

108TH CONGRESS
1ST SESSION

S. 954

To amend the Federal Power Act to provide for the protection of electric utility customers and enhance the stability of wholesale electric markets through the clarification of State regulatory jurisdiction.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2003

Mr. SHELBY (for himself, Mr. MILLER, Mr. LOTT, Ms. LANDRIEU, Mr. SESSIONS, Mr. COCHRAN, and Mr. CHAMBLISS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Power Act to provide for the protection of electric utility customers and enhance the stability of wholesale electric markets through the clarification of State regulatory jurisdiction.

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. BUNDLED RETAIL SALES OF ELECTRIC EN-**
4 **ERGY.**

5 (a) JURISDICTION.—Section 201(b)(1) of the Federal
6 Power Act (16 U.S.C. 824(b)(1)) is amended—

1 (1) by striking “(b)(1) The” and inserting the
2 following:

3 “(b) APPLICABILITY.—

4 “(1) IN GENERAL.—The”;

5 (2) by striking “The Commission” and insert-
6 ing the following:

7 “(2) FACILITIES.—The Commission”; and

8 (3) by adding at the end the following:

9 “(3) BUNDLED RETAIL SALES OF ELECTRIC
10 ENERGY.—The Commission shall not have jurisdic-
11 tion—

12 “(A) over bundled retail sales of electric
13 energy (including the transmission component
14 of retail sales); or

15 “(B) to compel the unbundling of rates for
16 bundled retail sales of electric energy.”.

17 (b) DEFINITION OF BUNDLED RETAIL SALES OF
18 ELECTRIC ENERGY.—Section 201 of the Federal Power
19 Act (16 U.S.C. 824) is amended by adding at the end the
20 following:

21 “(h) DEFINITION OF BUNDLED RETAIL SALES OF
22 ELECTRIC ENERGY.—In this part, the term ‘bundled re-
23 tail sales of electric energy’ means sales of electric energy
24 to retail customers in which generation, transmission, dis-
25 tribution, and other services necessary to supply electric

1 energy to retail customers are sold as a single delivered
 2 service by a single seller, acting under the regulatory juris-
 3 diction of a State commission.”.

4 **SEC. 2. SERVICE OBLIGATION PROTECTION.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
 6 seq.) is amended at the end the following:

7 **“SEC. 215. SERVICE OBLIGATIONS OF LOAD-SERVING ENTI-**
 8 **TIES.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) EXISTING WHOLESALE CONTRACTUAL OB-
 11 LIGATION.—

12 “(A) IN GENERAL.—The term ‘existing
 13 wholesale contractual obligation’ means an obli-
 14 gation under a firm long-term wholesale con-
 15 tract that was in effect on March 28, 2003.

16 “(B) CONTRACT MODIFICATIONS.—A con-
 17 tract modification after March 28, 2003 (other
 18 than a contract modification that increases the
 19 quantity of electric energy sold under the con-
 20 tract), shall not affect the status of a contract
 21 described in subparagraph (A) as an existing
 22 wholesale contractual obligation.

23 “(2) LOAD-SERVING ENTITY.—

24 “(A) IN GENERAL.—The term ‘load-serv-
 25 ing entity’ means a transmitting utility that has

1 an obligation under Federal, State, or local law,
2 or a long-term contract, to provide electric serv-
3 ice to—

4 “(i) electric consumers (as defined in
5 section 3 of the Public Utility Regulatory
6 Policies Act of 1978 (16 U.S.C. 2602)); or

7 “(ii) an electric utility (as defined in
8 section 3 of that Act) that has an obliga-
9 tion to provide electric service to electric
10 consumers.

11 “(B) SERVICE OBLIGATION.—For purposes
12 of this section, an obligation described in sub-
13 paragraph (A) shall be considered a service ob-
14 ligation.

15 “(b) SERVICE OBLIGATIONS.—

16 “(1) APPLICABILITY.—This subsection applies
17 to any load-serving entity that—

18 “(A) owns transmission facilities for the
19 transmission of electric energy in interstate
20 commerce used to purchase or deliver electric
21 energy to meet a service obligation to customers
22 or an existing wholesale contractual obligation;
23 or

24 “(B) holds a contract or service agreement
25 for firm transmission service used to purchase

1 or deliver electric energy to meet a service obli-
2 gation to customers or an existing wholesale
3 contractual obligation.

4 “(2) USE OF TRANSMISSION FACILITIES OR
5 SERVICES.—In exercising authority under this Act,
6 the Commission shall ensure that any entity de-
7 scribed in paragraph (1) shall be entitled to use
8 transmission facilities or rights to firm transmission
9 service described in paragraph (1) to meet service
10 obligations described in paragraph (1) before trans-
11 mission capacity is made available for other uses.

