

106TH CONGRESS
2D SESSION

S. 2570

To provide for the fair and equitable treatment of the Tennessee Valley Authority and its ratepayers in the event of restructuring of the electric utility industry.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2000

Mr. FRIST (for himself, Mr. THOMPSON, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the fair and equitable treatment of the Tennessee Valley Authority and its ratepayers in the event of restructuring of the electric utility industry.

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. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”
6 means the Federal Energy Regulatory Commission.

7 (2) DISTRIBUTOR.—The term “distributor”
8 means a cooperative organization, municipal, or
9 other publicly owned electric power system that, on

1 December 31, 1997, purchased all or substantially
2 all of its wholesale power requirements from the
3 Tennessee Valley Authority under a long-term power
4 sales agreement.

5 (3) DISTRIBUTOR SERVICE AREA.—The term
6 “distributor service area” means a geographic area
7 within which a distributor is authorized by State law
8 to sell electric power to retail electric consumers on
9 the date of enactment of this Act.

10 (4) ELECTRIC UTILITY.—The term “electric
11 utility” has the meaning given the term in section
12 3 of the Federal Power Act (16 U.S.C. 796).

13 (5) EXCESS ELECTRIC POWER.—The term “ex-
14 cess electric power” means the amount of the elec-
15 tric power and capacity that—

16 (A) is available to the Tennessee Valley
17 Authority; and

18 (B) exceeds the Tennessee Valley
19 Authority’s power supply obligations to dis-
20 tributors and any Tennessee Valley Authority
21 retail electric consumers (or predecessors in in-
22 terest) that had a contract for the purchase of
23 electric power from the Tennessee Valley Au-
24 thority on the date of enactment of this Act.

1 (6) PUBLIC UTILITY.—The term “public util-
2 ity” has the meaning given the term in section 201
3 of the Federal Power Act (16 U.S.C. 824).

4 (7) RETAIL ELECTRIC CONSUMER.—The term
5 “retail electric consumer” has the meaning given the
6 term in section 3 of the Federal Power Act (16
7 U.S.C. 796).

8 (8) TENNESSEE VALLEY REGION.—The term
9 “Tennessee Valley Region” means the geographic
10 area in which the Tennessee Valley Authority or its
11 distributors were the primary source of electric
12 power on December 31, 1997.

13 **SEC. 2. WHOLESALE COMPETITION IN THE TENNESSEE**
14 **VALLEY REGION.**

15 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

16 (1) WHEELING ORDERS.—Section 212(f) of the
17 Federal Power Act (16 U.S.C. 824k(f)) is repealed.

18 (2) TRANSMISSION.—Section 212(j) of the Fed-
19 eral Power Act (16 U.S.C. 824k(j)) is repealed.

20 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
21 THORITY ACT.—

22 (1) SALE OR DELIVERY OF ELECTRIC POWER.—
23 The third sentence of the first undesignated para-
24 graph of section 15d(a) of the Tennessee Valley Au-

1 thority Act of 1933 (16 U.S.C. 831n–4(a)) is re-
2 pealed.

3 (2) **ADDITIONAL AMENDMENTS.**—The second
4 and third undesignated paragraphs of section 15d(a)
5 of the Tennessee Valley Authority Act of 1933 (16
6 U.S.C. 831n–4(a)) are repealed.

7 **SEC. 3. TENNESSEE VALLEY AUTHORITY POWER SALES.**

8 (a) **LIMIT ON RETAIL SALES BY TENNESSEE VALLEY**
9 **AUTHORITY.**—Notwithstanding sections 10, 11, and 12 of
10 the Tennessee Valley Authority Act (16 U.S.C. 831i, 831j,
11 831k), the Tennessee Valley Authority may sell electric
12 power at retail only to—

13 (1) a retail electric consumer (or predecessor in
14 interest) that had a contract for the purchase of
15 electric power from the Tennessee Valley Authority
16 on the date of enactment of this Act; or

17 (2) a retail electric consumer that consumes the
18 electric power within a distributor service area, if the
19 applicable regulatory authority (other than the Ten-
20 nessee Valley Authority) permits any other power
21 supplier to sell electric power to the retail electric
22 consumer.

