19 “(1) The term ‘Affiliated Regional Reliability
 20 Entity’ means an entity delegated authority under
 21 the provisions of subsection (h).

22 “(2) The term ‘Bulk-Power System’ means all
 23 facilities and control systems necessary for operating
 24 an interconnected transmission grid (or any portion
 25 thereof), including high-voltage transmission lines,

1 substations, control centers, communications, data,
2 and operations planning facilities, and the output of
3 generating units necessary to maintain trans-
4 missions system reliability.

5 “(3) The term ‘Electric Reliability Organiza-
6 tion’ or ‘Organization’ means the organization ap-
7 proved by the Commission under subsection (d)(4).

8 “(4) The term ‘Entity Rule’ means a rule
9 adopted by an Affiliated Regional Reliability Entity
10 for a specific region and designed to implement or
11 enforce one or more Organization Standards. An
12 Entity Rule shall be subject to approval by the Or-
13 ganization and once approved, shall be treated as an
14 Organization Standard.

15 “(5) The term ‘Industry Sector’ means a group
16 of Users of the Bulk Power System with substan-
17 tially similar commercial interests, as determined by
18 the board of the Electric Reliability Organization.

19 “(6) The term ‘Interconnection’ means a geo-
20 graphic area in which the operation of Bulk-Power
21 System components is synchronized such that the
22 failure of one or more of such components may ad-
23 versely affect the ability of the operators of other
24 components within the Interconnection to maintain

1 safe and reliable operation of the facilities within
2 their control.

3 “(7) The term ‘Organization Standard’ means a
4 policy or standard duly adopted by the Electric Reli-
5 ability Organization to provide for the reliable oper-
6 ation of a Bulk-Power System.

7 “(8) The term ‘Public Interest Group’ means
8 any non-profit private or public organization that
9 has an interest in the activities of the Electric Reli-
10 ability Organization, including, but not limited to,
11 ratepayer advocates, environmental groups, and
12 State and local government organizations that regu-
13 late market participants and promulgate government
14 policy.

15 “(9) The term ‘Variance’ means an exception or
16 variance from the requirements of an Organization
17 Standard (including a proposal for an Organization
18 standard where there is no Organization standard)
19 that is adopted by an Affiliated Regional Reliability
20 Entity and applicable to all or a part of the region
21 for which the Affiliated Regional Reliability Entity is
22 responsible. A Variance shall be subject to approval
23 by the Organization and once approved, shall be
24 treated as an Organization Standard.

1 “(10) The term ‘System Operator’ means any en-
2 tity that operates or is responsible for the operation
3 of a Bulk-Power System, including but not limited
4 to a control area operator, an independent system
5 operator, a transmission company, a transmission
6 system operator, or a regional security coordinator.

7 “(11) The term ‘User of the Bulk-Power Sys-
8 tem’ means any entity that sells, purchases, or
9 transmits electric energy over a Bulk-Power System,
10 or that owns, operates or maintains facilities or con-
11 trol systems that are part of a Bulk-Power System,
12 or that is a System Operator.

13 “(b) COMMISSION AUTHORITY.—

14 “(1) Within the United States, the Commission
15 shall have jurisdiction over the Electric Reliability
16 Organization, all Affiliated Regional Reliability Enti-
17 ties, all System Operators, and all Users of the
18 Bulk-Power System, for purposes of approving and
19 enforcing compliance with the requirements of this
20 section, notwithstanding section 201(f).

21 “(2) The Commission may, by rule, define any
22 other term used in this section, provided such defini-
23 tion is consistent with the definitions in, and the
24 purpose and intent of, this Act.

1 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
2 lowing enactment of this section, and prior to the approval
3 of an Organization under subsection (d), any person, in-
4 cluding the North American Electric Reliability Council
5 and its member Regional Reliability Councils, shall file
6 with the Commission any reliability standard, guidance,
7 practice or amendment thereto that is proposed to be
8 made mandatory and enforceable. The Commission, after
9 allowing interested persons an opportunity to submit com-
10 ments, may approve any such proposed mandatory stand-
11 ard, guidance or practice, or any amendment thereto, if
12 it finds that the standard, guidance, or practice, or
13 amendment is just, reasonable, not unduly discriminatory
14 or preferential, and in the public interest. The Commission
15 may, without further proceeding or finding, grant its ap-
16 proval to any standard, guidance or practice for which no
17 substantive objections are filed in the comment period.
18 Filed standards, guidances, or practices, including any
19 amendments thereto, shall be mandatory and applicable
20 according to their terms following approval by the Com-
21 mission and shall remain in effect until (i) withdrawn, dis-
22 approved or superseded by an Organization Standard,
23 issued or approved by the Electric Reliability Organization
24 and made effective by the Commission under section (e);
25 or (ii) disapproved or suspended by the Commission if,

1 upon complaint or upon its own motion and after notice
 2 and an opportunity for comment, the Commission finds
 3 the standard, guidance or practice unjust, unreasonable,
 4 unduly discriminatory, or preferential or not in the public
 5 interest. Standards, guidances or practices in effect pursu-
 6 ant to the provisions of this subsection shall be enforceable
 7 by the Commission.

8 “(d) ORGANIZATION APPROVAL.—

9 “(1) Not later than 90 days after the date of
 10 enactment of this section, the Commission shall
 11 issue proposed rules specifying procedures and re-
 12 quirements for an entity to apply for approval as the
 13 Electric Reliability Organization. The Commission
 14 shall provide notice and opportunity for comment on
 15 the proposed rules. The Commission shall issue a
 16 final rule under this subsection within 180 days
 17 after the date of enactment of this section.

18 “(2) Following the issuance of a final Commis-
 19 sion rule under paragraph (1), an entity may submit
 20 an application to the Commission for approval as the
 21 Electric Reliability Organization. The applicant shall
 22 specify in its application its governance and proce-
 23 dures, as well as its funding mechanism and initial
 24 funding requirements.

1 “(3) The Commission shall provide public no-
2 tice of the application and afford interested parties
3 an opportunity to comment.

