

105TH CONGRESS  
1ST SESSION

# H. R. 2988

To facilitate the operation, maintenance, and upgrade of certain federally owned hydroelectric power generating facilities, to ensure the recovery of costs, and to improve the ability of the Federal Government to coordinate its generating and marketing of electricity with the non-Federal electric utility industry.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1997

Mr. DOOLITTLE introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Commerce and Transportation and Infrastructure, 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 facilitate the operation, maintenance, and upgrade of certain federally owned hydroelectric power generating facilities, to ensure the recovery of costs, and to improve the ability of the Federal Government to coordinate its generating and marketing of electricity with the non-Federal electric utility industry.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Power Market-  
3 ing Act of 1997”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are:

6 (1) To amend the Department of Energy Orga-  
7 nization Act (91 Stat. 565; 42 U.S.C. 7101, et seq.)  
8 to clarify the authorities of the Secretary of Energy  
9 regarding the Federal Power Marketing Administra-  
10 tions.

11 (2) To provide additional and more broadly dis-  
12 tributed benefits from Federal hydroelectric re-  
13 sources subject to control by the Federal Power  
14 Marketing Administrations.

15 (3) To eliminate the backlog of maintenance  
16 and improvement projects at Federal hydroelectric  
17 generating facilities through out sourcing such ac-  
18 tivities on a competitive basis.

19 (4) To provide adequate funding, through user  
20 fees, for all routine operation and maintenance re-  
21 quirements at Federal hydroelectric generating  
22 projects, as well as those maintenance and improve-  
23 ment projects that are not successfully outsourced.

24 (5) To recover fully from Federal Power Mar-  
25 keting Administration energy customers all costs in-

1 curred for the generation and marketing of Federal  
2 energy sold to such customers.

3 **SEC. 3. RELATIONSHIP TO OTHER LAW.**

4 The provisions of this Act shall apply notwithstand-  
5 ing any provision to the contrary of the Act of June 17,  
6 1902, ch. 1093, commonly known as the Reclamation Act  
7 of 1902, (32 Stat. 388, 43 U.S.C. 371 et seq.) and all  
8 laws supplemental thereto; the Flood Control Act of 1944,  
9 Act of December 22, 1944 (58 Stat. 887, 16 U.S.C. 460d  
10 et seq.); the Bonneville Project Act of 1937, Act of August  
11 20, 1937 (50 Stat. 731, 16 U.S.C. 832 et seq.); the Fed-  
12 eral Columbia River Transmission System Act, Act of Oc-  
13 tober 18, 1974, Public Law 93-454 (88 Stat. 1376, 16  
14 U.S.C. 838 et seq.); and the Pacific Northwest Electric  
15 Power Planning and Conservation Act of 1980, Act of De-  
16 cember 5, 1980, Public Law 96-501 (94 Stat. 2697, 16  
17 U.S.C. 839); and section 2406 of the Energy Policy Act  
18 of 1992 (106 Stat. 3099, 16 U.S.C. 839d-1)

19 **TITLE I—OPERATIONS AND**  
20 **MAINTENANCE**

21 **SEC. 101. OUTSOURCING OF MAINTENANCE AND IMPROVE-**  
22 **MENT PROJECTS.**

23 (a) INVENTORY OF PROJECTS.—The Secretary of  
24 Energy, in cooperation with the Secretary of the Army  
25 (acting through the Chief of Engineers) and the Secretary

1 of the Interior (acting through the Commissioner of Rec-  
2 lamation) shall develop and publish in the Federal Reg-  
3 ister on an annual basis an inventory of uncompleted  
4 projects for the maintenance and improvement of hydro-  
5 electric generating facilities owned by the United States  
6 and operated by the Department of the Army Corps of  
7 Engineers and the Bureau of Reclamation of the United  
8 States Department of the Interior. Such inventory shall  
9 include, but not be limited to, maintenance and capital im-  
10 provement projects that will—

11           (1) restore hydroelectric generating capacity  
12           that has been degraded as a result of deferred main-  
13           tenance or other reasons,

14           (2) maintain existing generating facilities at  
15           their design specifications, or

16           (3) replace existing hydroelectric generating  
17           equipment with more efficient equipment capable of  
18           increased hydroelectric power generating capacity.

