

SECTION-BY-SECTION ANALYSIS

OF THE COMPREHENSIVE ELECTRICITY COMPETITION ACT

TITLE I. RETAIL ELECTRIC SERVICE

SECTION 101. RETAIL COMPETITION.

This provision would amend the Public Utility Regulatory Policies Act of 1978 (PURPA) to require each distribution utility to permit all of its retail customers to purchase power from the supplier of their choice by January 1, 2003, but would permit a State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or a non-regulated utility to opt out if it finds, on the basis of a public proceeding, that consumers of the utility would be served better by the current monopoly system or an alternative retail competition plan.

The section also would enunciate a Federal policy that utilities should be able to recover prudently incurred, legitimate, and verifiable retail stranded costs that cannot be mitigated reasonably, but States and non-regulated utilities would continue to determine whether to provide for retail stranded costs recovery. If States and non-regulated utilities are considering implementation of retail competition, they would also be required to consider providing assistance for electric utility workers who may become or have become unemployed as a result of the implementation of retail competition. If a State or non-regulated utility decides to impose a stranded cost charge, it would be required to consider reducing that charge if the charge results from the use of on-site efficient or renewable generation. This section does not retrocede to States authority over Federal enclaves.

SECTION 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

This section would amend PURPA to permit a State that has filed a notice indicating it is implementing retail competition to prohibit a distribution utility that is not under the ratemaking authority of the State and that has not implemented retail competition from directly or indirectly selling electricity to the consumers covered by the State's notice. This section also would permit a nonregulated utility that has filed a notice of retail competition to prohibit any other utility that has not implemented retail competition from directly or indirectly selling electricity to the consumers covered by the nonregulated utility's notice.

SECTION 103. AGGREGATION FOR PURCHASE OF RETAIL ELECTRIC ENERGY.

This section would amend PURPA to ensure that electricity customers and entities acting on their behalf, subject to legitimate and non-discriminatory State requirements, would be allowed to acquire retail electric energy on an aggregate basis if they are served by one or more distribution utilities for which a notice of retail competition has been filed.

TITLE II. CONSUMER PROTECTION

SECTION 201. CONSUMER INFORMATION.

This section would amend PURPA to permit the Secretary of Energy to require all suppliers of electricity to disclose information on price, terms, and conditions; the type of energy resource used to generate the electric energy; and the environmental attributes of the generation, including air emissions characteristics. This requirement would be enforceable by the Federal Trade Commission and by individual States.

SECTION 202. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME CONSUMERS.

This section would amend PURPA to require a State regulatory authority or nonregulated distribution utility that files a notice of retail competition to consider assuring that its low-income residential consumers have service comparable to its other residential consumers and that all retail electric suppliers in the State share equitably any costs necessary to provide such service.

SECTION 203. UNFAIR TRADE PRACTICES.

This section would amend the Federal Trade Commission Act to establish slamming and cramming in supplying electricity as unfair trade practices punishable by the Federal Trade Commission (FTC). Under this section, a person may not submit or change, in violation of procedures established by the FTC, a retail electric customer's selection of a retail electric supplier. Also, a person may not charge a retail electric customer for a particular service, except in accordance with procedures established by the FTC.

SECTION 204. RESIDENTIAL ELECTRICITY CONSUMER DATABASE.

This section would amend PURPA to authorize the Secretary of Energy to establish a database containing information to help residential electric consumers compare the offers of various retail electric suppliers.

SECTION 205. MODEL RETAIL SUPPLIER CODE.

This section would amend PURPA to authorize the Secretary of Energy to develop for State use a model code for the regulation of retail electricity suppliers for the protection of electric consumers.

SECTION 206. MODEL ELECTRIC UTILITY WORKER CODE.

This section would amend PURPA to authorize the Secretary of Energy to develop for State use a model code setting standards for electric utility workers to ensure that electric utilities are operated safely and reliably.

TITLE III -- FACILITATING STATE AND REGIONAL REGULATION

SECTION 301. CLARIFICATION OF STATE AND FEDERAL AUTHORITY OVER RETAIL TRANSMISSION SERVICES.

Subsection (a) would clarify that the Federal Power Act (FPA) does not prevent States and nonregulated distribution utilities from ordering retail competition or imposing conditions, such as a fee, on the receipt of electric energy by an ultimate customer within the State. This section also would clarify the Federal Energy Regulatory Commission's (FERC) authority over unbundled retail transmission.

Subsection (b) would reinforce FERC's authority to require public utilities to provide open access transmission services and permit recovery of stranded costs. This section also would provide retroactive effect to Commission Order No. 888 and clarify FERC's authority to order retail transmission service to complete an authorized retail sale.