4 “(4) The Commission shall approve the applica-
5 tion if the Commission determines that the
6 applicant—

7 “(A) has the ability to develop, implement
8 and enforce standards that provide for an ade-
9 quate level of reliability of the Bulk-Power Sys-
10 tem;

11 “(B) permits voluntary membership to any
12 User of the Bulk-Power System or Public Inter-
13 est Group;

14 “(C) assures fair representation of its
15 members in the selection of its directors and
16 fair management of its affairs, taking into ac-
17 count the need for efficiency and effectiveness
18 in decisionmaking and operations and the re-
19 quirements for technical competency in the de-
20 velopment of Organization Standards and the
21 exercise of oversight of Bulk-Power System reli-
22 ability;

23 “(D) assures that no two Industry Sectors
24 have the ability to control, and no one Industry
25 Sector has the ability to veto, the Electric Reli-

1 ability Organization’s discharge of its respon-
2 sibilities (including actions by committees rec-
3 ommending standards to the board or other
4 board actions to implement and enforce stand-
5 ards);

6 “(E) provides for governance by a board
7 wholly comprised of independent directors;

8 “(F) provides a funding mechanism and
9 requirements that are just, reasonable and not
10 unduly discriminatory or preferential and are in
11 the public interest, and which satisfy the re-
12 quirements of subsection (I);

13 “(G) establishes procedures for develop-
14 ment of Organization Standards that provide
15 reasonable notice and opportunity for public
16 comment, taking into account the need for effi-
17 ciency and effectiveness in decisionmaking and
18 operations and the requirements for technical
19 competency in the development of Organization
20 Standards, and which standards development
21 process has the following attributes: (i) open-
22 ness, (ii) balance of interests, and (iii) due
23 process, except that the procedures may include
24 alternative procedures for emergencies;

1 “(H) establishes fair and impartial proce-
2 dures for implementation and enforcement of
3 Organization Standards, either directly or
4 through delegation to an Affiliated Regional Re-
5 liability Entity, including the imposition of pen-
6 alties, limitations on activities, functions, or op-
7 erations, or other appropriate sanctions;

8 “(I) establishes procedures for notice and
9 opportunity for public observation of all meet-
10 ings, except that the procedures for public ob-
11 servation may include alternative procedures for
12 emergencies or for the discussion of information
13 the directors determine should take place in
14 closed session, such as litigation, personnel ac-
15 tions, or commercially sensitive information;

16 “(J) provides for the consideration of rec-
17 ommendations of States and State commissions,
18 and

19 “(K) addresses other matters that the
20 Commission may deem necessary or appropriate
21 to ensure that the procedures, governance, and
22 funding of the Electric Reliability Organization
23 are just, reasonable, not unduly discriminatory
24 or preferential, and are in the public interest.

1 “(5) The Commission shall approve only one
2 Electric Reliability Organization. If the Commission
3 receives two or more timely applications that satisfy
4 the requirements of this subsection, the Commission
5 shall approve only the application it concludes will
6 best implement the provisions of this section.

7 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
8 ORGANIZATION STANDARDS.—

9 “(1) The Electric Reliability Organization shall
10 file with the Commission any new or modified Orga-
11 nization Standards, including any Variances or Enti-
12 ty Rules, and the Commission shall follow the proce-
13 dures under paragraph (2) for review of that filing.

14 “(2) Submissions under paragraph (1) shall in-
15 clude: (i) a concise statement of the purpose of the
16 proposal, and (ii) a record of any proceedings con-
17 ducted with respect to such proposal. The Commis-
18 sion shall provide notice of the filing of such pro-
19 posal and afford interested persons 30 days to sub-
20 mit comments. The Commission, after taking into
21 consideration any submitted comments, shall ap-
22 prove or disapprove such proposal not later than 60
23 day after the deadline for the submission of com-
24 ments, except that the Commission may extend the
25 60 day period for an additional 90 days for good

1 cause, and except further that if the Commission
2 does not act to approve or disapprove a proposal
3 within the foregoing periods the proposal shall go
4 into effect subject to its terms, without prejudice to
5 the authority of the Commission thereafter to sus-
6 pend or modify the proposal in accordance with the
7 standards and requirements of this section. Pro-
8 posals approved by the Commission shall take effect
9 according to their terms but not earlier than 30 days
10 after the effective date of the Commission's order,
11 except as provided in paragraph (3) of this sub-
12 section.

13 “(3)(A) In the exercise of its review responsibil-
14 ities under this subsection, the Commission shall
15 give due weight to the technical expertise of the
16 Electric Reliability Organization with respect to the
17 content of a new or modified Organization Standard,
18 but shall not defer to the Organization with respect
19 to the effect of the standard on competition. The
20 Commission shall approve a proposed new or modi-
21 fied Organization Standard if it determines the pro-
22 posal to be just, reasonable, not unduly discrimina-
23 tory or preferential, and in the public interest. The
24 Commission, either upon complaint or upon its own
25 motion, may suspend an existing Organization

1 Standard, if it determines the standard to be unjust,
2 unreasonable, unduly discriminatory or preferential
3 or not in the public interest.

4 “(B) An existing or proposed Organization
5 Standard which is disapproved or suspended in
6 whole or in part by the Commission shall be re-
7 manded to the Electric Reliability Organization for
8 further consideration.

9 “(C) The Commission, on its own motion or
10 upon complaint, may direct the Electric Reliability
11 Organization to develop an Organization Standard,
12 including modification to an existing Organization
13 Standard, addressing a specific matter by a date
14 certain if the Commission considers such new or
15 modified Organization Standard necessary or appro-
16 priate to further the purposes of this section. The
17 Electric Reliability Organization shall file any such
18 new or modified Organization Standard in accord-
19 ance with this subsection.