23 (b) **CONSTRUCTION OF RETAIL ELECTRIC SERVICE**
24 **FACILITIES.**—No person shall construct or modify a facil-
25 ity in the service area of a distributor for the purpose of

1 serving a retail electric consumer within the distributor
2 service area without the consent of the distributor, except
3 when the electric consumer is already being served by such
4 a person.

5 (c) WHOLESALE POWER SALES.—

6 (1) EXISTING SALES.—Nothing in this title
7 shall modify or alter the existing obligations of the
8 Tennessee Valley Authority under the first sentence
9 of section 10 of the Tennessee Valley Authority Act
10 (16 U.S.C. 831i) to sell power to a distributor, pro-
11 vided that this paragraph shall not apply to access
12 to power being supplied to another entity under an
13 existing contract with a term of 1 year or longer by
14 a distributor that—

15 (A) has made a prior election under sec-
16 tion 5(b); and

17 (B) requests to increase its power pur-
18 chases from the Tennessee Valley Authority.

19 (2) SALES OF EXCESS ELECTRIC POWER.—

20 (A) IN GENERAL.—Notwithstanding sec-
21 tions 10, 11, and 12, or any other provision of
22 the Tennessee Valley Authority Act of 1933 (16
23 U.S.C. 831i, 831j, 831k), the sale of electric
24 power at wholesale by the Tennessee Valley Au-

1 thority for use outside the Tennessee Valley Re-
2 gion shall be limited to excess electric power.

3 (B) NO EXCESS ELECTRIC POWER.—The
4 Tennessee Valley Authority shall not offer ex-
5 cess electric power under a firm power agree-
6 ment with a term of 3 or more years to any
7 new wholesale customer at rates, terms, and
8 conditions more favorable than those offered to
9 any distributor for comparable electric power,
10 taking into account such factors as the amount
11 of electric power sold, the firmness of such
12 power, and the length of the contract term, un-
13 less the distributor or distributors that are pur-
14 chasing electric power under equivalent firm
15 power contracts agree to the sale to the new
16 customer.

17 (C) NO EFFECT ON EXCHANGE POWER AR-
18 RANGEMENTS.—Nothing in this subsection pre-
19 cludes the Tennessee Valley Authority from
20 making exchange power arrangements with
21 other electric utilities when economically fea-
22 sible.

23 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
24 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
25 GION.—The third proviso of section 10 of the Tennessee

1 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
2 second and third provisos of section 12 of the Tennessee
3 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
4 apply to any sale of excess electric power by the Tennessee
5 Valley Authority for use outside the Tennessee Valley Re-
6 gion.

7 **SEC. 4. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
8 **ERATION FACILITIES.**

9 Section 15d(a) of the Tennessee Valley Authority Act
10 of 1933 (16 U.S.C. 831n-4(a)) is amended—

11 (1) in the second sentence, by inserting before
12 the period at the end the following: “, if the Cor-
13 poration determines that the construction, acquisi-
14 tion, enlargement, improvement, or replacement of
15 any plant or facility used or to be used for the gen-
16 eration of electric power is necessary to supply the
17 demands of distributors and retail electric consumers
18 of the Corporation”; and

19 (2) by inserting after the second sentence the
20 following: “Commencing on the date of enactment of
21 this sentence, the Tennessee Valley Authority shall
22 provide to distributors and their duly authorized rep-
23 resentatives, on a confidential basis, detailed infor-
24 mation on its projections and plans regarding the
25 potential acquisition of new electric generating facili-

1 ties, and, not less than 45 days before a decision by
2 the Tennessee Valley Authority to make such an ac-
3 quisition, shall provide distributors an opportunity to
4 comment on the acquisition. Notwithstanding any
5 other provision of law, confidential information de-
6 scribed in the preceding sentence shall not be dis-
7 closed by a distributor to a source other than the
8 Tennessee Valley Authority, except (1) in response
9 to process validly issued by any court or govern-
10 mental agency having jurisdiction over the dis-
11 tributor; (2) to any officer, agent, employee, or duly
12 authorized representative of a distributor who agrees
13 to the same confidentiality and non-disclosure obli-
14 gation applicable to distributor; (3) in any judicial or
15 administrative proceeding initiated by distributor
16 contesting action by the Tennessee Valley Authority
17 to cause the construction of new electric generation
18 facilities; or (4) on or after a date that is at least
19 3 years after the commercial operating date of the
20 electric generating facilities.”.