Subsection (c) would extend FERC's jurisdiction over transmission services to municipal and other publicly-owned utilities and cooperatives.

Subsection (d) would give the Secretary of Agriculture intervention rights in FERC rulemakings that directly affect a cooperative with loans made or guaranteed under the Rural Electrification Act of 1936.

SECTION 302. INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING.

This section would amend the FPA to permit FERC to approve interstate compacts that establish regional transmission planning agencies if the agencies meet certain criteria relating to their governance.

SECTION 303. BACKUP AUTHORITY TO IMPOSE A CHARGE ON AN ULTIMATE CONSUMER'S RECEIPT OF ELECTRIC ENERGY.

This section would amend the FPA to reinforce FERC's authority to provide a back-up for the recovery of retail stranded costs if a State or a non-regulated utility has filed a retail competition notice and concludes that such charges are appropriate but lacks authority to impose a charge on the consumer's receipt of electric energy.

SECTION 304. AUTHORITY TO ESTABLISH AND REQUIRE INDEPENDENT REGIONAL SYSTEM OPERATION.

This section would amend section 202 of the FPA by permitting FERC to establish an entity for independent operation, planning, and control of interconnected transmission facilities and to require a utility to relinquish control over operation of its transmission facilities to an independent regional system operator.

TITLE IV -- PUBLIC BENEFITS

SECTION 401. PUBLIC BENEFITS FUND.

This section would amend PURPA by establishing a Public Benefits Fund administered by

a Joint Board that would disburse matching funds to participating States and tribal governments to carry out programs that support affordable electricity service to low-income customers; implement energy conservation and energy efficiency measures and energy management practices; provide consumer education; and develop emerging electricity generation technologies. Funds for the Federal share would be collected from generators, which, as a condition of interconnection with facilities of any transmitting utility, would pay to the transmitting utility a charge, not to exceed one mill per kilowatt-hour. The transmitting utility then would pay the collected amounts to a fiscal agent for the Fund. States and tribal governments would have the flexibility to decide whether to seek funds and how to allocate funds among public purposes. In addition, a rural safety net would be created if the Secretary of Energy determines, in consultation with the Secretary of Agriculture, that significant adverse economic effects on rural areas have occurred or will occur as a result of electric restructuring.

SECTION 402. FEDERAL RENEWABLE PORTFOLIO STANDARD.

This section would amend PURPA to establish a Federal Renewable Portfolio Standard (RPS) to guarantee that a minimum level of renewable generation is developed in the United States. The RPS would require electricity sellers to have renewable credits based on a percentage of their electricity sales. The seller would receive credits by generating power from non-hydroelectric renewable technologies, such as wind, solar, biomass, or geothermal generation; purchasing credits from renewable generators; or a combination of these, but would receive twice the number of credits if the power was generated on Indian lands. The RPS requirement for 2000-2004 would be set at the current ratio of RPS-eligible generation to retail electricity sales. Between 2005-2009, the Secretary of Energy would determine the required annual percentage, which would be greater than the baseline percentage but less than 7.5%. In 2010-2015, the percentage would be 7.5%. The RPS credits would be subject to a cost cap of 1.5 cents per kilowatt hour, adjusted for inflation.

SECTION 403. NET METERING.

This section would amend PURPA by requiring all retail electric suppliers to make available to consumers "net metering service," through which a consumer would offset purchases of electric energy from the supplier with electric energy generated by the consumer at a small, on-site renewable generating facility and delivered to the distribution system. This section also would clarify that States are not preempted under Federal law from requiring a retail electric supplier to make available net metering service.

SECTION 404. REFORM OF SECTION 210 OF PURPA.

This section would repeal prospectively the "must buy" provision of section 210 of PURPA. Existing contracts would be preserved, and the other provisions of section 210 would continue to apply.

SECTION 405. INTERCONNECTIONS FOR CERTAIN FACILITIES.

This section would amend PURPA to require a distribution utility to allow a combined heat and power or a distributed power facility to interconnect with it if the facility is located in the

distribution utility's service territory and complies with rules issued by the Secretary of Energy and related safety and power quality standards.

SECTION 406. RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.

This section would amend the Rural Electrification Act of 1936 to authorize the Secretary of Agriculture, in consultation with the Secretary of Energy, to provide grants for the purpose of increasing energy efficiency, lowering or stabilizing electric rates to end users, or providing or modernizing electric facilities for rural and remote communities and Indian tribes.

SECTION 407. INDIAN TRIBE ASSISTANCE.

This section would amend the Energy Policy Act of 1992 to require the Secretary of Energy to establish a grant and technical assistance program to assist Indian tribes to meet their electricity needs. Among other things, the program could provide assistance in planning and constructing electricity generation, transmission, and distribution facilities.