20 “(D) An Affiliated Regional Reliability Entity
21 may propose a Variance or Entity Rule to the Elec-
22 tric Reliability Organization. The Affiliated Regional
23 Reliability Entity may request that the Electric Reli-
24 ability Organization expedite consideration of the
25 proposal, and shall file a notice of such request with

1 the Commission, if expedited consideration is nec-
2 essary to provide for Bulk-power System reliability.
3 If the Electric Reliability Organization fails to adopt
4 the Variance or Entity Rule, either in whole or in
5 part, the Affiliated Regional Reliability Entity may
6 request that the Commission review such action. If
7 the Commission determines, after its review of such
8 a request, that the action of the Electric Reliability
9 Organization did not conform to the applicable
10 standards and procedures approved by the Commis-
11 sion, or if the Commission determines that the Vari-
12 ance of Entity Rule is just, reasonable, not unduly
13 discriminatory or preferential, and in the public in-
14 terest, and that the Electric Reliability Organization
15 has unreasonably rejected the proposed Variance or
16 Entity Rule, then the Commission may remand the
17 proposed Variance or Entity Rule for further consid-
18 eration by the Electric Reliability Organization or
19 may direct the Electric Reliability Organization or
20 the Affiliated Regional Reliability Entity to develop
21 a Variance or Entity Rule consistent with that re-
22 quested by the Affiliated Regional Reliability Entity.
23 Any such Variance or Entity Rule proposed by an
24 Affiliated Regional Reliability Entity shall be sub-
25 mitted to the Electric Reliability Organization for

1 review and filing with the Commission in accordance
2 with the procedures specified in this subsection.

3 “(E) Notwithstanding any other provision of
4 this subsection, a proposed Organization Standard
5 or amendment shall take effect according to its
6 terms if the Electric Reliability Organization deter-
7 mines that an emergency exists requiring that such
8 proposed Organization Standard or amendment take
9 effect without notice or comment. The Electric Reli-
10 ability Organization shall notify the Commission im-
11 mediately following such determination and shall file
12 such emergency Organization Standard or amend-
13 ment with the Commission not later than five days
14 following such determination and shall include in
15 such filing an explanation of the need for such emer-
16 gency standard. Subsequently, the Commission shall
17 provide notice of the Organization Standard or
18 amendment for comment, and shall follow the proce-
19 dures set out in paragraphs (2) and (3) for review
20 of the new or modified Organization Standard. Any
21 such emergency Organization Standard that has
22 gone into effect shall remain in effect unless and
23 until suspended or disapproved by the Commission.
24 If the Commission determines at any time that the
25 emergency Organization Standard or amendment is

1 not necessary, the Commission may suspend such
2 emergency Organization Standard or amendment.

3 “(4) All Users of the Bulk-Power System shall
4 comply with any Organization Standard that takes
5 effect under this section.

6 “(f) COORDINATION WITH CANADA AND MEXICO.—
7 The Electric Reliability Organization shall take all appro-
8 priate steps to gain recognition in Canada and Mexico.
9 The United States shall use its best efforts to enter into
10 international agreements with the appropriate govern-
11 ments of Canada and Mexico to provide for effective com-
12 pliance with Organization Standards and to provide for
13 the effectiveness of the Electric Reliability Organization
14 in carrying out its mission and responsibilities. All actions
15 taken by the Electric Reliability Organization, any Affili-
16 ated Regional Reliability Entity, and the Commission shall
17 be consistent with the provisions of such international
18 agreements.

19 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
20 FUNDING.—

21 “(1) The Electric Reliability Organization shall
22 file with the Commission any proposed change in its
23 procedures, governance, or funding, or any changes
24 in the Affiliated Regional Reliability Entity’s proce-
25 dures, governance or funding relating to delegated

1 functions, and shall include with the filing an expla-
2 nation of the basis and purpose for the change.

3 “(2) A proposed procedural change shall take
4 effect 90 days after filing with the Commission if
5 the change constitutes a statement of policy, prac-
6 tice, or interpretation with respect to the meaning or
7 enforcement of an existing procedure. Any other pro-
8 posed procedural change shall take effect only upon
9 a finding by the Commission, after notice and oppor-
10 tunity for comments, that the change is just, reason-
11 able, not unduly discriminatory or preferential, is in
12 the public interest, and satisfies the requirements of
13 subsection (d)(4).

14 “(3) A proposed change in governance or fund-
15 ing shall not take effect unless the Commission finds
16 that the change is just, reasonable, not unduly dis-
17 criminatory or preferential, and is in the public in-
18 terest, and satisfies the requirements of subsection
19 (d)(4).

20 “(4) The Commission, either upon complaint or
21 upon its own motion, may suspend a procedure or
22 governance or funding provision if it determines the
23 procedure or provision does not meet the require-
24 ments of subsection (d)(4) or is unjust, unreason-

1 able, unduly discriminatory or preferential, or other-
2 wise not in the public interest.

3 “(5) The Commission, upon complaint or upon
4 its own motion, may require the Electric Reliability
5 Organization to amend the procedures, governance
6 or funding if the Commission determines that the
7 amendment is necessary to meet the requirements of
8 this section. The Electric Reliability Organization
9 shall file the amendment in accordance with para-
10 graph (1) of this subsection.

11 “(h) DELEGATIONS OF AUTHORITY.—

12 “(1) The Electric Reliability Organization shall,
13 upon request by an entity, enter into an agreement
14 with such entity for the delegation of authority to
15 implement and enforce compliance with Organization
16 Standards in a specified geographic area if the Or-
17 ganization finds that the entity requesting the dele-
18 gation satisfies the requirements of subsection (d)(4)
19 (A), (B), (C), (D), (F), (J), and (K), and if the dele-
20 gation promotes the effective and efficient implemen-
21 tation and administration of Bulk-Power System re-
22 liability. The Electric Reliability Organization may
23 enter into an agreement to delegate to the entity any
24 other authority, except that the Electric Reliability

1 Organization shall reserve the right to set and ap-
2 prove standards for Bulk-Power System reliability.

3 “(2) The Electric Reliability Organization shall
4 file with the Commission any agreement entered into
5 under this subsection and any information the Com-
6 mission requires with respect to the Affiliated Re-
7 gional Reliability Entity to which authority is to be
8 delegated. The Commission shall approve the agree-
9 ment, following public notice and an opportunity for
10 comment, if it finds that the agreement meets the
11 requirements of subsection (1) above, and is just,
12 reasonable, not unduly discriminatory or pref-
13 erential, and is in the public interest. A proposed
14 delegation agreement with an Affiliated Regional Re-
15 liability Entity organized on an Interconnection-wide
16 basis shall be rebuttably presumed by the Commis-
17 sion to promote the effective and efficient implemen-
18 tation and administration of Bulk-Power System re-
19 liability. No delegation by the Electric Reliability Or-
20 ganization shall be valid unless approved by the
21 Commission.

