

TITLE ____ — ELECTRICITY

Subtitle A — Amendments to the Federal Power Act

SEC. __01. DEFINITIONS.

(a) ELECTRIC UTILITY—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

“(22) ‘electric utility’ {DLD Comments > definition includes our clients, the APA and Western!} means any person or Federal or State agency (including any municipality) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency.”.

(b) TRANSMITTING UTILITY—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

“(23) ‘transmitting utility’ means an entity (including any entity described in section 201(f)) that owns or operates facilities used for the transmission of electric energy—

“(A) in interstate commerce; or

“(B) for the sale of electric energy at wholesale.”. {DLD Comments > Includes ED3, ED4, ED5, SCIP, ED2 all have wholesale deliveries to APS }

(c) ADDITIONAL DEFINITIONS—At the end of section (3) of the Federal Power Act, add the following:

“(26) ‘Regional Transmission Organization’ or ‘RTO’ means an entity of sufficient regional scope that meets the requirements of section 216 of the Act.

“(27) ‘Independent Transmission Organization’ or ‘ITO’ means an entity that is not of sufficient regional scope, but otherwise meets the requirements of section 216 of the Act.

“(28) ‘load-serving entity’ means an electric utility, transmitting utility or Federal power marketing agency that has an obligation under Federal, State, or local law (including an entity described in section 201(f) that exercises authority granted under such law), or an entity that holds firm transmission rights or equivalent tradeable or financial transmission rights as of the date of enactment of this Act, to provide electric service to either—

“(A) electric consumers as defined in section 3(5) of the Public Utility Regulatory

Policies Act of 1978 (16 U.S.C. 2602(5)); or

“(B) an entity described in section 201(f) or a rural cooperative that has a service obligation to provide electric service to electric consumers. {DLD Comment > assume this definition includes our clients?}

“(29) ‘service obligation’ means a legal or contractual requirement applicable to, or the exercise of authority granted to, a load-serving entity.”

“(30) ‘bundled retail sale of energy’ means a sale of electric energy to a consumer, as described in paragraph (28) or (29), where generation, transmission, distribution and other services necessary to supply electric energy to such consumers are sold as a single delivered service by a single seller. A service shall be considered to be sold as a single delivered service if offered by the seller as a single product, even if each component and price thereof is stated separately on retail billing statements in accordance with applicable legal requirements.”

Subtitle B—Reliability (DLD Comments > it is my understanding that this language is the language supported by WECC and the Western Governor Association – provides delegation of FERC authority to Electric Reliability Organization – the WECC should qualify)

SEC. 11. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding the following:

“ELECTRIC RELIABILITY.

“SEC. 215. (a) For the purposes of this section:

“(1) The term ‘bulk-power system’ means—

“(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

“(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

“(2) The terms ‘Electric Reliability Organization’ and ‘ERO’ mean the organization certified by the Commission under subsection (c), the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

“(3) The term ‘reliability standard’ means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

“(4) The term ‘reliable operation’ means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

“(5) The term ‘Interconnection’ means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

“(6) The term ‘transmission organization’ means an RTO , ITO or other transmission organization finally approved by the Commission for the operation of transmission facilities.

“(7) The term ‘regional entity’ means an entity having enforcement authority pursuant to subsection (e)(4).

“(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect

under this section. The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

“(c) Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

“(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

“(2) has established rules that—

“(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

“(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

“(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

“(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

“(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

“(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

“(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly

discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

“(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

“(4) The Commission shall remand to the ERO for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

“(5) The Commission, upon its own motion or upon complaint, may order the ERO to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

“(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

“(A) the Commission finds a conflict exists between a reliability standard and any such provision;

“(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

“(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

“(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

“(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

“(B) files notice and the record of the proceeding with the Commission.

“(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

“(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

“(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

“(A) the regional entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

“(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2);
and

“(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO’s authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

“(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

“(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

“(f) The ERO shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

“(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

“(h) The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

“(i)(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

“(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

“(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

“(4) Within 90 days of the application of the ERO or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

“(5) The Commission, after consultation with the ERO, may stay the effectiveness of any State action, pending the Commission’s issuance of a final order.

“(j) The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the ERO, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest

and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

“(k) The provisions of this section do not apply to Alaska or Hawaii.”.

