

106TH CONGRESS
1ST SESSION

S. 161

To provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

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

A BILL

To provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, and for other purposes.

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 “Power Marketing Ad-
5 ministration Reform Act of 1999”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the use of fixed allocations of joint multi-
2 purpose project costs and the failure to provide for
3 the recovery of actual interest costs and depreciation
4 have resulted in—

5 (A) substantial failures to recover costs
6 properly recoverable through power rates by the
7 Federal Power Marketing Administrations and
8 the Tennessee Valley Authority; and

9 (B) the imposition of unreasonable burdens
10 on the taxpaying public;

11 (2) existing underallocations and underrecovery
12 of costs have led to inefficiencies in the marketing
13 of Federally generated electric power and to environ-
14 mental damage; and

15 (3) with the emergence of open access to power
16 transmission and competitive bulk power markets,
17 market prices will provide the lowest reasonable
18 rates consistent with—

19 (A) sound business principles;

20 (B) maximum recovery of costs properly
21 allocated to power production; and

22 (C) encouraging the most widespread use
23 of power marketed by the Federal Power Mar-
24 keting Administrations and the Tennessee Val-
25 ley Authority.

1 (b) PURPOSES.—The purposes of this Act are to pro-
2 vide for—

3 (1) full cost recovery rates for power sold by
4 the Federal Power Marketing Administrations and
5 the Tennessee Valley Authority; and

6 (2) a transition to market-based rates for the
7 power.

8 **SEC. 3. SALE OR DISPOSITION OF FEDERAL POWER BY FED-**
9 **ERAL POWER MARKETING ADMINISTRATIONS**
10 **AND THE TENNESSEE VALLEY AUTHORITY.**

11 (a) ACCOUNTING.—Notwithstanding any other provi-
12 sion of law, as soon as practicable after the date of enact-
13 ment of this Act, the Secretary of Energy, in consultation
14 with the Federal Energy Regulatory Commission, shall de-
15 velop and implement procedures to ensure that the Fed-
16 eral Power Marketing Administrations and the Tennessee
17 Valley Authority use the same accounting principles and
18 requirements (including the accounting principles and re-
19 quirements with respect to the accrual of actual interest
20 costs during construction and pending repayment for any
21 project and recognition of depreciation expenses) as are
22 applied by the Commission to the electric operations of
23 public utilities.

24 (b) DEVELOPMENT AND SUBMISSION OF RATES TO
25 THE COMMISSION.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, not later than 1 year after the date
3 of enactment of this Act and periodically thereafter
4 but not less frequently than once every 5 years, each
5 Federal Power Marketing Administration and the
6 Tennessee Valley Authority shall submit to the Fed-
7 eral Energy Regulatory Commission a description of
8 proposed rates for the sale or disposition of Federal
9 power that will ensure the recovery of all costs in-
10 curred by the Federal Power Marketing Administra-
11 tion or the Tennessee Valley Authority, respectively,
12 for the generation and marketing of the Federal
13 power.

14 (2) COSTS TO BE RECOVERED.—The costs to be
15 recovered under paragraph (1)—

16 (A) shall include all fish and wildlife ex-
17 penditures required under treaty and legal obli-
18 gations associated with the construction and op-
19 eration of the facilities from which the Federal
20 power is generated and sold; and

21 (B) shall not include any cost of transmit-
22 ting the Federal power.

23 (c) COMMISSION REVIEW, APPROVAL, OR MODIFICA-
24 TION.—

1 (1) IN GENERAL.—The Federal Energy Regu-
2 latory Commission shall review and either approve or
3 modify rates for the sale or disposition of Federal
4 power submitted to the Commission by each Federal
5 Power Marketing Administration and the Tennessee
6 Valley Authority under this section, in a manner
7 that ensures that the rates will recover all costs de-
8 scribed in subsection (b)(2).