19 For each project contained in the inventory, the Secretary  
20 shall provide a statement of the baseline of annual hydro-  
21 electric generation produced from the project.

22 The initial inventory shall be published no later than 6  
23 months after the date of the enactment of this Act.

24           (b) CRITERIA AND PROCEDURES FOR COMPETITIVE  
25           OUTSOURCING OF MAINTENANCE AND IMPROVEMENT

1 PROJECTS.—The Secretary of Energy, in consultation  
2 with the Secretary of the Army (acting through the Chief  
3 of Engineers), and the Secretary of the Interior (acting  
4 through the Commissioner of Reclamation), shall develop  
5 and publish a notice in the Federal Register of a rule-  
6 making to establish a process for competitive outsourcing  
7 of maintenance and improvement projects. Such process  
8 shall include—

9           (1) performance specifications for the  
10       outsourcing of maintenance and improvement  
11       projects, including minimum safety, reliability and  
12       maintenance requirements;

13           (2) any requirements necessary to ensure oper-  
14       ational compatibility of the maintenance and im-  
15       provement project with other aspects of Federal  
16       projects;

17           (3) requirements for the contractor’s proposed  
18       plan for undertaking the maintenance and improve-  
19       ment projects, including financing, management, en-  
20       vironmental compliance, and power marketing; and

21           (4) any requirement to ensure that the Federal  
22       Government incurs no significant costs or risks re-  
23       sulting from the maintenance and improvement  
24       project.

1 The Secretary shall not prescribe engineering design speci-  
2 fications for the maintenance and improvement projects.  
3 The Secretary shall make available any supporting analy-  
4 sis and data for these projects. The Secretary shall permit  
5 access to facilities and records to prospective contractors  
6 for purposes of preparing proposals. Notice under this  
7 subsection shall be published for review and comment no  
8 later than 90 days after the enactment of this Act.

9 (c) SUBMISSION OF PROPOSALS FOR MAINTENANCE  
10 AND IMPROVEMENT PROJECTS.—The Secretary of the  
11 Army (acting through the Chief of Engineers) and the  
12 Secretary of the Interior (acting through the Commis-  
13 sioner of Reclamation) shall, within 30 days of final publi-  
14 cation of each annual inventory under subsection (a), seek  
15 proposals from qualified contractors to undertake the  
16 maintenance and improvement projects identified in that  
17 inventory. Contractor proposals shall contain the informa-  
18 tion specified in the criteria and procedures of subsection  
19 (b), and shall provide a proposed bonus payment to the  
20 Federal Government for the right to undertake the main-  
21 tenance and improvement project.

22 (d) AWARDING OF CONTRACTS FOR MAINTENANCE  
23 AND IMPROVEMENT PROJECTS.—(1) The Secretary con-  
24 cerned shall select a winning contractor from among the

1 competing qualified proposals based upon the highest bid  
2 provided to the Government.

3       (2) The Secretary shall provide the winning contrac-  
4 tor the right to a contract to receive a comparable percent-  
5 age of the total hydroelectric energy generated by the Fed-  
6 eral hydroelectric generating facility concerned that rep-  
7 resents the increase in generation benefit resulting from  
8 the Federal hydroelectric generating facility concerned  
9 that represents the increase in generation benefit resulting  
10 from the completion of the project. The percentage in-  
11 crease in hydroelectric generation shall be calculated as  
12 the difference between the estimated total hydroelectric  
13 generation (as specified pursuant to the last sentence of  
14 subsection (a) of section 101) for the Federal hydroelectric  
15 generation facility existing at the time of the inventory  
16 and the increased generation benefit resulting from imple-  
17 mentation of the maintenance and improvement project.  
18 The contract shall not exceed the estimated useful life of  
19 the maintenance and improvement project.

20       (3) The contract for hydroelectric generation shall  
21 constitute the sole and exclusive right of the contractor  
22 in the Federal hydroelectric generating asset. Ownership  
23 of all physical assets shall remain with the United States.