22 “(3) A delegation agreement entered into under
23 this subsection shall specify the procedures for an
24 Affiliated Regional Reliability Entity to propose En-
25 tity Rules or Variances for review by the Electric

1 Reliability Organization. With respect to any such
2 proposal that would apply on an Interconnection-
3 wide basis, the Electric Reliability Organization shall
4 presume such proposal valid if made by an Inter-
5 connection-wide Affiliated Regional Reliability Entity
6 unless the Electric Reliability Organization makes a
7 written finding that the proposal: (i) was not devel-
8 oped in a fair and open process that provided an op-
9 portunity for all interested parties to participate; (ii)
10 has a significant adverse impact on reliability or
11 commerce in other Interconnections; (iii) fails to
12 provide a level of reliability of the Bulk-Power Sys-
13 tem within the Interconnection such that it would
14 constitute a serious and substantial threat to public
15 health, safety, welfare, or national security; or (iv)
16 creates a serious and substantial burden on competi-
17 tive markets within the Interconnection that it not
18 necessary for reliability. With respect to any such
19 proposal that would apply only to part of an Inter-
20 connection, the Electric Reliability Organization
21 shall find such proposal valid if the Affiliated Re-
22 gional Reliability Entity or Entities making the pro-
23 posal demonstrate that it: (i) was developed in a fair
24 and open process that provided an opportunity for
25 all interested parties to participate; (ii) would not

1 have an adverse impact on commerce that it not nec-
2 essary for reliability; (iii) provides a level of Bulk-
3 Power System reliability adequate to protect public
4 health, safety, welfare, and national security and
5 would not have a significant adverse impact on reli-
6 ability; and (iv) in the case of a Variance, is based
7 on legitimate differences between regions or between
8 subregions within the Affiliated Regional Reliability
9 Entity's geographic area. The Electric Reliability
10 Organization shall approve or disapprove such pro-
11 posal within 120 days, or the proposal shall be
12 deemed approved. Following approval of any such
13 proposal under this paragraph, the Electric Reli-
14 ability Organization shall seek Commission approval
15 pursuant to the procedures prescribed under sub-
16 section (e)(3). Affiliated Regional Reliability Entities
17 may not make requests for approval directly to the
18 Commission except pursuant to subsection (e)(3)(D).

19 “(4) If an Affiliated Regional Reliability Entity
20 requests, consistent with paragraph (1) of this sub-
21 section, that the Electric Reliability Organization
22 delegate authority to it, but is unable within 180
23 days to reach agreement with the Electric Reliability
24 Organization with respect to such requested delega-
25 tion, such entity may seek relief from the Commis-

1 sion. If, following notice and opportunity for com-
2 ment, the Commission determines that a delegation
3 to the entity would meet the requirements of sub-
4 section (1) above, and that the delegation would be
5 just, reasonable, not unduly discriminatory or pref-
6 erential, and in the public interest, and that the
7 Electric Reliability Organization has unreasonably
8 withheld such delegation, the Commission may, by
9 order, direct the Electric Reliability Organization to
10 make such delegation.

11 “(5) The Commission may, upon its own mo-
12 tion or upon complaint, and with notice to the ap-
13 propriate Affiliated Regional Reliability Entity or
14 Entities, direct the Electric Reliability Organization
15 to propose a modification to an agreement entered
16 into under this subsection if the Commission deter-
17 mines that:

18 “(A) the Affiliated Regional Reliability En-
19 tity no longer has the capacity to carry out ef-
20 fectively or efficiently its implementation or en-
21 forcement responsibilities under that agree-
22 ment, has failed to meet its obligations under
23 that agreement, or has violated any provision of
24 this section,

1 “(B) the rules, practices, or procedures of
2 the Affiliated Regional Reliability Entity no
3 longer provide for fair and impartial discharge
4 of its implementation or enforcement respon-
5 sibilities under the agreement,

6 “(C) the geographic boundary of a trans-
7 mission entity approved by the Commission is
8 not wholly within the boundary of an Affiliated
9 Regional Reliability Entity and such difference
10 is inconsistent with the effective and efficient
11 implementation and administration of Bulk-
12 Power System reliability, or

13 “(D) the agreement is inconsistent with
14 another delegation agreement as a result of ac-
15 tions taken under paragraph (4) of this sub-
16 section.

17 “(6) Following an order of the Commission
18 issued under paragraph (5) of this subsection, the
19 Commission may suspend the affected agreement if
20 the Electric Reliability Organization or the Affiliated
21 Regional Reliability Entity does not propose an ap-
22 propriate and timely modification. If the agreement
23 is suspended, the Electric Reliability Organization
24 shall assume the previously delegated responsibil-
25 ities. The Commission shall allow the Electric Reli-

1 ability Organization and the Affiliated Regional Reli-
2 ability Entity an opportunity to appeal the suspen-
3 sion.

4 “(i) ORGANIZATION MEMBERSHIP.—Every System
5 Operator shall be required to be a member of the Electric
6 Reliability Organization and shall be required also to be
7 a member of any Affiliated Regional Reliability Entity op-
8 erating under an agreement effective pursuant to sub-
9 section (h) applicable to the region in which the System
10 Operator operates or is responsible for the operation of
11 Bulk-Power System facilities.