Subtitle C - Federal Power Act Jurisdiction Clarification and Standard Market Design Implementation

SEC. __21. CLARIFICATION OF JURISDICTION UNDER THE FEDERAL POWER ACT.

Section 201(a) of the Federal Power Act (16 U.S.C. 824(a)) is amended by adding at the end: “The authorities granted to the Commission shall not extend to the transmission rate component of any bundled retail sale of energy.”

SEC. __22. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.

No final order shall be issued by the Commission in Docket No. RM01-12-000 prior to January 1, 2005.

Subtitle D – Flexible Market Design

SEC. __31. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should become members of independently administered Regional Transmission Organizations (“RTO”) that have operational or functional control of facilities used for the transmission of electric energy in interstate commerce and do not own or control generation facilities used to supply electric energy for sale at wholesale.

SEC. __32. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.—

(a) DEFINITIONS.—For purposes of this section:

(1) The term “appropriate Federal regulatory authority” means—

(A) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) The term “Federal utility” means a Federal power marketing agency or the Tennessee Valley Authority. DLD Comment > I’m assuming/hoping this definitions excludes SCIP and CRA!

(3) The term “transmission system” means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—The appropriate Federal regulatory authority is authorized to enter into a contract, agreement or other arrangement transferring control and use of all or part of the Federal utility’s transmission system to an RTO or ITO, as defined in sections 3(26) and 3(27) of the Federal Power Act . Such contract, agreement or arrangement shall include—

(1) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility’s costs and expenses related to the transmission facilities that are the subject of the contract, agreement or other arrangement, consistency with existing contracts and third-party financing arrangements, and consistency with said Federal utility’s statutory authorities, obligations, and limitations;

(2) provisions for monitoring and oversight by the Federal utility of the RTO or ITO’s fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the RTO or ITO or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(3) a provision that allows the Federal utility to withdraw from the RTO or ITO and

terminate the contract, agreement or other arrangement in accordance with its terms.

Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO or ITO shall serve to confer upon the Federal Energy Regulatory Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) Any statutory provision requiring or authorizing a Federal utility to transmit electric power or to construct, operate or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of paragraph (2).

(2) This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from, any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

SEC. 33. REGIONAL TRANSMISSION ORGANIZATION REQUIREMENTS.

Part II of the Federal Power Act is amended by adding the following:

“TRANSMISSION ORGANIZATION CRITERIA

“SEC. 216. An RTO and, as appropriate, an ITO, shall meet of the following criteria:

“(1) An RTO and ITO shall be independent of all market participants.

“(2) An RTO and ITO shall oversee or control interstate transmission facilities within a specific region in such manner as will remove opportunities for unduly discriminatory or preferential transmission practices, consistent with section 218.

“(3) An RTO and ITO may own transmission facilities, operate transmission facilities owned by other entities, or oversee the operation of transmission facilities owned by other entities.

“(4) An RTO or ITO not within an RTO region shall have the exclusive authority for maintaining the short-term reliability of the transmission grid it controls, operates or oversees, subject to section 215 of the Act.

“(5) An RTO in conjunction with any relevant ITO and an ITO not within an RTO region shall be the provider of transmission service and the sole administrator of a non-discriminatory wholesale open access tariff for the facilities under its ownership, control or oversight.

“(6) An RTO in conjunction with any relevant ITO and an ITO not within an RTO region shall develop market mechanisms for identifying and managing congestion, but such mechanisms need not be based upon locational marginal pricing. DLD Comment > this language may not stop FERC from its LMP directive – once the RTO is formed they are on the slippery slope – FERC will claim other congestion management tools are discriminator – can language be strengthened to exclude or limit FERC’s authority to force LMP “...but such mechanisms must be nondiscriminatory and FERC is prohibited from mandating locational marginal pricing”.

“(7) An RTO in conjunction with any relevant ITO and an ITO not within an RTO region shall implement procedures to address parallel path flows.

“(8) An RTO in conjunction with any relevant ITO and an ITO not within an RTO region shall operate a single open access same time information system for all transmission facilities under its ownership, control or oversight and shall calculate total transmission capacity and available transmission capacity, or the equivalent transmission rights if its congestion management system is based upon financial rather than physical rights.

