

104TH CONGRESS  
2D SESSION

# H. R. 2929

To amend title I of the Public Utility Regulatory Policies Act of 1978  
to deregulate the electric power industry.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1996

Mr. MARKEY introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title I of the Public Utility Regulatory Policies  
Act of 1978 to deregulate the electric power industry.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Electric Power Competition Act of 1996”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

Sec. 2. Findings.

TITLE I—SUSPENSION OF PUBLIC UTILITY REGULATORY  
POLICIES ACT PROVISIONS

Sec. 101. Purchases from qualifying facilities.

TITLE II—STANDARDS OF COMPETITION FOR ELECTRIC  
UTILITIES

Sec. 201. Standards of competition.

TITLE III—ANTITRUST LAWS

Sec. 301. State action doctrine.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that equitable rates for electric  
3 consumers and increased efficiency in the use of tech-  
4 nology and resources for the generation of electric power  
5 require—

6 (1) reliance on competition and market forces  
7 rather than regulation of monopolies to generate the  
8 most efficient and reliable electricity for ratepayers;

9 (2) access to transmission and distribution fa-  
10 cilities for all suppliers and marketers of electricity  
11 with pricing and terms and conditions on a com-  
12 parable basis with those who own or control such fa-  
13 cilities;

14 (3) a program to promote fuel diversity and  
15 conservation and environmental protection through  
16 the encouragement of renewable technologies and  
17 other environmentally benign generation resources;

18 (4) the ability of electric utilities to recover le-  
19 gitimate and verifiable stranded costs;

20 (5) the preservation of the benefits and exemp-  
21 tions necessary for a competitive market, including

1 mandatory power purchase provisions which are pro-  
2 vided to qualifying small power production facilities  
3 and qualifying cogeneration facilities under section  
4 210 of the Public Utility Regulatory Policies Act of  
5 1978 until and unless standards of competition are  
6 adopted by the Federal Energy Regulatory Commis-  
7 sion and implemented by the State regulatory au-  
8 thorities removing structural or other barriers to  
9 competition in electricity markets; and

10 (6) reform of Federal and State electric utility  
11 regulatory laws and regulations, including eliminat-  
12 ing certain exemptions from certain antitrust laws,  
13 which create unnecessary obstacles to competition  
14 and to prevention of anticompetitive behavior of en-  
15 tities with market power.

16 **TITLE I—SUSPENSION OF PUB-**  
17 **LIC UTILITY REGULATORY**  
18 **POLICIES ACT PROVISIONS**

19 **SEC. 101. PURCHASES FROM QUALIFYING FACILITIES.**

20 Title II of the Public Utility Regulatory Policies Act  
21 of 1978 is amended by adding the following new sections  
22 at the end thereof:

1 **“SEC. 214. UTILITIES WITH CERTIFICATION OF COMPETI-**  
2 **TION.**

3 “(a) CERTAIN REQUIREMENTS OF SECTION 210 SUS-  
4 PENDED.—If an electric utility has received a Certification  
5 of Competition from a State regulatory authority in ac-  
6 cordance with subtitle F of title I—

7 “(1) the provisions of section 210 requiring  
8 electric utilities to offer to purchase electric energy  
9 from qualifying cogeneration facilities and qualifying  
10 small power production facilities shall be suspended;  
11 and

12 “(2) for power purchase arrangements entered  
13 into during the period of any such suspension, for  
14 the duration of such power purchase arrangements  
15 the rates for such purchase shall not be dependent  
16 on the incremental cost to the electric utility of al-  
17 ternative energy in section 210(b).

18 “(b) PROTECTION OF EXISTING CONTRACTUAL COM-  
19 MITMENTS.—Nothing in this Act, directly or indirectly,  
20 authorizes the Commission, a State regulatory authority,  
21 or any electric utility to reopen, alter, curtail, force the  
22 renegotiation of, or interfere with the enforcement of any  
23 power purchase arrangements between a qualifying cogen-  
24 eration facility or qualifying small power production facili-  
25 ties and an electric utility purchaser.

1 “(c) TERMS.—For purposes of this section the terms  
2 ‘qualifying cogeneration facility’ and ‘qualifying small  
3 power production facility’ shall have the meaning provided  
4 for such terms by section 3(18) of the Federal Power Act.