9 (2) BASIS FOR REVIEW.—The review by the
10 Commission under paragraph (1) shall be based on
11 the record of proceedings before the Federal Power
12 Marketing Administration or the Tennessee Valley
13 Authority, except that the Commission shall afford
14 all affected persons an opportunity for an additional
15 hearing in accordance with the procedures estab-
16 lished for ratemaking by the Commission under the
17 Federal Power Act (16 U.S.C. 791a et seq.).

18 (d) APPLICATION OF RATES.—

19 (1) IN GENERAL.—Beginning on the date of ap-
20 proval or modification by the Commission of rates
21 under this section, each Federal Power Marketing
22 Administration and the Tennessee Valley Authority
23 shall apply the rates, as approved or modified by the
24 Commission, to each existing contract for the sale or
25 disposition of Federal power by the Federal Power

1 Marketing Administration or the Tennessee Valley
2 Authority to the maximum extent permitted by the
3 contract.

4 (2) APPLICABILITY.—This section shall cease to
5 apply to a Federal Power Marketing Administration
6 or the Tennessee Valley Authority as of the date of
7 termination of all commitments under any contract
8 for the sale or disposition of Federal power that
9 were in existence as of the date of enactment of this
10 Act.

11 (e) ACCOUNTING PRINCIPLES AND REQUIRE-
12 MENTS.—In developing or reviewing the rates required by
13 this section, the Federal Power Marketing Administra-
14 tions, the Tennessee Valley Authority, and the Commis-
15 sion shall rely on the accounting principles and require-
16 ments developed under subsection (a).

17 (f) INTERIM RATES.—Until market pricing for the
18 sale or disposition of Federal power by a Federal Power
19 Marketing Administration or the Tennessee Valley Au-
20 thority is fully implemented, the full cost recovery rates
21 required by this section shall apply to—

22 (1) a new contract entered into after the date
23 of enactment of this Act for the sale of power by a
24 Federal Power Marketing Administrator or the Ten-
25 nessee Valley Authority; and

1 (2) a renewal after the date of enactment of
2 this Act of an existing contract for the sale of power
3 by a Federal Power Marketing Administration or the
4 Tennessee Valley Authority.

5 (g) TRANSITION TO MARKET-BASED RATES.—

6 (1) IN GENERAL.—If the transition to full cost
7 recovery rates would result in rates that exceed mar-
8 ket rates, the Secretary of Energy may approve
9 rates for power sold by Federal Power Marketing
10 Administrations at market rates, and the Tennessee
11 Valley Authority may approve rates for power sold
12 by the Tennessee Valley Authority at market rates,
13 if—

14 (A) operation and maintenance costs are
15 recovered, including all fish and wildlife costs
16 required under existing treaty and legal obliga-
17 tions;

18 (B) the contribution toward recovery of in-
19 vestment pertaining to power production is
20 maximized; and

21 (C) purchasers of power under existing
22 contracts consent to the remarketing by the
23 Federal Power Marketing Administration or the
24 Tennessee Valley Authority of the power

1 through competitive bidding not later than 3
2 years after the approval of the rates.

3 (2) COMPETITIVE BIDDING.—Competitive bid-
4 ding shall be used to remarket power that is subject
5 to, but not sold in accordance with, paragraph (1).

6 (h) MARKET-BASED PRICING.—

7 (1) IN GENERAL.—Not later than 2 years after
8 the date of enactment of this Act, the Secretary of
9 Energy shall develop and implement procedures to
10 ensure that all power sold by Federal Power Market-
11 ing Administrations and the Tennessee Valley Au-
12 thority is sold at prices that reflect demand and sup-
13 ply conditions within the relevant bulk power supply
14 market.

15 (2) BID AND AUCTION PROCEDURES.—The Sec-
16 retary of Energy shall establish by regulation bid
17 and auction procedures to implement market-based
18 pricing for power sold under any power sales con-
19 tract entered into by a Federal Power Marketing
20 Administration or the Tennessee Valley Authority
21 after the date that is 2 years after the date of enact-
22 ment of this Act, including power that is under con-
23 tract but that is declined by the party entitled to
24 purchase the power and remarketed after that date.