“(9) An RTO and an ITO not within an RTO region shall ensure that a market for ancillary services is available. DLD Comment > ancillary services includes balancing energy – again the slippery slope – once realtime balancing energy markets exist it will be difficult to stop FERC mandating LMP in order to ensure non-discriminatory ancillary services markets.

“(10) An RTO in conjunction with any relevant ITO or an ITO not within an RTO

region shall provide for monitoring of wholesale electric energy markets and ancillary services within its region, working with the Commission, States, and other appropriate entities.

“(11) An RTO shall conduct or coordinate regional planning, or if it is an ITO it shall participate in regional planning, working with stakeholders, appropriate State regulatory authorities, the Commission, and the Department of Energy to identify and encourage needed cost-effective expansions of transmission capacity, removal of transmission constraints, and siting of generation facilities.

“(12) An RTO and ITO shall facilitate non-discriminatory scheduling and interconnection arrangements on the transmission grid it operates or oversees.

“(13) An RTO and ITO shall provide participating electric and transmitting utilities and other entities that have incurred costs in forming the RTO or ITO an opportunity to recover all legitimate, verifiable, prudently incurred costs of forming the RTO or ITO.

“(14) An RTO and ITO shall provide a plan to eliminate the practice of assessing multiple, cumulative charges for transmission service across successive locations (known as “pancaked rates”). DLD Comment > this provisions helps TDUs but I believe will cause Western, SRP and others heartburn!

“(15) An RTO and ITO shall ensure that a real time electricity market is available and may provide for a day ahead electricity market or such other electricity market as it deems appropriate.

“(16) An RTO and ITO shall coordinate its activities with transmitting utilities overseeing or controlling adjacent interstate transmission facilities.

“(17) An RTO and ITO shall provide a plan on how to allocate costs associated with new transmission facilities as well as modification, expansion or upgrade of existing transmission facilities (“transmission expansion”) that will ensure that costs of any transmission expansion are allocated fairly and that those who pay for transmission expansion are credited with some proportionate transmission service that reflects the amount invested in the transmission expansion or equivalent tradeable or financial transmission rights.

“(18) An RTO and ITO shall provide a plan to ensure that—

“(A) any load-serving entity under its control (DLD Comment > what is “under its control” are the districts by virtue of their interconnection to a transmission provider who is under the RTO control included or excluded? If excluded we need the same protections) or oversight shall be entitled to use firm transmission rights or equivalent tradeable or financial transmission rights to meet its current and reasonably forecasted service obligations;

“(B) any load-serving entity under its control or oversight shall be afforded a fair opportunity to make any necessary reservations of transmission capacity to exercise firm transmission rights or equivalent tradeable or financial rights to meet current and reasonably forecasted service obligations;

“(C) to the extent that all or a portion of a load-serving entity’s service obligation is transferred to another load-serving entity, the successor shall be entitled to use firm transmission rights, if they were available to the transferor, or equivalent tradeable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

“LIMITATIONS ON COMMISSION AUTHORITY

“SEC. 217. (a) In any rule or order, including the final rule on the Standard Market Design in Docket No. RM01-12-000, or any action on an individual application to form or modify an RTO or ITO after the date of enactment of this section the Commission shall comply with the requirements of this section and section 216.

“(b) If an applicant files a proposal to establish, participate in or modify an RTO or ITO with the Commission and if such application meets the requirements of the preceding section and other applicable requirements of Section 205 of this Act to the extent consistent with this section and the preceding section, the Commission shall promptly approve the application.

“(c) In exercising its authority, the Commission shall permit applicants to retain the maximum practicable flexibility in structuring and implementing RTOs and ITOs. In carrying out this requirement,

the Commission shall—

“(1) permit organizational forms of for-profit, not-for-profit or any variation thereof to operate RTOs and ITOs or operate within RTOs;

“(2) permit RTOs and ITOs to phase-in the implementation of the applicable requirements so as to best meet the needs of a region, and in particular shall take into account the special circumstances that may be found in the Western Interconnection related to the existence of transmission congestion; the existence of significant hydroelectric capacity; the participation of unregulated transmitting utilities; and the distances between generation and load; and

“(3) make a finding with respect to each RTO and ITO order that the Commission has—

“(A) taken into account legal, financial, and operational constraints faced by particular types of applicants and participants, including public utilities, entities described in section 201(f), and rural cooperative utilities;

“(B) addressed the concerns of State regulatory authorities and other appropriate State authorities in States in which the RTO and ITO operates; and

“(C) provided for economically efficient investment in transmission infrastructure to support the development of regional wholesale markets for electric power.