12 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—

13 “(1) Consistent with the range of actions ap-
14 proved by the Commission under subsection
15 (d)(4)(H), the Electric Reliability Organization may
16 impose a penalty, limitation of activities, functions,
17 or operations, or other disciplinary action the Elec-
18 tric Reliability Organization finds appropriate
19 against a User of the Bulk-Power System if the
20 Electric Reliability Organization, after notice and an
21 opportunity for interested parties to be heard, issues
22 a finding in writing that the User of the Bulk-Power
23 System has violated an Organization Standard. The
24 Electric Reliability Organization shall immediately
25 notify the Commission of any disciplinary action im-

1 posed with respect to an act or failure to act of a
2 User of the Bulk-Power System that affected or
3 threatened to affect Bulk-Power System facilities lo-
4 cated in the United States. The sanctioned party
5 shall have the right to seek modification or rescis-
6 sion of such disciplinary action by the Commission.
7 If the Organization finds it necessary to prevent a
8 serious threat to reliability, the Organization may
9 seek injunctive relief in the United States district
10 court for the district in which the affected facilities
11 are located.

12 “(2) A disciplinary action taken under subpara-
13 graph (1) may take effect not earlier than the 30th
14 day after the Electric Reliability Organization files
15 with the Commission its written finding and record
16 of proceedings before the Electric Reliability Organi-
17 zation and the Commission posts the Organization’s
18 written finding, unless the Commission, on its own
19 motion or upon petition by the User of the Bulk-
20 Power System which is the subject of the action,
21 suspends the action. The action shall remain in ef-
22 fect or remain suspended until the Commission,
23 after notice and opportunity for hearing, affirms,
24 sets aside, modifies, or reinstates the action, but the
25 Commission shall conduct such hearing under proce-

1 dures established to ensure expedited consideration
2 of the action taken.

3 “(3) The Commission, on its own motion, or
4 upon complaint of any person, may order compliance
5 with an Organization Standard and may impose a
6 penalty, limitation of activities, functions, or oper-
7 ations, or take such other disciplinary actions as the
8 Commission finds appropriate, against a User of the
9 Bulk-Power System with respect to actions affecting
10 or threatening to affect Bulk-Power System facilities
11 located in the United States if the Commission
12 finds, after notice and opportunity for a hearing,
13 that the User of the Bulk-Power System has violated
14 or threatens to violate an Organization Standard.

15 “(4) The Commission may take such action as
16 is necessary against the Electric Reliability Organi-
17 zation or an Affiliated Regional Reliability Entity to
18 assure compliance with an Organization Standard,
19 or any Commission order affecting the Electric Reli-
20 ability Organization or an Affiliated Regional Reli-
21 ability Entity.

22 “(k) RELIABILITY REPORTS.—The Electric Reli-
23 ability Organization shall conduct periodic assessments of
24 the reliability and adequacy of the interconnected Bulk-
25 Power System in North America and shall report annually

1 to the Secretary of Energy and the Commission its find-
 2 ings and recommendations for monitoring or improving
 3 system reliability and adequacy.

4 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
 5 COSTS.—The reasonable costs of the Electric Reliability
 6 Organization, and the reasonable costs of each Affiliated
 7 Regional Reliability Entity are related to implementation
 8 and enforcement of Organization Standards or other re-
 9 quirements contained in a delegation agreement approved
 10 under subsection (h), shall be assessed by the Electric Re-
 11 liability Organization and each Affiliated Regional Reli-
 12 ability Entity, respectively, taking into account the rela-
 13 tionship of costs to each region and based on an allocation
 14 that reflects an equitable sharing of the costs among all
 15 end-users. The Commission shall provide by rule for the
 16 review of such costs and allocations, pursuant to the
 17 standards in this subsection and subsection (d)(4)(F).”.

18 (b) ENFORCEMENT.—Sections 316 and 316A of the
 19 Federal Power Act are amended by striking “or 214” each
 20 place it appears and inserting “214, or 221”.

21 **SEC. 302. APPLICATION OF ANTITRUST LAWS.**

22 Notwithstanding any other provision of law, the fol-
 23 lowing activities are rebuttably presumed to be in compli-
 24 ance with the antitrust laws of the United States.

1 (1) Activities undertaken by the Electric Reli-
2 ability Organization under section 221 of the Fed-
3 eral Power Act or Affiliated Regional Reliability En-
4 tity operating under an agreement in effect under
5 section 221(h) of the Federal Power Act.

6 (2) Activities of a member of the Electric Reli-
7 ability Organization or Affiliated Regional Reliability
8 Entity in pursuit of organization objectives under
9 section 221 of the Federal Power Act undertaken in
10 good faith under the rules of the organization. Pri-
11 mary jurisdiction, and immunities and other affirm-
12 ative defenses, shall be available to the extent other-
13 wise applicable.

14 **SEC. 303. SAVINGS CLAUSE.**

15 Nothing in this title shall be construed to preempt
16 the authority of a State to take action to ensure the reli-
17 ability, adequacy or safety of electric facilities within the
18 State, except where the exercise of such authority has a
19 material adverse impact on the reliable operation of the
20 bulk power system.

21 **SEC. 304. REGIONAL ADVISORY ROLE.**

22 (a) ESTABLISHMENT.—The Secretary of Energy
23 shall establish a regional advisory body on the petition of
24 the Governors of at least two-thirds of the States within

1 a region that have more than one-half of their electrical
2 loads served within the region.

3 (b) MEMBERSHIP.—A regional advisory body—

4 (1) shall be composed of one member from each
5 State in the region, appointed by the Governor of
6 each State in the region; and

7 (2) may include representatives of agencies,
8 States, and provinces outside the United States,
9 upon execution of an appropriate international
10 agreement described in Section 221(f) of the Federal
11 Power Act.

12 (c) FUNCTIONS.—A regional advisory body may pro-
13 vide advice to an affiliated regional reliability entity, the
14 electric reliability organization, or the Commission
15 regarding—

16 (1) the governance of an affiliated regional reli-
17 ability entity existing or proposed within a region;

18 (2) whether a standard proposed to apply with-
19 in the region is just, reasonable, not unduly discrimi-
20 natory or preferential and in the public interest; and

21 (3) whether fees proposed to be assessed within
22 the region are—

23 (A) just, reasonable, not unduly discrimi-
24 natory or preferential, and in the public inter-
25 est; and

1 (B) consistent with the requirements of
 2 Section 221(l) of the Federal Power Act.