1 (i) USE OF REVENUE COLLECTED THROUGH MAR-
2 KET-BASED PRICING.—

3 (1) IN GENERAL.—Revenue collected through
4 market-based pricing shall be disposed of as follows:

5 (A) REVENUE FOR OPERATIONS, FISH AND
6 WILDLIFE, AND PROJECT COSTS.—Revenue
7 shall be remitted to the Secretary of the Treas-
8 ury to cover—

9 (i) all power-related operations and
10 maintenance expenses;

11 (ii) all fish and wildlife costs required
12 under existing treaty and legal obligations;
13 and

14 (iii) the project investment cost per-
15 taining to power production.

16 (B) REMAINING REVENUE.—Revenue that
17 remains after remission to the Secretary of the
18 Treasury under subparagraph (A) shall be dis-
19 posed of as follows:

20 (i) FEDERAL BUDGET DEFICIT.—50
21 percent of the revenue shall be remitted to
22 the Secretary of the Treasury for the pur-
23 pose of reducing the Federal budget defi-
24 cit.

1 (ii) FUND FOR ENVIRONMENTAL MITI-
2 GATION AND RESTORATION.—35 percent of
3 the revenue shall be deposited in the fund
4 established under paragraph (2)(A).

5 (iii) FUND FOR RENEWABLE RE-
6 SOURCES.—15 percent of the revenue shall
7 be deposited in the fund established under
8 paragraph (3)(A).

9 (2) FUND FOR ENVIRONMENTAL MITIGATION
10 AND RESTORATION.—

11 (A) ESTABLISHMENT.—

12 (i) IN GENERAL.—There is established
13 in the Treasury of the United States a
14 fund to be known as the “Fund for Envi-
15 ronmental Mitigation and Restoration”
16 (referred to in this paragraph as the
17 “Fund”), consisting of funds allocated
18 under paragraph (1)(B)(ii).

19 (ii) ADMINISTRATION.—The Fund
20 shall be administered by a Board of Direc-
21 tors consisting of the Secretary of the Inte-
22 rior, the Secretary of Energy, and the Ad-
23 ministrator of the Environmental Protec-
24 tion Agency, or their designees.

1 (B) USE.—Amounts in the Fund shall be
2 available for making expenditures—

3 (i) to carry out project-specific plans
4 to mitigate damage to, and restore the
5 health of, fish, wildlife, and other environ-
6 mental resources that is attributable to the
7 construction and operation of the facilities
8 from which power is generated and sold;
9 and

10 (ii) to cover all costs incurred in es-
11 tablishing and administering the Fund.

12 (C) PROJECT-SPECIFIC PLANS.—

13 (i) IN GENERAL.—The Board of Di-
14 rectors of the Fund shall develop a project-
15 specific plan described in subparagraph
16 (B)(i) for each project that is used to gen-
17 erate power marketed by the Federal
18 Power Marketing Administration or the
19 Tennessee Valley Authority.

20 (ii) USE OF EXISTING DATA, INFOR-
21 MATION, AND PLANS.—In developing plans
22 under clause (i), the Board, to the maxi-
23 mum extent practicable, shall rely on exist-
24 ing data, information, and mitigation and
25 restoration plans developed by—

1 (I) the Commissioner of the Bu-
2 reau of Reclamation;

3 (II) the Director of the United
4 States Fish and Wildlife Service;

5 (III) the Administrator of the
6 Environmental Protection Agency;
7 and

8 (IV) the heads of other Federal,
9 State, and tribal agencies.

10 (D) MAXIMUM AMOUNT.—

11 (i) IN GENERAL.—The Fund shall
12 maintain a balance of not more than
13 \$200,000,000 in excess of the amount that
14 the Board of Directors of the Fund deter-
15 mines is necessary to cover the costs of
16 project-specific plans required under this
17 paragraph.

18 (ii) SURPLUS REVENUE FOR DEFICIT
19 REDUCTION.—Revenue that would be de-
20 posited in the Fund but for the absence of
21 such project-specific plans shall be used by
22 the Secretary of the Treasury for purposes
23 of reducing the Federal budget deficit.