21 **SEC. 5. RENEGOTIATION OF POWER CONTRACTS.**

22 (a) RENEGOTIATION.—The Tennessee Valley Author-
23 ity and the distributors shall make good faith efforts to
24 renegotiate their power contracts in effect on and after
25 the date of enactment of this Act.

1 (b) DISTRIBUTOR CONTRACT TERMINATION OR RE-
2 DUCTION RIGHT.—If a distributor and the Tennessee Val-
3 ley Authority are unable by negotiation to arrive at a mu-
4 tually acceptable replacement contract to govern their
5 post-enactment relationship, the Tennessee Valley Author-
6 ity shall allow the distributor to give notice 1 time each
7 calendar year, within the 60-day period beginning on the
8 date of enactment of this Act or on any anniversary of
9 that date, of the distributor’s decision to (1) terminate the
10 contract to purchase wholesale electric energy from the
11 Tennessee Valley Authority that was in effect on the date
12 of enactment of this Act, to take effect on the date that
13 is 3 years after the date on which notice is given under
14 this subsection; or (2) reduce the quantity of wholesale
15 power requirements under the contract to purchase whole-
16 sale electric energy from the Tennessee Valley Authority
17 that was in effect on the date of enactment of this Act
18 by up to 10 percent of its requirements, to take effect on
19 the date that is 2 years after the date on which notice
20 is given under this subsection, or more than 10 percent
21 of its requirements, to take effect on the date that is 3
22 years after the date on which notice is given under this
23 subsection, and to negotiate with the Tennessee Valley Au-
24 thority to amend the contract that was in effect on the

1 date of enactment to reflect a partial requirements rela-
2 tionship.

3 (c) PARTIAL REQUIREMENTS NOTICE.—As part of a
4 notice under subsection (b), a distributor shall identify—

5 (1) the annual quantity of electric energy that
6 the distributor will acquire from a source other than
7 the Tennessee Valley Authority as the result of an
8 election by the distributor; and

9 (2) the times of the day and year that specified
10 amounts of the energy will be received by the dis-
11 tributor.

12 (d) NONDISCRIMINATION.—The Tennessee Valley
13 Authority shall not unduly discriminate against any dis-
14 tributor as the result of—

15 (1) the exercise of notice under paragraph (1)
16 or (2) of subsection (b) by the distributor; or

17 (2) the status of the distributor as a partial re-
18 quirements customer.

19 **SEC. 6. REGULATION OF TENNESSEE VALLEY AUTHORITY**
20 **TRANSMISSION SYSTEM.**

21 Notwithstanding sections 201(b)(1) and 201(f) of the
22 Federal Power Act (16 U.S.C. 824(b)(1), 824(f)), sections
23 202(h), 205, 206, 208, 210 through 213, 301 through
24 304, 306, 307 (except the last sentence of 307(c)), 308,
25 309, 313, and 317 of that Act (16 U.S.C. 824a(h), 824d,

1 824e, 824g, 824i–824l, 825–825c, 825e, 825f, 825g,
 2 825h, 825l, 825p) apply to the transmission and local dis-
 3 tribution of electric power by the Tennessee Valley Au-
 4 thority to the same extent and in the same manner as
 5 the provisions apply to the transmission of electric power
 6 in interstate commerce by a public utility otherwise sub-
 7 ject to the jurisdiction of the Commission under part II
 8 of that Act (16 U.S.C. 824 et seq.).