12 “(c) USE BY SUCCESSORS IN INTEREST.—

13 “(1) IN GENERAL.—If all or a portion of the
14 service obligation or contractual obligation described
15 in subsection (b) is transferred to another load-serv-
16 ing entity, the successor shall be entitled to use the
17 transmission facilities or firm transmission rights as-
18 sociated with the transferred service obligation con-
19 sistent with subsection (b).

20 “(2) SUBSEQUENT TRANSFERS.—A subsequent
21 transfer to another load-serving entity, or a re-
22 transfer to the original load-serving entity, shall be
23 entitled as provided in paragraph (1).

24 “(d) RELATIONSHIP TO OTHER PROVISIONS.—If a
25 transmitting utility reserves transmission capacity (or re-

1 serves the equivalent capacity in the form of tradable
2 transmission rights) to meet service obligations or firm
3 long-term wholesale contractual obligations under sub-
4 section (b), the transmitting utility shall not be considered
5 to be engaging in undue discrimination or preference
6 under this Act or any other law.

7 “(e) APPLICABILITY.—This section does not apply to
8 an area served by a utility located in an area described
9 in section 212(k)(2)(B).

10 “(f) SAVINGS CLAUSE.—Nothing in this section al-
11 ters or affects the allocation of transmission rights ap-
12 proved by the Commission before the date of enactment
13 of this section by an independent system operator or re-
14 gional transmission organization.”.

15 **SEC. 3. COST ALLOCATION.**

16 Section 205 of the Federal Power Act (16 U.S.C.
17 824d) is amended by adding at the end the following:

18 “(g) COST ALLOCATION.—

19 “(1) APPLICABILITY.—This subsection applies
20 to any rule or order of general applicability issued
21 by the Commission under this Act that—

22 “(A) requires the physical connection of
23 any cogeneration facility, any small power pro-
24 duction facility, any other electric power gen-
25 eration facility that makes wholesale sales of

1 electric power, or the transmission facilities of
2 any electric utility, with the facilities of any
3 electric utility, Federal power marketing agen-
4 cy, geothermal power producer (including a pro-
5 ducer that is not an electric utility), qualifying
6 cogenerator, or qualifying small power pro-
7 ducer; or

8 “(B) setting rates for transmission service.

9 “(2) COSTS.—Any order or rule described in
10 paragraph (1) shall require that the applicant seek-
11 ing the interconnection of facilities or transmission
12 service to pay—

13 “(A) the necessary and reasonable costs of
14 any new facility required to provide the inter-
15 connection or transmission service that would
16 not have been necessary absent the interconnec-
17 tion or transmission service request;

18 “(B) an equitable share of the fixed costs
19 of the existing system necessary to complete the
20 interconnection or transmission service trans-
21 action; and

22 “(C) the costs of any other services that
23 are ancillary to the interconnection or trans-
24 mission service transaction.

1 “(3) TRANSMISSION SERVICE CREDITS.—The
2 requestor of interconnection or transmission service
3 shall not be entitled to transmission service credits
4 as a result of payments made under this sub-
5 section.”.

6 **SEC. 4. STANDARD MARKET DESIGN RULE.**

7 Section 206 of the Federal Power Act (16 U.S.C.
8 824i) (as amended by section 3) is amended by adding
9 at the end the following:

10 “(g) STANDARD MARKET DESIGN RULE.—

11 “(1) DEFINITION OF STANDARD MARKET DE-
12 SIGN RULE.—In this subsection, the term ‘standard
13 market design rule’ means—

14 “(A) a rule promulgated pursuant to the
15 notice of proposed rulemaking issued by the
16 Commission on July 31, 2002, in Docket No.
17 RM01–12–0000, including any modification of
18 the rule that is within the scope of the notice;
19 or

20 “(B) any rule or order of general applica-
21 bility under this Act that addresses trans-
22 mission access or market design and in which
23 the Commission—

1 “(i) asserts jurisdiction over the
2 transmission component of bundled retail
3 sales of electric energy; or

4 “(ii) requires the transfer of owner-
5 ship, operation, or control of transmission
6 facilities to a regional transmission organi-
7 zation, independent transmission provider,
8 or similar organization.

9 “(2) EFFECTIVENESS.—Except as provided in
10 paragraph (3), a standard market design rule shall
11 not be effective except to the extent that the stand-
12 ard market design rule is approved by Congress in
13 a law enacted after the date of enactment of this
14 subsection.

15 “(3) STATE CONSENT.—A standard market de-
16 sign rule that is otherwise valid under this Act may
17 take effect in a region consisting entirely of States
18 the State Commission has consented in writing to
19 the application of the standard market design rule
20 in the State.”.

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