24       (e) PROVISION FOR MAINTENANCE AND IMPROVE-  
25 MENT PROJECTS THAT ARE NOT OUTSOURCED.—If no

1 proposals are received for particular maintenance and im-  
2 provement projects, or if the proposals are determined to  
3 be unacceptable, the Secretary concerned may proceed  
4 with the proposed project under section 102, subject to  
5 a specific appropriation by Congress of funds for such pur-  
6 pose. The Secretary shall make public the basis for any  
7 such determination.

8 (f) UNSOLICITED PROPOSALS.—After publication of  
9 the inventory under subsection (a), any contractor may  
10 submit an unsolicited proposal to undertake a mainte-  
11 nance and improvement project at a Federal hydroelectric  
12 generating facility. Each unsolicited proposal shall docu-  
13 ment that the proposed maintenance and improvement  
14 project meets the criteria specified in subsection (b) and  
15 was not identified in the inventory developed under sub-  
16 section (a). If the proper documentation is provided, the  
17 Secretary of the Army (acting through the Chief of Engi-  
18 neers) or the Secretary of the Interior (acting through the  
19 Commissioner of Reclamation), as the case may be, shall  
20 enter into a negotiated contract with such contractor with-  
21 in 120 days after receipt of the proposal without further  
22 competition. Such a contract shall provide for the contrac-  
23 tor to undertake the proposed maintenance and improve-  
24 ment project in exchange for a contract for the percentage  
25 increase in hydroelectric generation achieved from such

1 activity, calculated on the same basis as described in sub-  
2 section (d). Such a contract shall be for a period of not  
3 to exceed 25 years or the estimated useful life of the main-  
4 tenance and improvement project, whichever is less. The  
5 contractor shall make annual payments to the Federal  
6 Government based on a percentage of the revenue realized  
7 by the contractor from the sale of such hydroelectric gen-  
8 eration. Such payments shall be made at the same rate  
9 as the annual average rate of interest paid by the United  
10 States Treasury on long-term securities of comparable ma-  
11 turity in the preceding year.

12 (g) AUTHORIZATION FOR REPROGRAMMING OF  
13 FUNDS FROM EXISTING MAINTENANCE AND IMPROVE-  
14 MENT PROJECTS.—The Secretary of the Army (acting  
15 through the Chief of Engineers) or the Secretary of the  
16 Interior (acting through the Commissioner of Reclama-  
17 tion), as the case may be, shall include in the inventory  
18 developed under subsection (a) uncompleted maintenance  
19 and improvement projects that have received appropria-  
20 tions. Such Secretary may award contracts for the comple-  
21 tion of such projects under the provisions of this section.  
22 Any unobligated or unexpended funds previously appro-  
23 priated for such activities may be proposed for reallocation  
24 to other authorized purposes, subject to reprogramming  
25 procedures established in appropriations Acts.

1 **SEC. 102. USER FEE FINANCING OF HYDROELECTRIC GEN-**  
2 **ERATION OPERATIONS AND MAINTENANCE.**

3 (a) **ELIGIBLE PROJECT ACTIVITIES.**—Routine oper-  
4 ations and any maintenance or improvement projects that  
5 are not successfully outsourced pursuant to the provisions  
6 of section 101 shall be eligible for user fee financing under  
7 this section.

8 (b) **ESTABLISHMENT OF FEES.**—The Secretary of  
9 Energy shall establish a user fee to fully offset appropria-  
10 tions made for eligible hydroelectric generating mainte-  
11 nance and improvement projects described in subsection  
12 (a). The user fee shall be in the form of a surcharge on  
13 rates for electric energy and shall be collected from cus-  
14 tomers who purchase electric energy from the Federal  
15 Power Marketing Administration concerned. The user fee  
16 shall become effective at the beginning of the first fiscal  
17 year after enactment of this Act, and shall remain in effect  
18 for each fiscal year thereafter.

19 (c) **AMOUNT OF FEE.**—The fee imposed for each  
20 project under this section shall be established in appro-  
21 priations Acts at a level such that the estimated aggregate  
22 receipts from the fee during a fiscal year shall be equal  
23 to the amounts made available by the Congress in such  
24 appropriation Acts for the project concerned.