“(d) The Commission shall not require directly, or as a condition of its approval of (1) any application to form or participate in an RTO or (2) any application to provide independent control or oversight of transmission facilities, that a public utility divest generation or transmission facilities.

“(e) The Commission shall not interfere with a transmitting utility’s right to develop, construct and own system expansions to ensure adequate and reliable service.

“DEFERENCE REQUIREMENT

“SEC. 218. (a) In exercising its jurisdiction under this Part to act on matters concerning formation or modification of an RTO or an ITO, the Commission shall give substantial deference to any agreement by State regulatory authorities, other appropriate State officials, and stakeholders of the

RTO or ITO on issues concerning—

“(1) allocation of the costs of new transmission and interconnection facilities;

“(2) equitable allocation of the fixed costs of the existing system, including the imposition of rates for transmission service through and out of an RTO or ITO;

“(3) the ability of load-serving entities to meet service obligations, as described in paragraph 18 of section 216; and

“(4) the ability of States and public utilities regulated by States to perform integrated resource planning for the benefit of retail customers.

(b) The Commission shall provide any transmitting utility that participates in an RTO or an ITO an opportunity to recover all legitimate, verifiable, prudently incurred costs incurred forming, joining and participating in the RTO or ITO, including revenues lost due to its participation in the RTO or ITO for a reasonable transition period. DLD Comment > what about lost revenues from non-participating or unwelcome transmission providers!

“EXCEPTION.

“SEC. 219. Nothing in sections 216, 217 and 218 shall apply to any entity referred to in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824(k)(2)(B)).”

SEC. __34. SERVICE OBLIGATION SECURITY AND PARITY.

Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding the following:

“(e) A load-serving entity shall be entitled to use firm transmission rights or equivalent tradeable or financial transmission rights to meet its current and reasonably forecasted service obligation.

“(f) To the extent that all or a portion of a load-serving entity’s service obligation is transferred to another load-serving entity, the successor shall be entitled to use firm transmission rights, if they were available to the transferor, or equivalent tradeable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights. “(g) To the extent a transmitting utility that is not part of an RTO or an ITO reserves transmission capacity or reserves the equivalent tradeable or financial transmission rights to meet any service obligation and affords load-serving entities that rely on that transmitting utility’s facilities comparable rights to do the same, that transmitting utility shall not be considered as engaging in undue discrimination or preference under the Act.

“(h) Any sale of electric energy by a load-serving entity to a buyer other than those described in section 3(28)(A) and (B) of the Federal Power Act must be consistent with section 205 and 206 of the Federal Power Act.

“(i) Nothing in this section shall affect the allocation of transmission rights by an RTO or ITO approved by the Commission before the enactment of this subsection. Nothing in this section shall provide a basis for abrogating any contract for firm transmission service or rights in effect as of the date of the enactment of this subsection.” DLD Comments > WestConnect status as an approved RTO by the Commission needs to be fully evaluated – if WestConnect is an approved RTO then the load-serving entities protection is limited to what WestConnect has already done or will do – at a minimum revisions to RTOs allocation of transmission rights need to be tested against these provisions.

SEC. __35. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.

(a) Within 3 months of enactment of this Act, the Commission shall convene regional discussions with State regulatory commissions, as defined in section 3(21) of the Federal Power Act, via public hearings or technical conferences, and following notice to the public and the opportunity for interested parties to comment on and to participate in such discussions. The regional discussions should address whether wholesale electric markets in each region are working effectively to provide reliable service to electric consumers in the region at the lowest reasonable cost. Priority should be given to discussions in regions that do not have, as of the date of enactment of this Act, a Regional Transmission Organization or an Independent Transmission Organization, respectively defined in section 3(26) and section 3(27) of