3 (d) DEFERENCE.—In a case in which a regional advi-
 4 sory body encompasses an entire Interconnection, the
 5 Commission may give deference to the recommendations
 6 of the regional advisory body that are provided for in sub-
 7 section (c).

8 **SEC. 305. APPLICATION.**

9 The provisions of this Title do not apply to Alaska
 10 or Hawaii.

11 **TITLE IV—REPEAL OF THE PUB-**
 12 **LIC UTILITY HOLDING COM-**
 13 **PANY ACT OF 1935 AND EN-**
 14 **ACTMENT OF THE PUBLIC**
 15 **UTILITY HOLDING COMPANY**
 16 **ACT OF 1999**

17 **SEC. 401. SHORT TITLE.**

18 This Title may be cited as the “Public Utility Hold-
 19 ing Company Act of 1999”.

20 **SEC. 402. FINDINGS AND PURPOSES.**

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

22 (1) the Public Utility Holding Company Act of
 23 1935 was intended to facilitate the work of Federal
 24 and State regulators by placing certain constraints
 25 on the activities of holding company systems;

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

6 (3) there is a continuing need for State regula-
7 tion in order to ensure the rate protection of utility
8 customers; and

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

13 (b) PURPOSES.—The purposes of this Title are—

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

23 (2) to address protection of electric and gas
24 utility customers by providing for Federal and State
25 access to books and records of all companies in a

1 holding company system that are relevant to utility
2 rates.

3 **SEC. 403. DEFINITIONS.**

4 For the purposes of this Title—

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

10 (2) the term “associated company” of a com-
11 pany means any company in the same holding com-
12 pany system with such company;

13 (3) the term “Commission” means the Federal
14 Energy Regulatory Commission;

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

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

24 (6) the terms “exempt wholesale generator”
25 and “foreign utility company” have the same mean-

1 ings as in sections 32 and 33, respectively, of the
2 Public Utility Holding Company Act of 1935, as
3 those sections existed on the day before the effective
4 date of this Act;

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

13 (8) the term “holding company” means—

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

19 (B) any person, determined by the Com-
20 mission, after notice and opportunity for hear-
21 ing, to exercise directly or indirectly (either
22 alone or pursuant to an arrangement or under-
23 standing with one or more persons) such a con-
24 trolling influence over the management or poli-
25 cies of any public utility company or holding

1 company as to make it necessary or appropriate
2 for the rate protection of utility customers with
3 respect to rates that such person be subject to
4 the obligations, duties, and liabilities imposed
5 by this Title upon holding companies;

6 (9) the term “holding company system” means
7 a holding company, together with its subsidiary com-
8 panies;

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

18 (11) the term “natural gas company” means a
19 person engaged in the transportation of natural gas
20 in interstate commerce or the sale of such gas in
21 interstate commerce for resale;

22 (12) the term “person” means an individual or
23 company;

24 (13) the term “public utility” means any person
25 who owns or operates facilities used for transmission

1 of electric energy in interstate commerce or sales of
2 electric energy at wholesale in interstate commerce;

3 (14) the term “public utility company” means
4 an electric utility company or a gas utility company;

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

11 (16) the term “subsidiary company” of a hold-
12 ing company means—

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

18 (B) any person, the management or poli-
19 cies of which the Commission, after notice and
20 opportunity for hearing, determines to be sub-
21 ject to a controlling influence, directly or indi-
22 rectly, by such holding company (either alone or
23 pursuant to an arrangement or understanding
24 with one or more other persons) so as to make
25 it necessary for the rate protection of utility

1 customers with respect to rates that such per-
 2 son be subject to the obligations, duties, and li-
 3 abilities imposed by this Title upon subsidiary
 4 companies of holding companies; and

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

9 **SEC. 404. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
 10 **PANY ACT OF 1935.**

11 The Public Utility Holding Company Act of 1935 (15
 12 U.S.C. 79a et seq.) is repealed, effective one year after
 13 the date of enactment of this Title.

14 **SEC. 405. FEDERAL ACCESS TO BOOKS AND RECORDS.**

15 (a) IN GENERAL.—Each holding company and each
 16 associate company thereof shall maintain, and shall make
 17 available to the Commission, such books, accounts, memo-
 18 randa, and other records as the Commission deems to be
 19 relevant to costs incurred by a public utility or natural
 20 gas company that is an associate company of such holding
 21 company and necessary or appropriate for the protection
 22 of utility customers with respect to jurisdictional rates for
 23 the transmission of electric energy in interstate commerce,
 24 the sale of electric energy at wholesale in interstate com-
 25 merce, the transportation of natural gas in interstate com-

1 merce, and the sale in interstate commerce of natural gas
2 for resale for ultimate public consumption for domestic,
3 commercial, industrial, or any other use.

4 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
5 ing company or of any subsidiary company of a holding
6 company shall maintain, and make available to the Com-
7 mission, such books, accounts, memoranda, and other
8 records with respect to any transaction with another affil-
9 iate, as the Commission deems to be relevant to costs in-
10 curred by a public utility or natural gas company that is
11 an associate company of such holding company and nec-
12 essary or appropriate for the protection of utility cus-
13 tomers with respect to jurisdictional rates.

14 (c) HOLDING COMPANY SYSTEMS.—The Commission
15 may examine the books, accounts, memoranda, and other
16 records of any company in a holding company system, or
17 any affiliate thereof, as the Commission deems to be rel-
18 evant to costs incurred by a public utility or natural gas
19 company within such holding company system and nec-
20 essary or appropriate for the protection of utility cus-
21 tomers with respect to jurisdictional rates.

22 (d) CONFIDENTIALITY.—No member, officer, or em-
23 ployee of the Commission shall divulge any fact or infor-
24 mation that may come to his or her knowledge during the
25 course of examination of books, accounts, memoranda, or

1 other records as provided in this section, except as may
2 be directed by the Commission or by a court of competent
3 jurisdiction.

