

105TH CONGRESS  
2D SESSION

# S. 2187

To amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

---

IN THE SENATE OF THE UNITED STATES

JUNE 18, 1998

Mr. NICKLES introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

## A BILL

To amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

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.**

4       This Act may be cited as the “Electric Consumer  
5       Choice Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the opportunity for all consumers to pur-  
4 chase electric energy in interstate commerce from  
5 any supplier is essential to a dynamic, fully inte-  
6 grated and competitive national market for electric  
7 energy;

8 (2) the establishment, maintenance or enforce-  
9 ment of exclusive rights to sell electric energy and  
10 other State action which unduly discriminates  
11 against any consumer who seeks to purchase electric  
12 energy in interstate commerce from any supplier  
13 constitute an unwarranted and unacceptable dis-  
14 crimination against and burden on interstate com-  
15 merce;

16 (3) in today's technologically driven market-  
17 place there is no justification for the discrimination  
18 against and burden imposed on interstate commerce  
19 by exclusive rights to sell electric energy or other  
20 State action which unduly discriminates against any  
21 consumer who seeks to purchase electric energy in  
22 interstate commerce from any supplier; and

23 (4) the electric energy transmission and local  
24 distribution facilities of the Nation's federally  
25 owned, investor-owned, and self-regulated utilities  
26 are essential facilities for the conduct of a competi-

1       tive interstate retail market in electric energy in  
2       which all consumers have the opportunity to pur-  
3       chase electric energy in interstate commerce from  
4       any supplier.

5       **SEC. 3. DECLARATION OF PURPOSE.**

6       The purpose of this Act is to ensure that nothing in  
7       the Federal Power Act or any other Federal law exempts  
8       or protects from article I, section 8, clause 3 of the Con-  
9       stitution of the United States exclusive rights to sell elec-  
10      tric energy or any other State actions which unduly dis-  
11      criminate against any consumer who seeks to purchase  
12      electric energy in interstate commerce from any supplier.

13      **SEC. 4. SCOPE OF STATE AUTHORITY UNDER THE FEDERAL**  
14                                   **POWER ACT.**

15      Section 201 of the Federal Power Act (16 U.S.C.  
16      824) is amended by adding at the end the following:

17           “(h) Notwithstanding any other provision of this sec-  
18      tion, nothing in this part or any other Federal law shall  
19      be construed to authorize a State to—

20                   “(1) establish, maintain, or enforce on behalf of  
21      any electric utility an exclusive right to sell electric  
22      energy; or

23                   “(2) otherwise unduly discriminate against any  
24      consumer who seeks to purchase electric energy in  
25      interstate commerce from any supplier.”

1 **SEC. 5. ACCESS TO TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES.**  
2

3 No supplier of electric energy, who would otherwise  
4 have a right of access to a transmission or local distribu-  
5 tion facility because such facility is an essential facility  
6 for the conduct of interstate commerce in electric energy,  
7 shall be denied access to such facility or precluded from  
8 engaging in the retail sale of electric energy on the  
9 grounds that such denial or preclusion is authorized or  
10 required by State action establishing, maintaining, or en-  
11 forcing an exclusive right to sell, transmit, or locally dis-  
12 tribute electric energy.

13 **SEC. 6. STATE AUTHORITY TO IMPOSE RECIPROCITY RE-**  
14 **QUIREMENTS.**

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

17 **“SEC. 215. STATE AUTHORITY TO IMPOSE RECIPROCITY RE-**  
18 **QUIREMENTS.**

19 “A State or State commission may prohibit an elec-  
20 tric utility from selling electric energy to an ultimate con-  
21 sumer in such State if such electric utility or any of its  
22 affiliates owns or controls transmission or local distribu-  
23 tion facilities and is not itself providing unbundled local  
24 distribution service in a State in which such electric utility  
25 owns or operates a facility used for the generation of elec-  
26 tric energy.”.

1 **SEC. 7. SAVINGS CLAUSE.**

2 Nothing in this Act shall be construed to—

3 (1) authorize the Federal Energy Regulatory  
4 Commission to regulate retail sales or local distribu-  
5 tion of electric energy or otherwise expand the juris-  
6 diction of the Commission, or

7 (2) limit the authority of a State to regulate re-  
8 tail sales and local distribution of electric energy in  
9 a manner consistent with article I, section 8, clause  
10 3 of the Constitution of the United States.

11 **SEC. 8. EFFECTIVE DATES.**

12 Section 5 and the amendment made by section 4 of  
13 this Act take effect on January 1, 2002. The amendment  
14 made by section 6 of this Act takes effect on the date  
15 of enactment of this Act.

○