the Federal Power Act. The regional discussions shall consider—

- (1) the need for an independent regional transmission organization or organizations in the region to provide non-discriminatory transmission access and generation interconnection;
- (2) a process for regional planning of transmission facilities with State regulatory authority participation and for consideration of multi-state projects;
- (3) a means for ensuring that costs for all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of wholesale energy or capacity are reasonable and economically efficient;
- (4) a means for ensuring that all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and other customers who have existing contracts for electric service within the region maintain their ability to use the existing transmission system without incurring unreasonable additional costs in order to expand the transmission system for new customers;
- (5) whether the integrated transmission and electric power supply system can and should be operated in a manner that schedules and economically prioritizes all available electric generation resources, so as to minimize the costs of electric energy to all consumers (“economic dispatch”) and maintaining system reliability;
- (6) a means to provide transparent price signals to ensure efficient expansion of the electric system and efficiently manage transmission congestion;
- (7) eliminating in a reasonable manner, consistent with applicable State and Federal law, multiple, cumulative charges for transmission service across successive locations within a region (“pancaked rates”);
- (8) resolution of seams issues with neighboring regions and inter-regional coordination;
- (9) a means of providing information electronically to potential users of the transmission system;
- (10) implementation of a market monitor for the region with State regulatory authority and Commission oversight and establishment of rules and procedures that ensure that State

regulatory authorities are provided access to market information and that provides for expedited consideration by the Commission of any complaints concerning exercise of market power and the operation of wholesale markets; and,

(11) a timetable to meet the objectives of this section.

(b) Within 12 months of enactment of this Act, the Commission shall report to Congress on the progress made in addressing the issues in subsection (a) of this Section in discussions with the States.

(c) Nothing in this Section shall affect any discussions between the Commission and State or other retail regulatory authorities that are on-going prior to enactment of this Act.

Subtitle E—Improving Transmission Access and Infrastructure

SEC. 41. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

“OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

“SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

“(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

“(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

“(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

“(1) is a facility used in local distribution that sells no more than 4,000,000 megawatt hours of electricity per year; or DLD Comments > understand this provision but believe its of little value, if the larger transmission providers are forced into RTOs than the game is over > we all are paying for the CA ISO even though we are not members. This section may provide a

delay but FERC will make it so difficult to stay out that the smaller systems will be forced in – game over! In addition it appears that our clients are subject to the other provisions on the bill as “load serving entity’s” and “electric utilities” – am I missing something.

“(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

“(3) meets other criteria the Commission determines to be in the public interest.

“(c) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

“(d) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

“(e) The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

“(f) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

“(g) For purposes of this subsection, the term ‘unregulated transmitting utility’ means an entity that—

“(1) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

“(2) is either an entity described in section 201(f) or a rural electric cooperative.”.

SEC. 42. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act is amended by adding the following:

“SUSTAINABLE TRANSMISSION NETWORKS RULEMAKING

“SEC. 220. (a) Within 6 months of the enactment of this section, the Commission shall establish, by rule, transmission pricing policies and standards for promoting the expansion and improvement of interstate transmission networks through incentive-based, performance-based, participant-funded and cost of service-based rate treatments to ensure reliability of the electric system, to support interstate

wholesale markets for electric power, and expand transmission transfer capacity needed to sustain wholesale competition. Policies and standards established under this section shall be applicable to all public utilities, be consistent with section 205 of this Act; and, specifically—

“(1) promote capital investment in the economically efficient enlargement of transmission networks to reduce congestion on transmission networks and provide assurance that new generation and transmission is built where it provides the lowest overall cost to consumers;

“(2) encourage improved operation of transmission facilities and deployment of transmission technologies to increase capacity and efficiency of existing networks and reduce line losses, including but not limited to high-capacity wires (including high-temperature superconducting cables), power electronics and information technologies (including flexible alternating current transmission system technologies), and high-voltage, direct current lines;

“(3) provide a return on equity that attracts new investment in transmission facilities and reasonably reflects the financial, operational and other risks taken by public utilities in restructuring transmission assets; and

“(4) reward improved quality of transmission service.

“(b) In the case of any transmission rate approved by the Commission on or after the effective date of the rule established under this section, the rate shall comply with the procedural and other requirements of this part, including the requirement of sections 205 and 206, that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory.”.