4 **SEC. 406. STATE ACCESS TO BOOKS AND RECORDS.**

5 (a) IN GENERAL.—Upon the written request of a
6 State commission having jurisdiction to regulate a public
7 utility company in a holding company system, the holding
8 company or any associate company or affiliate thereof,
9 other than such public utility company, wherever located,
10 shall produce for inspection books, accounts, memoranda,
11 and other records that—

12 (1) have been identified in reasonable detail in
13 a proceeding before the State commission;

14 (2) the State commission deems are relevant to
15 costs incurred by such public utility company; and

16 (3) are necessary for the effective discharge of
17 the responsibilities of the State commission with re-
18 spect to such proceedings.

19 (b) LIMITATION.—Subsection (a) does not apply to
20 any person that is a holding company solely by reason of
21 ownership of one or more qualifying facilities under the
22 Public Utility Regulatory Policies Act.

23 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
24 duction of books, accounts, memoranda, and other records
25 under subsection (a) shall be subject to such terms and

1 conditions as may be necessary and appropriate to safe-
 2 guard against unwarranted disclosure to the public of any
 3 trade secrets or sensitive commercial information.

4 (d) EFFECT ON STATE LAW.—Nothing in this sec-
 5 tion shall preempt applicable State law concerning the pro-
 6 vision of books, records, or any other information, or in
 7 any way limit the rights of any State to obtain books,
 8 records, or any other information under any other Federal
 9 law, contract, or otherwise.

10 (e) COURT JURISDICTION.—Any United States dis-
 11 trict court located in the State in which the State commis-
 12 sion referred to in subsection (a) is located shall have ju-
 13 risdiction to enforce compliance with this section.

14 **SEC. 407. EXEMPTION AUTHORITY.**

15 (a) RULEMAKING.—Not later than 90 days after the
 16 effective date of this Title, the Commission shall promul-
 17 gate a final rule to exempt from the requirements of sec-
 18 tion 405 any person that is a holding company, solely with
 19 respect to one or more—

20 (1) qualifying facilities under the Public Utility
 21 Regulatory Policies Act of 1978;

22 (2) exempt wholesale generators; or

23 (3) foreign utility companies.

24 (b) OTHER AUTHORITY.—If, upon application or
 25 upon its own motion, the Commission finds that the books,

1 records, accounts, memoranda, and other records of any
2 person are not relevant to the jurisdictional rates of a pub-
3 lic utility or natural gas company, or if the Commission
4 finds that any class of transactions is not relevant to the
5 jurisdictional rates of a public utility or natural gas com-
6 pany, the Commission's shall exempt such person or trans-
7 action from the requirements of section 405.

8 **SEC. 408. AFFILIATE TRANSACTIONS.**

9 Nothing in this Title shall preclude the Commission
10 or a State commission from exercising its jurisdiction
11 under otherwise applicable law to determine whether a
12 public utility company, public utility, or natural gas com-
13 pany may recover in rates any costs of an activity per-
14 formed by an associate company, or any costs of goods
15 or services acquired by such public utility company from
16 an associate company.

17 **SEC. 409. APPLICABILITY.**

18 No provision of this Title shall apply to, or be deemed
19 to include—

20 (1) the United States;

21 (2) a State or any political subdivision of a
22 State;

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

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

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

7 **SEC. 410. EFFECT ON OTHER REGULATIONS.**

8 Nothing in this Title precludes the Commission or a
9 State commission from exercising its jurisdiction under
10 otherwise applicable law to protect utility customers.

11 **SEC. 411. ENFORCEMENT.**

12 The Commission shall have the same powers as set
13 forth in sections 306 through 317 of the Federal Power
14 Act (16 U.S.C. 825d–825p) to enforce the provisions of
15 this Title.

16 **SEC. 412. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this Title prohibits a
18 person from engaging in or continuing to engage in activi-
19 ties or transactions in which it is legally engaged or au-
20 thorized to engage on the effective date of this Title.

21 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
22 Nothing in this Title limits the authority of the Commis-
23 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
24 (including section 301 of that Act) or the Natural Gas

1 Act (15 U.S.C. 717 et seq.) (including section 8 of that
2 Act).

3 **SEC. 413. IMPLEMENTATION.**

4 Not later than 6 months after the date of enactment
5 of this Title, the Commission shall—

6 (1) promulgate such regulations as may be nec-
7 essary or appropriate to implement this Title (other
8 than section 6); and

9 (2) submit to Congress detailed recommenda-
10 tions on technical and conforming amendments to
11 Federal law necessary to carry out this Title and the
12 amendments made by this Title.

13 **SEC. 414. TRANSFER OF RESOURCES.**

14 All books and records that relate primarily to the
15 functions transferred to the Commission under this Title
16 shall be transferred from the Securities and Exchange
17 Commission to the Commission.

18 **SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such funds
20 as may be necessary to carry out this Title.

21 **SEC. 416. CONFORMING AMENDMENT TO THE FEDERAL**
22 **POWER ACT.**

23 Section 318 of the Federal Power Act (16 U.S.C.
24 825q) is repealed.

TITLE V—NUCLEAR DECOMMISSIONING

SEC. 501. SHORT TITLE.

This Title may be cited as the “Nuclear Decommissioning Assurance Act”.

SEC. 502. DEFINITIONS.

In this Act:

(1) DECOMMISSION.—The term “decommission” has the meaning given the term in section 50.2 of title 10, Code of Federal Regulations (or any successor regulation).

(2) DECOMMISSIONING OBLIGATION.—The term “decommissioning obligation” means the obligation to pay costs associated with the measures necessary to ensure the continued protection of the public from the dangers of any residual radioactivity or other hazards present at a facility when a nuclear unit is decommissioned, as defined in 10 CFR § 50.2, including, but not limited to, all costs of entombing, decontaminating, dismantling, removing and disposing of a nuclear power plant, including all decommissioning and associated preparation, security, and radiation monitoring expenses and post-shutdown spent nuclear fuel storage.

1 (3) NUCLEAR DECOMMISSIONING TRUST
 2 FUND.—The term “nuclear decommissioning trust
 3 fund” has the meaning given the term “external
 4 sinking fund” in section 50.75(e)(1)(ii) of title 10,
 5 Code of Federal Regulations (or any successor regu-
 6 lation).