SECTION 408. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

This section would authorize the Secretary of Energy to establish an office within the Department of Energy to coordinate and implement energy, energy management, and energy conservation programs for Indian tribes.

SECTION 409. SOUTHEAST ALASKA ELECTRICAL POWER.

This section would authorize appropriations as necessary to ensure the availability of adequate electric power to the greater Ketchikan area in southeast Alaska, including an intertie.

TITLE V-- REGULATION OF MERGERS AND CORPORATE STRUCTURE

SECTION 501. REFORM OF HOLDING COMPANY REGULATION UNDER PUHCA.

This section would repeal the Public Utility Holding Company Act of 1935 (PUHCA). In addition, FERC and State regulatory commissions would be given greater access to the books and records of holding companies and affiliates.

SECTION 502. ELECTRIC COMPANY MERGERS.

This section would amend the FPA by conferring on FERC jurisdiction over the merger or consolidation of electric utility holding companies and generation-only companies. This section also would streamline FERC's review of mergers. In addition, this section would require that FERC consider the effect a merger could have on wholesale and retail electric generation markets.

SECTION 503. REMEDIAL MEASURES FOR MARKET POWER.

This section would amend the FPA to authorize FERC to remedy market power in wholesale markets. This section also would authorize FERC, upon petition from a State, to remedy market power in retail markets.

TITLE VI-- ELECTRIC RELIABILITY

SECTION 601. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT.

This section would amend the FPA to give FERC authority to approve and oversee an Electric Reliability Organization to prescribe and enforce mandatory reliability standards. Membership in the organization would be open to all entities that use the bulk-power system and would be required for all entities critical to system reliability. The Electric Reliability Organization would be authorized to delegate authority to one or more Affiliated Regional Reliability Entities, which could implement and enforce the standards within a region.

SECTION 602. ELECTRICITY OUTAGE INVESTIGATION.

This section would amend the Department of Energy Organization Act to establish in the Department of Energy a board to investigate and determine the causes of a major bulk-power system failure in the United States.

SECTION 603. ADDITIONAL TRANSMISSION CAPACITY.

This section would amend PURPA to give the Secretary of Energy authority to call and chair a meeting of representatives of States in a region in order to discuss provision of additional transmission capacity and related concerns.

TITLE VII -- ENVIRONMENTAL PROTECTION

SECTION 701. NITROGEN OXIDES CAP AND TRADE PROGRAM.

This section would clarify Environmental Protection Agency authority to require a cost-effective interstate trading system for nitrogen oxide pollutant reductions addressing the regional transport contributions needed to attain and maintain the National Ambient Air Quality Standards for ozone.

TITLE VIII – FEDERAL POWER SYSTEMS

Subtitle A–Tennessee Valley Authority (TVA)

SEC. 801. DEFINITION.

SEC. 802. APPLICATION OF FEDERAL POWER ACT

This section would subject TVA to relevant provisions of the FPA for purposes of TVA's transmission system, but would provide that any determination of the Commission would be subject to any other laws applicable to TVA, including the requirement that TVA recover its costs.

SEC. 803. ANTITRUST COVERAGE.

This section would subject TVA to the antitrust laws effective January 1, 2003, except that TVA would not be liable for civil damages or attorney's fees.

SEC. 804. TVA POWER SALES.

This section would permit TVA, effective January 1, 2003, to sell electric power at wholesale to any person. With regard to sales at retail, this section would permit TVA to sell (1) to existing customers or (2) to customers of an existing wholesale customer of TVA, if the distributor has firm power purchases from TVA of 50 percent or less of its total retail sales, or if the distributor agrees that TVA can sell power to the customer.

SEC. 805. RENEGOTIATION OF LONG-TERM POWER CONTRACTS.

This section would require TVA to renegotiate its long-term power contracts with respect to the remaining term; the length of the termination notice; the amount of power a distributor may purchase from a supplier other than TVA beginning January 1, 2003, and access to the TVA transmission system for that power; and stranded cost recovery. This section would require that, if the parties are unable to reach agreement within the one year, they would submit the issues in dispute to the Federal Energy Regulatory Commission for final resolution.

SEC. 806. STRANDED COST RECOVERY.

This section would provide the Commission with the authority to provide TVA with stranded cost recovery.

SEC. 807. CONFORMING AMENDMENTS.

This section would make conforming amendments to the Tennessee Valley Authority Act.

Subtitle B—Bonneville Power Administration

SEC. 811. DEFINITIONS.

SEC. 812. APPLICATION OF FEDERAL POWER ACT.

This section would subject Bonneville to relevant provisions of the FPA for purposes of Bonneville's transmission system, but would provide that any determination of the Commission would be subject to a list of conditions, including a requirement that the rates and charges are sufficient to recover existing and future Federal investment in the Bonneville Transmission System.