9 **SEC. 7. REGULATION OF TENNESSEE VALLEY AUTHORITY**
 10 **DISTRIBUTORS.**

11 (a) ELECTION TO REPEAL TENNESSEE VALLEY AU-
 12 THORITY REGULATION OF DISTRIBUTORS.—On the elec-
 13 tion of a distributor, the third proviso of section 10 of
 14 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
 15 831i) and the second and third provisos of section 12 of
 16 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
 17 831k) shall not apply to a wholesale sale of electric power
 18 by the Tennessee Valley Authority in the Tennessee Valley
 19 Region after the date of enactment of this Act, and the
 20 Tennessee Valley Authority shall not be authorized to reg-
 21 ulate, by means of a rule, contract provision, resale rate
 22 schedule, contract termination right, or any other method,
 23 any rate, term, or condition that is—

24 (1) imposed on the resale of the electric power
 25 by the distributor; or

1 (2) for the use of a local distribution facility.

2 (b) AUTHORITY OF GOVERNING BODIES OF DIS-
3 TRIBUTORS.—

4 (1) IN GENERAL.—Any regulatory authority ex-
5 ercised by the Tennessee Valley Authority over any
6 distributor making an election under subsection (a)
7 shall be exercised by the governing body of the dis-
8 tributor in accordance with the laws of the State in
9 which the distributor is organized.

10 (2) NO ELECTION.—If a distributor does not
11 make an election under subsection (a), the third pro-
12 viso of section 10 of the Tennessee Valley Authority
13 Act of 1933 (16 U.S.C. 831i) and the second and
14 third provisos of section 12 of the Tennessee Valley
15 Authority Act of 1933 (16 U.S.C. 831k) shall con-
16 tinue to apply for the duration of any wholesale
17 power contract between the Tennessee Valley Au-
18 thority and the distributor, in accordance with the
19 terms of the contract.

20 (c) USE OF FUNDS.—In any contract between the
21 Tennessee Valley Authority and a distributor for the pur-
22 chase of at least 70 percent of the distributor's require-
23 ments for the sale of electric power, the Tennessee Valley
24 Authority shall include such terms and conditions as may
25 be reasonably necessary to ensure that the financial bene-

1 fits of a distributor's electric system operations are allo-
2 cated to the distributor's retail electric consumers.

3 (d) REMOVAL OF PURPA RATEMAKING AUTHOR-
4 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
5 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
6 striking “, and in the case of an electric utility with re-
7 spect to which the Tennessee Valley Authority has rate-
8 making authority, such term means the Tennessee Valley
9 Authority”.

10 **SEC. 8. STRANDED COST RECOVERY.**

11 (a) COMMISSION JURISDICTION.—

12 (1) RECOVERY OF COSTS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), notwithstanding the absence of 1 or
15 more provisions addressing wholesale stranded
16 cost recovery in a power sales agreement be-
17 tween the Tennessee Valley Authority and a
18 distributor that is executed after the date of en-
19 actment of this Act, the Tennessee Valley Au-
20 thority may recover any wholesale stranded
21 costs that may arise from the exercise of rights
22 by a distributor under section 5, to the extent
23 authorized by the Commission based on applica-
24 tion of the rules and principles that the Com-
25 mission applies to wholesale stranded cost re-

1 covery by other electric utilities within its juris-
2 diction.

3 (B) NO RECOVERY OF COSTS RELATED TO
4 LOSS OF SALES REVENUES.—In any recovery
5 under subparagraph (A), the Tennessee Valley
6 Authority shall not be authorized to recover
7 from any distributor any wholesale stranded
8 costs related to loss of sales revenues by the
9 Tennessee Valley Authority, or its expectation
10 of continuing to sell electric energy, for any pe-
11 riod after September 30, 2007.

12 (2) NO EFFECT ON CLAIM.—The exercise of
13 rights by a distributor under section 5 shall not af-
14 fect any claim by the Tennessee Valley Authority
15 that the Tennessee Valley Authority may have for
16 the recovery of stranded costs before October 1,
17 2007.