7 (4) STATE COMMISSION.—The term “State
 8 commission” has the meaning given the term in sec-
 9 tion 3 of the Federal Power Act.

10 **SEC. 503. NRC DECOMMISSIONING DETERMINATION.**

11 (a) PETITION.—

12 (1) IN GENERAL.—A licensee under part 50 of
 13 title 10, Code of Federal Regulations may petition
 14 the Nuclear Regulatory Commission for a deter-
 15 mination of whether—

16 (A) adequate amounts have been deposited
 17 or are being deposited in the nuclear decommis-
 18 sioning trust fund of the licensee; and

19 (B) the future funding for any nuclear
 20 power plant owned in whole or in part by the
 21 licensee is assured.

22 (2) CONTENTS.—A petition under paragraph
 23 (1) shall disclose—

24 (A) the licensee’s current minimum
 25 amount established by the Nuclear Regulatory

1 Commission under section 50.75 of title 10,
2 Code of Federal Regulations for each facility
3 for which the licensee holds a license;

4 (B) the currently effective rates to recover
5 costs for decommissioning obligations as estab-
6 lished by the Commission or State commissions,
7 as appropriate;

8 (C) the amount that has been accumulated
9 in the nuclear decommissioning trust fund;

10 (D) the planned rate and timing of collec-
11 tion of the costs of the decommissioning obliga-
12 tions through the projected useful life of the fa-
13 cility; and

14 (E) any other information pertinent to
15 evaluating the assurance of funding of the nu-
16 clear decommissioning trust fund.

17 (b) DETERMINATION.—Not later than 180 days of
18 receipt of a petition under paragraph (1), the Nuclear
19 Regulatory Commission shall issue a determination re-
20 garding whether the nuclear decommissioning trust fund
21 and the currently approved level of rates to recover the
22 costs of the decommissioning obligation are adequate to
23 ensure full and safe decommissioning of the facility. If the
24 Commission determines that there is not currently ade-

1 quate recovery, it shall specify the amounts needed to
2 make the recovery adequate.

3 (c) CONSIDERATIONS.—In making a determination
4 under subsection (b), the Nuclear Regulatory Commission
5 shall consider—

6 (1) the current level of funds in the nuclear de-
7 commissioning trust fund;

8 (2) the adequacy of the currently approved
9 rates to recover the costs of the decommissioning ob-
10 ligation;

11 (3) the assurance of continuing recovery of such
12 costs through rates;

13 (4) the timing of the recovery of such costs rel-
14 ative to the projected useful life of the plant; and

15 (5) any other information that the Nuclear
16 Regulatory Commission considers pertinent to deter-
17 mination of the necessary assurance of adequate
18 funding.

19 (d) ADEQUACY OF MINIMUM AMOUNTS.—Nothing in
20 this Act precludes the Nuclear Regulatory Commission
21 from revising or reconsidering the adequacy of the min-
22 imum amounts established under section 50.75(c) of title
23 10, Code of Federal Regulations.

1 (e) NOTICE.—The Nuclear Regulatory Commission
 2 shall issue notice of its finding to the licensee, the Federal
 3 Regulatory Commission, and any other party of record.

4 **SEC. 504. AMENDMENTS TO THE FEDERAL POWER ACT.**

5 (a) DECLARATION.—Section 201 of the Federal
 6 Power Act is amended by adding at the end the following:

7 “(h) DECLARATION REGARDING DECOMMISS-
 8 SIONING.—The decommissioning of nuclear power plants
 9 licensed by the Nuclear Regulatory Commission is affected
 10 with a public interest, and the Federal regulation of mat-
 11 ters relating to decommissioning of nuclear power plants,
 12 to the extent provided in this part, is necessary in the pub-
 13 lic interest.”.

14 (b) NUCLEAR DECOMMISSIONING ASSURANCE.—The
 15 Federal Power Act is amended by adding the following:

16 **“SEC. 222. NUCLEAR DECOMMISSIONING ASSURANCE.**

17 “(a) RECOVERY OF ADEQUATE DECOMMISSIONING
 18 REVENUES IN TRANSMISSION OR WHOLESALE RATES.—
 19 Any entity, including a public power entity, responsible for
 20 decommissioning a nuclear power plant in whole or in
 21 part, and which has obtained a finding from the Nuclear
 22 Regulatory Commission pursuant to section 503(b) of the
 23 Nuclear Decommissioning Assurance Act, may apply to
 24 the Commission for an order under this subsection, pursu-
 25 ant to sections 205 and 206 of this Part, approving rates

1 and charges in connection with the transmission or whole-
2 sale sale of electric energy subject to the Commission's
3 jurisdiction, to collect all or part of the revenues necessary
4 to meet the revenue requirement determined by the NRC
5 to be necessary to assure adequate funding of the entity's
6 nuclear decommissioning obligations. In issuing an order
7 under this subsection, the Commission shall find to be just
8 and reasonable, prudently incurred, the recoverable in
9 transaction or wholesale rates the decommissioning costs
10 and revenue requirements determined to be necessary by
11 the NRC pursuant to 10 C.F.R. § 50.75 and Section 503
12 of the Nuclear Decommissioning Assurance Act.

13 “(b) RECOVERY OF ADEQUATE DECOMMISSIONING
14 REVENUES.—In issuing an order under subsection (a), ap-
15 proving rates and charges in connection with the trans-
16 mission or wholesale sale of electricity, the Commission
17 shall find to be just and reasonable, prudently incurred,
18 and recoverable through a nonbypassable charge or rate
19 the remainder of the decommissioning costs and revenue
20 requirements (determined to be necessary by the NRC
21 pursuant to 10 C.F.R. § 50.75 and section 503 of the Nu-
22 clear Decommissioning Assurance Act) and not recovered
23 under subsection(a). The Commission is authorized to en-
24 force and shall enforce any rule or order issued pursuant

- 1 to this subsection in order to ensure collection of adequate
- 2 decommissioning revenues.”.