SEC. 813. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NON-RECOVERABLE COSTS.

This section would require the Commission to establish a mechanism that would enable the Administrator to place a surcharge on rates or charges for transmission services over the Bonneville Transmission System under limited circumstances in order to recover power costs

unable to be recovered through power revenues in time to meet Bonneville's cost recovery requirements.

SEC. 814. COMPLAINTS.

This section would clarify that the PMAs may file complaints with the Commission.

SEC. 815. REVIEW OF COMMISSION ORDERS.

The section would clarify that the PMAs may file a rehearing request or may appeal a Commission order.

SEC. 816. CONFORMING AMENDMENTS.

This section would make conforming amendments to the FPA, the Federal Columbia River Transmission System Act, the Pacific Northwest Regional Preference Act, the Pacific Northwest Electric Power Planning and Conservation Act, and the Bonneville Project Act.

Subtitle C—Western Area Power Administration (WAPA) and Southwestern Power Administration (SWPA)

SEC. 821. DEFINITIONS.

SEC. 822. APPLICATION OF FEDERAL POWER ACT.

This section would subject SWPA and WAPA to relevant provisions of the FPA for purposes of the transmission systems of SWPA and WAPA, but would provide that any determination of the Commission would be subject to a list of conditions, including a requirement that the rates and charges are sufficient to recover existing and future Federal investment in the transmission systems.

SEC. 823. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NON-RECOVERABLE COSTS.

This section would require the Commission to establish a mechanism that would enable the Administrator to place a surcharge on rates or charges for transmission services over the SWPA or WAPA Transmission System when necessary in order to recover power costs unable to be recovered through power revenues in time to meet SWPA's or WAPA's cost recovery requirements.

SEC. 824. CONFORMING AMENDMENTS.

This section would make conforming amendments to the Department of Energy Organization Act and the Reclamation Reform Act of 1982.

TITLE IX-- OTHER PROVISIONS

SECTION 901. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY.

This section would amend the Bankruptcy Act to provide that decommissioning costs be a nondischargeable priority claim.

SECTION 902. ENERGY INFORMATION ADMINISTRATION STUDY OF IMPACTS OF COMPETITION IN ELECTRICITY MARKETS.

This section would amend the Department of Energy Organization Act to direct the Energy Information Administration to collect and publish information on the impacts of wholesale and retail competition.

SECTION 903. ANTITRUST SAVINGS CLAUSE.

This section would provide that nothing in this Act would supersede the operation of the antitrust laws.

SECTION 904. ELIMINATION OF ANTITRUST REVIEW BY THE NUCLEAR REGULATORY COMMISSION.

This section would eliminate Nuclear Regulatory Commission antitrust review of an application for a license to construct or operate a commercial utilization or production facility.

SECTION 905. ENVIRONMENTAL LAW SAVINGS CLAUSE.

This section would provide that nothing in this Act would alter environmental requirements of Federal or State law.

SECTION 906. GENERATING PLANT EFFICIENCY STUDY.

This section would amend the Department of Energy Organization Act to require the Secretary of Energy to issue a report on the efficiency of new and existing electric generating facilities before and after electric competition is in effect.

SECTION 907. CONFORMING AMENDMENTS.

TITLE X -- AMENDMENTS TO INTERNAL REVENUE CODE

SECTION 1001. TREATMENT OF BONDS ISSUED TO FINANCE ELECTRIC OUTPUT FACILITIES.

This section would amend the Internal Revenue Code to clarify the status of tax-exempt bonds used to finance utility facilities owned by municipalities. The section would grandfather current tax treatment for bonds that exist already, continue to permit public utilities to issue tax-exempt bonds in the future for new electricity distribution facilities, and eliminate their ability in the future to issue tax-exempt bonds for new transmission and generation facilities.

SECTION 1002. NUCLEAR DECOMMISSIONING COSTS.

This section would amend the Internal Revenue Code to clarify that an investor-owned utility could take a tax deduction for the amount paid into a qualified nuclear decommissioning fund for any taxable year, notwithstanding the elimination of “cost of service” ratemaking.

SECTION 1003. DEPRECIATION TREATMENT OF DISTRIBUTED POWER PROPERTY.

This section would amend the Internal Revenue Code of 1986 to clarify that distributed power facilities have a tax life of 15 years.

SECTION 1004. TAX CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

This section would amend the Internal Revenue Code to provide an 8 percent investment credit for qualified combined heat and power (CHP) systems placed in service in calendar years 2000 through 2002. The measure would apply to large CHP systems that have a total energy efficiency exceeding 70 percent and to smaller systems that have a total energy efficiency exceeding 60 percent.