24 (3) FUND FOR RENEWABLE RESOURCES.—

25 (A) ESTABLISHMENT.—

1 (i) IN GENERAL.—There is established
2 in the Treasury of the United States a
3 fund to be known as the “Fund for Renew-
4 able Resources” (referred to in this para-
5 graph as the “Fund”), consisting of funds
6 allocated under paragraph (1)(B)(iii).

7 (ii) ADMINISTRATION.—The Fund
8 shall be administered by the Secretary of
9 Energy.

10 (B) USE.—Amounts in the Fund shall be
11 available for making expenditures—

12 (i) to pay the incremental cost (above
13 the expected market cost of power) of non-
14 hydroelectric renewable resources in the re-
15 gion in which power is marketed by a Fed-
16 eral Power Marketing Administration; and

17 (ii) to cover all costs incurred in es-
18 tablishing and administering the Fund.

19 (C) ADMINISTRATION.—Amounts in the
20 Fund shall be expended only—

21 (i) in accordance with a plan devel-
22 oped by the Secretary of Energy that is de-
23 signed to foster the development of non-
24 hydroelectric renewable resources that
25 show substantial long-term promise but

1 that are currently too expensive to attract
2 private capital sufficient to develop or as-
3 certain their potential; and

4 (ii) on recipients chosen through com-
5 petitive bidding.

6 (D) MAXIMUM AMOUNT.—

7 (i) IN GENERAL.—The Fund shall
8 maintain a balance of not more than
9 \$50,000,000 in excess of the amount that
10 the Secretary of Energy determines is nec-
11 essary to carry out the plan developed
12 under subparagraph (C)(i).

13 (ii) SURPLUS REVENUE FOR DEFICIT
14 REDUCTION.—Revenue that would be de-
15 posited in the Fund but for the absence of
16 the plan shall be used by the Secretary of
17 the Treasury for purposes of reducing the
18 Federal budget deficit.

19 (j) PREFERENCE.—

20 (1) IN GENERAL.—In making allocations or re-
21 allocations of power under this section, a Federal
22 Power Marketing Administration and the Tennessee
23 Valley Authority shall provide a preference for public
24 bodies and cooperatives by providing a right of first
25 refusal to purchase the power at market prices.

1 (2) USE.—

2 (A) IN GENERAL.—Power purchased under
3 paragraph (1)—

4 (i) shall be consumed by the pref-
5 erence customer or resold for consumption
6 by the constituent end-users of the pref-
7 erence customer; and

8 (ii) may not be resold to other persons
9 or entities.

10 (B) TRANSMISSION ACCESS.—In accord-
11 ance with regulations of the Federal Energy
12 Regulatory Commission, a preference customer
13 shall have transmission access to power pur-
14 chased under paragraph (1).

15 (3) COMPETITIVE BIDDING.—If a public body
16 or cooperative does not purchase power under para-
17 graph (1), the power shall be allocated to the next
18 highest bidder.

19 (k) REFORMS.—The Secretary of Energy shall re-
20 quire each Federal Power Marketing Administration to
21 implement—

22 (1) program management reforms that require
23 the Federal Power Marketing Administration to as-
24 sign personnel and incur expenses only for author-
25 ized power marketing, reclamation, and flood control

1 activities and not for ancillary activities (including
2 consulting or operating services for other entities);
3 and

4 (2) annual reporting requirements that clearly
5 disclose to the public, the activities of the Federal
6 Power Marketing Administration (including the full
7 cost of the power projects and power marketing pro-
8 grams).

9 (l) CONTRACT RENEWAL.—Effective beginning on
10 the date of enactment of this Act, a Federal Power Mar-
11 keting Administration shall not enter into or renew any
12 power marketing contract for a term that exceeds 5 years.

13 (m) RESTRICTIONS.—Except for the Bonneville
14 Power Administration, each Federal Power Marketing Ad-
15 ministration shall be subject to the restrictions on the con-
16 struction of transmission and additional facilities that are
17 established under section 5 of the Act entitled “An Act
18 authorizing the construction of certain public works on
19 rivers and harbors for flood control, and for other pur-
20 poses”, approved December 22, 1944 (commonly known
21 as the “Flood Control Act of 1944”) (58 Stat. 890)).