25 (d) **RELATIONSHIP TO FULL COST RECOVERY.**—(1)  
26 Any costs that are paid through appropriations offset by

1 user fees shall be excluded from the power rate require-  
2 ments of title II of this Act and any electric energy rates  
3 established therefrom.

4 (2) Any costs for hydroelectric power operation and  
5 maintenance, improvements or upgrades that are paid  
6 through any means other than those provided in sections  
7 101 and this section shall be included in the power rate  
8 requirements of title II of this Act, and payments for such  
9 costs shall not be used to reduce rates for electric energy.

10 **SEC. 103. CUSTOMER PARTICIPATION.**

11 In the implementation of the provisions of sections  
12 101 and 102, the Secretary of Energy shall consult with  
13 customer groups and solicit their views and recommenda-  
14 tions. The Secretary shall seek to ensure that the views  
15 of customer groups are appropriately reflected in plans for  
16 implementation of these authorities.

17 **SEC. 104. 5-YEAR PLANS.**

18 The Bureau of Reclamation, the United States Army  
19 Corps of Engineers, and the Administrators of the Federal  
20 Power Marketing Administrations shall jointly develop,  
21 and make available to the public, 5-year plans for the op-  
22 eration, maintenance, and replacement of all hydroelectric  
23 facilities managed by such agencies.

**TITLE II—RATES****2 SEC. 201. ACCOUNTING AND COST RECOVERY.**

3 (a) IN GENERAL.—Notwithstanding any other provi-  
4 sion of law, the Secretary of Energy shall implement sec-  
5 tion 302 of the Department of Energy Organization Act  
6 of 1977 (91 Stat. 578; 42 U.S.C. 7152) so as to ensure  
7 that the Federal Power Marketing Administrations pro-  
8 vide for the sale and disposition of Federal energy at rates  
9 set in conformance with this section.

10 (b) PROCEDURES.—Not later than 6 months after  
11 the date of enactment of this Act, the Secretary of Energy  
12 shall promulgate rules containing each of the following:

13 (1) ACCOUNTING PRINCIPLES AND REQUIRE-  
14 MENTS.—Procedures to ensure that the Federal  
15 Power Marketing Administrations utilize the same  
16 accounting principles and requirements as are appli-  
17 cable to public utilities pursuant to parts II and III  
18 of the Federal Power Act (16 U.S.C. 792 and fol-  
19 lowing) with respect to accounting for revenue, ex-  
20 penses, investments, and depreciation.

21 (2) RATES.—Procedures for setting rates for  
22 the sale and disposition of Federal energy which—

23 (A) use the procedures and accounts estab-  
24 lished pursuant to paragraph (1);

1 (B) use the appropriate ratemaking stand-  
2 ards and requirements generally applicable to  
3 public utilities pursuant to part II of the Fed-  
4 eral Power Act (16 U.S.C. 824 et seq.); and

5 (C) ultimately recover from Federal Power  
6 Marketing Administration electric energy cus-  
7 tomers all costs incurred by such Federal  
8 Power Marketing Administration (or other Fed-  
9 eral agency, where applicable) for the genera-  
10 tion and marketing of Federal energy sold to  
11 such customers.

12 (3) STRANDED COSTS.—The Secretary of En-  
13 ergy may delay the effective date of the procedures  
14 under paragraph (2) for not more than one year  
15 until appropriate stranded costs mechanisms are de-  
16 veloped.

17 (4) COMPLIANCE.—Procedures for the filing of  
18 complaints with the Federal Energy Regulatory  
19 Commission by interested persons seeking to ensure  
20 compliance with the procedures of this section.

21 (4) ADMINISTRATIVE RECONCILIATION.—Proce-  
22 dures to insure that the Bureau of Reclamation, the  
23 United States Army Corps of Engineers, and the  
24 Administrators of the Federal Power Marketing Ad-

1 ministrations maintain a consistent set of books and  
2 records for purposes of repayment obligations.