18 (b) DEBT.—

19 (1) IN GENERAL.—Stranded costs recovered by
20 the Tennessee Valley Authority under subsection (a)
21 shall be used to pay down the debt of the Tennessee
22 Valley Authority, to the extent determined by the
23 Tennessee Valley Authority to be consistent with
24 proper financial management.

1 (2) GENERATION CAPACITY.—The Tennessee
2 Valley Authority shall not use any amount recovered
3 under paragraph (1) to pay for additions to the gen-
4 eration capacity of the Tennessee Valley Authority.

5 (c) UNBUNDLING.—

6 (1) IN GENERAL.—Any stranded cost recovery
7 charge to a customer authorized by the Commission
8 to be assessed by the Tennessee Valley Authority
9 shall be—

10 (A) unbundled from the otherwise applica-
11 ble rates and charges to the customer; and

12 (B) separately stated on the bill of the cus-
13 tomer.

14 (2) NO WHOLESALE STRANDED COST RECOV-
15 ERY.—The Tennessee Valley Authority shall not re-
16 cover wholesale stranded costs from any customer
17 through any rate, charge, or mechanism.

18 (d) REPORT.—Beginning in fiscal year 2001, as part
19 of the annual management report submitted by the Ten-
20 nessee Valley Authority to Congress, the Tennessee Valley
21 Authority shall include in the report—

22 (1) the status of the Tennessee Valley
23 Authority's long-range financial plans and the
24 progress toward its goal of competitively priced elec-
25 tric power (including a general discussion of the

1 Tennessee Valley Authority's prospects on meeting
2 the objectives of the Ten Year Business Outlook
3 issued on July 22, 1997);

4 (2) any changes in assumptions since the pre-
5 vious report that may have a material effect on the
6 Tennessee Valley Authority's long-range financial
7 plans;

8 (3) the source of funds used for any generation
9 and transmission capacity additions;

10 (4) the use or other disposition of amounts re-
11 covered by the Tennessee Valley Authority under the
12 Tennessee Valley Authority Act of 1933 (16 U.S.C.
13 831 et seq.) and this Act;

14 (5) the amount by which the Tennessee Valley
15 Authority's publicly held debt was reduced; and

16 (6) the projected amount by which the Ten-
17 nessee Valley Authority's publicly held debt will be
18 reduced.

19 **SEC. 9. APPLICATION OF ANTITRUST LAW**

20 (a) IN GENERAL.—

21 (1) DEFINITION OF ANTITRUST LAWS.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), in this section, the term
24 “antitrust laws” has the meaning given the

1 term in subsection (a) of the first section of the
2 Clayton Act (15 U.S.C. 12(a)).

3 (B) INCLUSION.—In this section, the term
4 “antitrust laws” includes section 5 of the Fed-
5 eral Trade Commission Act (15 U.S.C. 45), to
6 the extent that section 5 applies to unfair meth-
7 ods of competition.

8 (2) APPLICABILITY OF ANTITRUST LAW.—Ex-
9 cept as provided in subsection (b), the Tennessee
10 Valley Authority shall be subject to the antitrust
11 laws with respect to the operation of its electric
12 power and transmission systems.

13 (b) DAMAGES.—No damages, interest on damages,
14 costs, or attorneys’ fees may be recovered under section
15 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, 15c)
16 from the Tennessee Valley Authority.

17 (c) EFFECT ON OTHER RIGHTS.—Nothing in this
18 Act diminishes or impairs any privilege, immunity, or ex-
19 emption in effect on the day before the date of enactment
20 of this Act that would have been accorded any person by
21 virtue of the association of the person together in advo-
22 cating a cause or point of view to—

23 (1) the Tennessee Valley Authority; or

24 (2) any other agency or branch of Federal,
25 State or local government.

1 **SEC. 10. SAVINGS PROVISION.**

2 Nothing in this Act shall affect section 15d(b) of the
3 Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-
4 4(b)), providing that bonds issued by the Tennessee Valley
5 Authority shall not be obligations of, nor shall payment
6 of the principal thereof or interest thereon be guaranteed
7 by, the United States.

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