SEC. 43. INFRASTRUCTURE COST ALLOCATION PRINCIPLE.

(a) Within one year after the enactment of this Act, the Commission shall issue a final rule regarding the allocation of costs associated with the interconnection of new transmission facilities as well as the modification, expansion or upgrade of existing transmission facilities (“transmission expansion”) for facilities that are not within an RTO or ITO.

(b) The final rule shall ensure that the costs of any transmission expansion are allocated in such a way that all users of the transmission expansion bear the appropriate share of its costs.

(c) In its rulemaking, the Commission shall consider system-wide benefits as benefits that include, but are not limited to projects that—

- (1) provide reliability and adequacy for regional needs;
- (2) accommodate load growth on a regional level;
- (3) increase transmission capability into congested areas; and
- (4) facilitate major regional and inter-regional power transfers (seams).

(d) The cost of transmission expansion projects that do not provide sufficient system-wide benefits but rather benefit only a subset of users or market participants shall be recovered from that subset on an incremental basis.

Subtitle F—Amendments to the Public Utility Regulatory Policies Act of 1978

SEC. 51. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(11) NET METERING.—

“(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

“(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

“(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.”.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

“(i) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section 111(d)(13), the

term net metering service shall mean a service provided in accordance with the following standards:

“(1) An electric utility—

“(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

“(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge. DLD Comment > this will cause problems – will force transmission charges away from capacity reservation to an energy determinate, other wise a large users may be able to avoid transmission charges by operating on-sight generation for a very limited amount of hours.

“(2) An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with normal metering practices.

“(3) If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

“(4) If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

“(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

“(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour

credit appearing on the bill for the following billing period.

“(5) An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

“(6) The Commission, after consultation with State regulatory authorities and unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

“(7) For purposes of this subsection—

“(A) The term ‘eligible on-site generating facility’ means—

“(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less that is fueled by solar energy, wind energy, or fuel cells; or

“(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

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

“(C) The term ‘high efficiency system’ means fuel cells or combined heat and power.

“(D) The term ‘net metering service’ means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.”

SEC. __52. REAL-TIME PRICING AND TIME-OF-USE METERING STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(12) REAL-TIME PRICING.—

“(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a real-time rate schedule, under which the rate charged by the electric utility varies by the hour (or smaller time interval) according to changes in the electric utility’s wholesale power cost. The real-time pricing service shall enable the electric consumer to manage energy use and cost through real-time metering and communications technology.

“(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

“(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.

“(13) TIME-OF-USE METERING.—

“(A) Each electric utility shall, at the request of an electric consumer, provide electric service under a time-of-use rate schedule which enables the electric consumer to manage energy use and cost through time-of-use metering and technology.

“(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

“(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.”.

(b) SPECIAL RULES.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

“(j) REAL-TIME PRICING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same real-time metering and communication service as a direct retail electric consumer of the electric utility.

“(k) TIME-OF-USE METERING.—In a State that permits third-party marketers to sell electric energy to retail electric consumers, the electric consumer shall be entitled to receive the same time-of-use metering and communication service as a direct retail electric consumer of the electric utility.”.

SEC. 53. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(14) TIME-BASED METERING AND COMMUNICATIONS.—

“(A) Each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

“(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others, each the following:

“(i) Time-Of-Use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing

their consumption overall.

“(ii) Critical Peak Pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption.

“(iii) Real-Time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

“(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

“(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

“(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

“(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than twelve (12) months after enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).”.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding the at the end the following:

“(k) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall

conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.”.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking “and” at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting “; and”, and by adding the following at the end thereof:

“(5) technologies, techniques and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.”.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

“(d) DEMAND RESPONSE.—The Secretary shall be responsible for each of the following:

“(1) Educating consumers on the availability, advantages and benefits of advanced metering and communications technologies including the funding of demonstration or pilot projects.

“(2) Working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs, and

“(3) Within 6 months of enactment, provide the Congress with a report that identifies and quantifies the national benefits of demand response and provides policy recommendations as to how to achieve specific levels of such benefits by January 1, 2005.”.

(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

(1) It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

(2) The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

(A) identifying the areas with the greatest demand response potential;

(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

(3) The Federal Energy Regulatory Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews each of the following:

(A) Saturation and penetration rate of advanced meters and communications technologies, devices and systems.