3 (c) NEW RATES FOR SALE OF ENERGY.—Not later  
4 than 1 year after the enactment of this Act, each Federal  
5 Power Marketing Administration shall propose rates for  
6 the sale and disposition of Federal energy using the proce-  
7 dures established by the Secretary pursuant to this Act,  
8 and, upon approval by the Federal Energy Regulatory  
9 Commission, shall immediately thereafter apply such rates  
10 to each new contract (and to each existing contract to the  
11 maximum extent permitted by such contract) for the sale  
12 or disposition of Federal energy by such Federal Power  
13 Marketing Administration.

14 **SEC. 202. APPROVAL OF FEDERAL ENERGY RATES.**

15 (a) FLOOD CONTROL ACT OF 1944.—(1) The first  
16 sentence of section 5 of the Flood Control Act of 1944  
17 (58 Stat. 890; 16 U.S.C. 825s) is amended as follows:

18 (A) By inserting the following after the word  
19 “principles:” “and the provisions of the Federal  
20 Power Marketing Act of 1997”.

21 (B) By striking the words “confirmation and,”  
22 and inserting the following: “determination or”.

23 (C) By striking “Secretary of Energy” at the  
24 end of such sentence and inserting in lieu thereof  
25 “Federal Energy Regulatory Commission pursuant

1 to the provisions of the Federal Power Marketing  
2 Act of 1997”.

3 (2) The second sentence of such section 5 is amended  
4 by striking “(upon the basis of the application of such rate  
5 schedules to the capacity of the electric facilities of the  
6 projects)” and by striking the period at the end thereof  
7 and inserting the following: “and in conformance with the  
8 provisions of the Federal Power Marketing Act of 1997.”.

9 (b) DEPARTMENT OF ENERGY ORGANIZATION  
10 ACT.—Section 302 of the Department of Energy Organi-  
11 zation Act (42 U.S.C. 7152(a)(1)) is amended by adding  
12 the following new subsection after subsection (a):

13 “(b) RATES.—The Federal Energy Regulatory Com-  
14 mission shall have authority, consistent with the provisions  
15 of the Federal Power Marketing Act of 1997 to—

16 “(1) approve, reject, or revise rates for the sale  
17 and disposition of electric energy by the Federal  
18 Power Marketing Administrations; and

19 “(2) determine rates, terms and conditions for  
20 the transmission of Federal and non-Federal electric  
21 energy by the Federal Power Marketing Administra-  
22 tions.”.

23 (c) PACIFIC NORTHWEST ELECTRIC POWER PLAN-  
24 NING AND CONSERVATION ACT.—(1) Section 7(a) of the

1 Pacific Northwest Electric Power Planning and Conserva-  
2 tion Act (16 U.S.C. 839e(a)(2)) is amended as follows:

3 (A) In the first sentence of paragraph (1) by  
4 striking “and for the transmission of non-Federal  
5 power” and in the second sentence of paragraph (1)  
6 by striking “and transmission” and by striking  
7 “other costs and expenses” and inserting “other  
8 costs and expenses (other than those properly alloca-  
9 ble, as determined by the Federal Energy Regu-  
10 latory Commission in accordance with generally ac-  
11 cepted ratemaking principles)”.

12 (B) In paragraph (2) by striking “confirmation  
13 and” and inserting “determination or”.

14 (C) By amending subparagraph (C) of para-  
15 graph (2) to read as follows:

16 “(C) are set in conformance with the Federal  
17 Power Marketing Act of 1997.”.

18 (D) By inserting the following at the end of  
19 subsection (a):

20 “(3) Rates, terms, and conditions for the trans-  
21 mission of power by the Administrator shall be de-  
22 termined by, and shall become effective only as per-  
23 mitted or ordered by, the Federal Energy Regu-  
24 latory Commission pursuant to the Federal Power  
25 Act.”.

1           (2) The first sentence of section 7(k) of the Pacific  
2 Northwest Electric Power Planning and Conservation Act  
3 (16 U.S.C. 839e(k)) is amended by striking the period and  
4 adding the following at the end thereof: “, and in accord-  
5 ance with the Federal Power Marketing Act of 1997”.

6           (3) Section 7(k) of such Act is amended by striking  
7 all after “approval thereof by the Commission” and insert-  
8 ing “in accordance with the Federal Power Marketing Act  
9 of 1997.”.