5 **“SEC. 215. ENCOURAGEMENT OF PARTICULAR GENERA-**  
6 **TION TECHNOLOGIES.**

7 “Nothing in this Act, the Federal Power Act, or any  
8 other provision of Federal law prevents a State regulatory  
9 authority from favoring or disfavoring particular types of  
10 generation in its determination for purposes of section 210  
11 of the incremental cost to a purchasing electric utility of  
12 alternative electric energy. Where a State regulatory au-  
13 thority determines that an electric utility’s incremental  
14 cost of alternative electric energy shall be determined by  
15 competitive bidding, the State regulatory authority may  
16 segment the bid by generation technology or by groups  
17 of generation technologies.”.

18 **TITLE II—STANDARDS OF COM-**  
19 **PETITION FOR ELECTRIC**  
20 **UTILITIES**

21 **SEC. 201. STANDARDS OF COMPETITION.**

22 Title I of the Public Utility Regulatory Policies Act  
23 of 1978 is amended by adding the following new subtitle  
24 at the end thereof:

1                   **“Subtitle F—Standards of**  
2                   **Competition for Electric Utilities**

3                   **“SEC. 151. CERTIFICATION OF COMPETITION BY STATE**  
4                   **REGULATORY AUTHORITIES.**

5                   “(a) VOLUNTARY STATE CERTIFICATION.—A State  
6 regulatory authority may elect to issue a State certifi-  
7 cation of compliance with standards and requirements of  
8 competition under this subtitle to a State regulated elec-  
9 tric utility for which it has ratemaking authority. Such  
10 election shall be voluntary. Nothing in this subtitle pro-  
11 hibits any State regulatory authority from determining  
12 that it is not appropriate to issue or deny any such certifi-  
13 cation in the case of any electric utility for which the State  
14 regulatory authority has ratemaking authority. Nothing in  
15 this subtitle prohibits or limits any State regulatory au-  
16 thority from implementing any other process regarding  
17 competition for electric utilities subject to the jurisdiction  
18 of such State regulatory authority.

19                   “(b) CRITERIA FOR CERTIFICATION.—After notice  
20 and opportunity for hearing, the Commission shall estab-  
21 lish, by rule, in accordance with standards of competition  
22 set forth in section 152 criteria for the certification by  
23 a State regulatory authority that a State regulated electric  
24 utility for which it has ratemaking authority has met—

1           “(1) the minimum certification requirements of  
2 section 153,

3           “(2) either—

4                 “(A) the Federal retail competition stand-  
5 ard set forth in section 152(a), or

6                 “(B) the Federal divestiture standard com-  
7 petition set forth in section 152(b); and

8           “(3) such other requirements as the Commis-  
9 sion shall prescribe consistent with the public inter-  
10 est and the purposes of this title.

11 **“SEC. 152. FEDERAL STANDARDS OF COMPETITION.**

12           “(a) RETAIL COMPETITION STANDARD.—(1) A State  
13 regulated electric utility meets the retail competition  
14 standard if the State regulatory authority which has rate-  
15 making authority over such utility determines, in accord-  
16 ance with criteria established by the Commission under  
17 section 151(b), and after notice and opportunity for hear-  
18 ing, that—

19                 “(A) the utility permits competition in retail  
20 sales of electric energy to all consumers within its  
21 service territory;

22                 “(B) the opportunity to build, own, and operate  
23 all new generating capacity approved by a State reg-  
24 ulatory authority is open to competition by all  
25 sources, and

1           “(C) the electric utility does not gain any ad-  
2           vantage over other competitors by virtue of its status  
3           as a regulated buyer and seller of electricity in its  
4           service territory.

5           “(2) Certification under paragraph (1) of this sub-  
6           section shall be withdrawn if the State regulatory author-  
7           ity finds that—

8           “(A) an electric utility affiliate is competing un-  
9           fairly by using assets, goods, or services obtained  
10          from the electric utility at a price below the market  
11          value; or

12          “(B) the electric utility or its affiliate has dis-  
13          criminatory access to any asset, service, or informa-  
14          tion which would be helpful to a competitor where  
15          the access is attributable to the electric utility’s sta-  
16          tus as a regulated integrated monopoly or the asset  
17          or information is an essential facility that is not eco-  
18          nomicly duplicable by a competitor.