(B) Existing demand response programs and time-based rate programs.

(C) The annual resource contribution of demand resources, including the prior year and following years.

(D) The potential for demand response as a quantifiable, reliable resource for regional planning purposes.

(E) Steps taken to ensure that, in regional transmission planning and operations, that demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider or transmitting party.

(f) **COST RECOVERY OF DEMAND RESPONSE DEVICES.**—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated. It is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and

devices, but who are part of the same regional electricity entity, shall be recognized.

SEC. __54. ADOPTION OF ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

“(6) Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less.

“(7) No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with technical standards adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

“(8) Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

“(9) Each electric utility shall develop and implement a ten-year plan to increase the efficiency of its fossil fuel generation.”.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

“(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this subsection.”.

SEC. __55. TECHNICAL ASSISTANCE.

Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is amended to read as follows:

“(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide such technical assistance as determined appropriate to assist State regulatory authorities and electric

utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and (9) of section 113(b).”.

SEC. 56. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end the following:

“(m) **TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.**—

“(1) After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to independently administered real time wholesale markets for the sale of electric energy or long-term wholesale markets for the sale of capacity and electric energy.

“(2) After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility that does not on a yearly average use at least fifty percent of its combined thermal and electrical output for commercial or industrial processes or heating or cooling applications.

“(2) After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy to a qualifying cogeneration facility or a qualifying small power production facility under this section if competing retail electric suppliers are able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility.

“(3) Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before a State regulatory authority or nonregulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

“(4)(A) To ensure recovery by an electric utility that purchases electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed under this section, of all prudently incurred costs associated with the purchases, the Commission shall issue and enforce such regulations as may be required to ensure that the electric utility shall collect the prudently incurred costs associated with such purchases.

“(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).”.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

“(C) ‘qualifying small power production facility’ means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.”.

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

“(B) ‘qualifying cogeneration facility’ means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.”.

Subtitle G—Market Transparency, Anti-Manipulation And Enforcement

SEC. __61. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding after section 2__ as added by this Act the following:

“MARKET TRANSPARENCY RULES

“SEC. 2__. (a) Not later than 180 days after the date of enactment of this section, the

Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a quarterly basis. The Commission shall have authority to obtain such information from any electric and transmitting utility, including any entity described in section 201(f).

“(b) The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market.”.

SEC. __62. MARKET MANIPULATION.

Part II of the Federal Power Act is amended by the following:

“PROHIBITION ON FILING FALSE INFORMATION

“SEC. 221. It shall be a violation of this Act for any person or any other entity willfully and knowingly to report any information relating to the price of electricity sold at wholesale, which information the person or any other entity knew to be false at the time of the reporting, to any governmental entity with the intent to manipulate the data being compiled by such governmental entity.

“PROHIBITION ON ROUND TRIP TRADING

“SEC. 222. (a) It shall be a violation of this Act for any person or any other entity willfully and knowingly to enter into any contract or other arrangement to execute a ‘round-trip trade’ for the purchase or sale of electric energy at wholesale.

“(b) For the purposes of this section, the term ‘round trip trade’ means a transaction, or combination of transactions, in which a person or any other entity—

“(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

“(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively,

the purchase and sale transactions in themselves result in no financial gain or loss; and

“(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.”.

SEC. __63. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting “electric utility (including entities described in section 201(f) and rural cooperative entities),” after “Any person,”; and

(2) inserting “transmitting utility,” after “licensee” each place it appears.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended by inserting “or transmitting utility” after “any person” in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting “electric utility,” after “Any person,” in the first sentence.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking “two years” and inserting “five years”;

(2) in subsection (b), by striking “\$500” and inserting “\$25,000”; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o-1) is amended—

(1) in subsections (a) and (b), by striking “section 211, 212, 213, or 214” each place it appears and inserting “Part II”; and

(2) in subsection (b), by striking “\$10,000” and inserting “\$1,000,000”.

(f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a), by striking “\$5,000” and inserting “\$1,000,000”, and by striking “two years” and inserting “five years”; and

(2) in subsection (b), by striking “\$500” and inserting “\$50,000”.