10          (d) BONNEVILLE PROJECT ACT.—Section 7 of the  
11 Bonneville Project Act, as amended (16 U.S.C. 832(f)),  
12 is amended by striking “(upon the basis of the application  
13 of such rate schedules to the capacity of the electric facili-  
14 ties of Bonneville project)”.

15          (e) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-  
16 TEM ACT.—Section 9 of the Federal Columbia River  
17 Transmission System Act (16 U.S.C. 838g) is amended  
18 as follows:

19               (1) By striking “confirmation and” in each  
20 place it appears and inserting “determination or”.

21               (2) By striking “Secretary of Energy” in each  
22 place it appears, and inserting “Federal Energy  
23 Regulatory Commission”.

24               (3) By striking “and” at the end of paragraph

25               (2).

1           (4) By striking the period at the end of the sec-  
2           tion and adding the following: “, and (4) in accord-  
3           ance with the provisions of the Federal Power Mar-  
4           keting Act of 1997.”.

5           (f) APPROVAL PROCESS.—Notwithstanding any other  
6           provision of law, the Federal Energy Regulatory Commis-  
7           sion shall have authority to approve, reject, revise, or de-  
8           termine rates for the sale or disposition of electric energy  
9           proposed by the Federal Power Marketing Administra-  
10          tions. The Commission’s authority shall include, but shall  
11          not be limited to, assuring that rates of the Federal Power  
12          Marketing Administrations are in accordance with the  
13          provisions of this Act. Notwithstanding any other provi-  
14          sion of law, the Federal Energy Regulatory Commission  
15          may review de novo the factual bases for rates proposed  
16          by the Federal Power Marketing Administrations. In any  
17          proceeding before the Federal Energy Regulatory Com-  
18          mission regarding the rates, terms, or conditions for the  
19          transmission, sale, or disposition of electric energy by a  
20          Federal Power Marketing Administration, the officers and  
21          employees of the Federal Power Marketing Administration  
22          shall comply with the ex parte rules of the Federal Energy  
23          Regulatory Commission as applicable to public utilities.

24          (g) RULES AND REGULATIONS.—The Federal En-  
25          ergy Regulatory Commission shall promulgate rules and

1 regulations to implement the requirements of this section  
2 not later than one year after the date of enactment of this  
3 Act.

## 4 **TITLE III—TRANSMISSION**

### 5 **SEC. 301. RATES FOR FEDERAL TRANSMISSION SERVICES.**

6 Section 201(e) of the Federal Power Act (16 U.S.C.  
7 824(e)) is amended by inserting “(1) after “(e)”, and by  
8 adding the following new paragraph at the end thereof:

9 “(2) Notwithstanding any other provision of law,  
10 each Federal Power Marketing Administration, or any  
11 corporation or association which is wholly owned, directly  
12 or indirectly, by any Federal Power Marketing Adminis-  
13 tration shall be considered a public utility solely for the  
14 purposes of part II and part III of this Act with respect  
15 to determining, fixing and otherwise regulating rates,  
16 terms and conditions for transmission of electric energy.  
17 The recovery of the costs of Federal transmission facilities  
18 shall be equitably allocated (in accordance with generally  
19 accepted ratemaking principles for public utilities) to Fed-  
20 eral and non-Federal power utilizing such transmission fa-  
21 cilities. Nothing in this section shall expand the authority  
22 of any such entities with respect to transmission of electric  
23 energy.”.

1 **SEC. 302. AMENDMENT TO SECTION 212 OF THE FEDERAL**  
2 **POWER ACT.**

3 Section 212 of the Federal Power Act is amended by  
4 striking subsection (i).

5 **TITLE IV—ENFORCEMENT**

6 **SEC. 401. REVIEW AND ENFORCEMENT.**

7 Notwithstanding any other provision of law, each af-  
8 fected person or entity shall have the right to bring an  
9 action to enforce the requirements of this Act and Acts  
10 amended by this Act with respect to any matter addressed  
11 in this Act or by amendment made in this Act in the rel-  
12 evant United States district court.

○