19          “(b) DIVESTITURE STANDARD.—A State regulated  
20          electric utility that is an integrated electric utility that  
21          owns or controls a monopoly distribution franchise, mo-  
22          nopoly transmission facilities, or both, meets the divesti-  
23          ture standard of competition if the State regulatory au-  
24          thority which has ratemaking authority over such utility  
25          determines, in accordance with criteria established by the

1 Commission under section 151(b), and after notice and  
2 opportunity for hearing, that the utility has—

3 “(1) divested itself of all existing generation fa-  
4 cilities and is prohibited under State law from di-  
5 rectly or indirectly acquiring ownership or control of  
6 any generation facilities for so long as it owns or  
7 controls a monopoly distribution franchise or trans-  
8 mission facilities, and

9 “(2) in the case of a utility that owns or con-  
10 trols transmission facilities, adopted open access  
11 transmission tariffs that have been approved as just,  
12 reasonable, and not unduly preferential.

13 **“SEC. 153. MINIMUM CERTIFICATION REQUIREMENTS.**

14 “A State regulatory authority may not issue a certifi-  
15 cation of competition under this subtitle to any electric  
16 utility unless the authority has made each of the following  
17 determinations:

18 “(1) A determination that all suppliers of en-  
19 ergy services to the utility or to electricity consumers  
20 in the service territory of the utility have both the  
21 incentive and opportunity to provide energy-effi-  
22 ciency and renewable energy resources that are less  
23 costly on a life-cycle basis than displaced generation.

24 “(2) A determination that nonbypassable  
25 charges on use of, or access to, the local distribution

1 services or facilities of the utility are in effect and  
2 adequate to ensure sustained and equitable alloca-  
3 tion of costs associated with low-income services and  
4 other investments, including those in fuel diversity  
5 and energy efficiency, that deliver system wide bene-  
6 fits in the form of equity among, or reduced life-  
7 cycle costs of service to, electricity consumers in the  
8 service territory of the utility: *Provided*, That the  
9 fuel diversity objective may also be met by minimum  
10 portfolio standards that ensure maintenance or im-  
11 provement of current levels of reliance on renewable  
12 energy resources.

13 “(3) A determination that any systems of retail  
14 competition among electric-service suppliers are  
15 structured to protect customers from price discrimi-  
16 nation or undue price increases and to ensure that  
17 no customer class can avoid its equitable share of  
18 the electric utility’s legitimate and verifiable strand-  
19 ed costs.

20 “(4) A determination that under applicable  
21 State laws and regulations, any recovery of sunk  
22 costs associated with existing generation assets, is  
23 not contingent on continued operation of the genera-  
24 tion assets for which recovery is approved.”.

# 1       **TITLE III—ANTITRUST LAWS**

## 2       **SEC. 301. STATE ACTION DOCTRINE.**

3       (a) **GENERAL RULE.**—In order to ensure that remedies for anticompetitive abuses are available to entities competing in the electric generation market, utilities exercising monopoly functions under State regulation may not use the “State action” doctrine of antitrust jurisprudence as a defense against charges of anticompetitive behavior in unregulated generation markets.

10       (b) **TERMS.**—For purposes of this section—

11               (1) The terms used in this title shall have the same meaning as when used in title I of the Public Utility Regulatory Policies Act of 1978.

14               (2) The term “antitrust laws” includes the Sherman Antitrust Act (15 U.S.C. 1 et seq.) and amendments thereto, the Clayton Act (15 U.S.C. 12 et seq.) and amendments thereto, regulations promulgated under such laws, and Federal court decisions interpreting such laws.

20               (3) The term “State action doctrine” means the judicial rule first articulated by the United States Supreme Court in *Parker v. Brown*, 317 U.S. 341, 352 (1943) by which any act would be exempt from compliance with Federal antitrust laws because taken pursuant to direction or authorization by the

1 laws, regulations, or governmental activity of any  
2 State.

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