SEC. __64. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking “the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period” in the second sentence and inserting “the date of the filing of such complaint nor later than 5 months after the filing of such complaint”;

(2) striking “60 days after” in the third sentence and inserting “of”;

(3) striking “expiration of such 60-day period” in the third sentence and inserting “publication date”; and

(4) striking the fifth sentence and inserting: “If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.”.

SEC. __65. SANCTITY OF CONTRACT.

(a) **LIMITATION ON AUTHORITY.**—The Federal Energy Regulatory Commission shall have no authority to abrogate or modify any provision of an existing contract, except upon a finding, after notice and opportunity for a hearing, that such action is necessary to protect the public interest, unless such contract expressly provides for a different standard of review.

(b) **JURISDICTION.**—For purposes of this section, an existing contract is any agreement, in effect and subject to the jurisdiction of the Commission—

(1) under section 4 of the Natural Gas Act or section 205 of the Federal Power Act;

and

(2) that is not for sales in an organized exchange or auction spot market.

Subtitle H—Consumer Protections

SEC. __71. INFORMATION DISCLOSURE.

(a) **DISCLOSURE RULES.**—Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall issue rules prescribing the form, content, placement, and timing of the disclosure required under subsections (b) and (c) of this section. The rules shall be issued in accordance with section 553 of title 5, United States Code, after consultation with the Federal Energy

Regulatory Commission, the Secretary of Energy, and the Administrator of the Environmental Protection Agency.

(b) DISCLOSURE TO ELECTRIC CONSUMERS.—In order to assist electric consumers in making informed purchasing decisions, an electric utility that sells or makes an offer to sell electric energy, or solicits electric consumers to purchase electric energy, shall provide the electric consumer, in accordance with rules issued under subsection (a), a statement containing—

(1) the nature of the service being offered, including information about interruptibility of service;

(2) the price of the electric energy, including a description of any variable charges;

(3) a description of all other charges associated with the service being offered, including access charges, exit charges, back-up service charges, stranded cost recovery charges, and customer service charges; and

(4) information the Federal Trade Commission determines is technologically and economically feasible to provide, is of assistance to electric consumers in making purchasing decisions, and concerns—

(A) the product or its price,

(B) the share of electric energy that is generated by each type of electric generation resource, and

(C) the generation emissions characteristics of the electric energy.

(c) DISCLOSURE TO WHOLESALE PURCHASERS.—In every sale of electric energy for resale, the seller shall provide to the purchaser the information respecting generation source and emissions characteristics required by rules issued under subsection (a).

(d) FEDERAL TRADE COMMISSION ENFORCEMENT.—Violation of a rule issued under this section shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a). All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance with this section notwithstanding any jurisdictional limitations in the Federal Trade Commission Act.

(e) STATE AUTHORITY.—This section does not preclude a State regulatory authority from issuing and enforcing additional laws, regulations, or procedures regarding the practices that are the subject of this section.

SEC. __72. CONSUMER PRIVACY.

The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information in connection with the sale or delivery of electric energy to a retail electric consumer. The Federal Trade Commissions shall proceed in accordance with section 553 of title 5 of the United States Code, when prescribing a rule under this section.

SEC. __73. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if determined by the appropriate State regulatory authority to be necessary to prevent loss of service.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) RULEMAKING.—The Federal Trade Commission shall proceed in accordance with section 553 of title 5, United States Code, when prescribing a rule under this section.

SEC. __74. DEFINITIONS.

For purposes of this subtitle—

(1) “State commission” has the meaning given that term in section 3(15) of the Federal Power Act (16 U.S.C. 796(15)),

(2) “electric consumer” and “electric utility” have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602), and

(3) “local distribution company” means any entity that owns, controls, or operates local distribution facilities.

Subtitle I—Technical Amendments

SEC. __81. TECHNICAL AMENDMENTS.

(a) Section 211(c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

(1) striking “(2)”;

(2) striking “(A)” and inserting “(1)”

(3) striking “(B)” and inserting “(2)”; and

(4) striking “termination of modification” and inserting “termination or modification”.

(b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking “electric utility” the second time it appears and inserting “transmitting utility”.

(c) Section 315 of the Federal Power Act (16 U.S.C. 825n) is amended by striking “subsection” and inserting “section”.