1 **SEC. 4. TRANSMISSION SERVICE PROVIDED BY FEDERAL**
2 **POWER MARKETING ADMINISTRATIONS AND**
3 **TENNESSEE VALLEY AUTHORITY.**

4 (a) IN GENERAL.—Subject to subsection (b), a Fed-
5 eral Power Marketing Administration and the Tennessee
6 Valley Authority shall provide transmission service on an
7 open access basis, and at just and reasonable rates ap-
8 proved or established by the Federal Energy Regulatory
9 Commission under part II of the Federal Power Act (16
10 U.S.C. 824 et seq.), in the same manner as the service
11 is provided under Commission rules by any public utility
12 subject to the jurisdiction of the Commission under that
13 part.

14 (b) EXPANSION OF CAPABILITIES OR TRANS-
15 MISSIONS.—Subsection (a) does not require a Federal
16 Power Marketing Administration or the Tennessee Valley
17 Authority to expand a transmission or interconnection ca-
18 pability or transmission.

19 **SEC. 5. INTERIM REGULATION OF POWER RATE SCHED-**
20 **ULES OF FEDERAL POWER MARKETING AD-**
21 **MINISTRATIONS.**

22 (a) IN GENERAL.—During the date beginning on the
23 date of enactment of this Act and ending on the date on
24 which market-based pricing is implemented under section
25 3 (as determined by the Federal Energy Regulatory Com-
26 mission), the Commission may review and approve, reject,

1 or revise power rate schedules recommended for approval
2 by the Secretary of Energy, and existing rate schedules,
3 for power sales by a Federal Power Marketing Administra-
4 tion.

5 (b) BASIS FOR APPROVAL.—In evaluating rates
6 under subsection (a), the Federal Energy Regulatory
7 Commission, in accordance with section 3, shall—

8 (1) base any approval of the rates on the pro-
9 tection of the public interest; and

10 (2) undertake to protect the interest of the tax-
11 paying public and consumers.

12 (c) COMMISSION ACTIONS.—As the Federal Energy
13 Regulatory Commission determines is necessary to protect
14 the public interest in accordance with section 3 until a
15 full transition is made to market-based rates for power
16 sold by Federal Power Marketing Administrations, the
17 Federal Energy Regulatory Commission may—

18 (1) review the factual basis for determinations
19 made by the Secretary of Energy;

20 (2) revise or modify those findings as appro-
21 priate;

22 (3) revise proposed or effective rate schedules;
23 or

24 (4) remand the rate schedules to the Secretary
25 of Energy.

1 (d) REVIEW.—An affected party (including a tax-
2 payer, bidder, preference customer, or affected competitor)
3 may seek a rehearing and judicial review of a final decision
4 of the Federal Energy Regulatory Commission under this
5 section in accordance with section 313 of the Federal
6 Power Act (16 U.S.C. 825*l*).

7 (e) PROCEDURES.—The Federal Energy Regulatory
8 Commission shall by regulation establish procedures to
9 carry out this section.

10 **SEC. 6. CONFORMING AMENDMENTS.**

11 (a) TRANSFERS FROM THE DEPARTMENT OF THE IN-
12 TERIOR.—Section 302(a)(3) of the Department of Energy
13 Organization Act (42 U.S.C. 7152(a)(3)) is amended by
14 striking the last sentence.

15 (b) USE OF FUNDS TO STUDY NONCOST-BASED
16 METHODS OF PRICING HYDROELECTRIC POWER.—Sec-
17 tion 505 of the Energy and Water Development Appro-
18 priations Act, 1993 (42 U.S.C. 7152 note; 106 Stat.
19 1343) is repealed.

20 **SEC. 7. APPLICABILITY.**

21 Except as provided in section 3(l), this Act shall
22 apply to a power sales contract entered into by a Federal
23 Power Marketing Administration or the Tennessee Valley
24 Authority after July 23, 1997.

○