

106TH CONGRESS
2D SESSION

S. 2967

To amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2000

Mr. MURKOWSKI (for himself, Mr. GORTON, Mr. KERREY, Mr. JEFFORDS, and Mr. THOMPSON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to facilitate competition in 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.**

4 This Act may be cited as the “Electric Power Indus-
5 try Tax Modernization Act”.

6 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**
7 **TRIC FACILITIES.**

8 (a) RULES APPLICABLE TO ELECTRIC OUTPUT FA-
9 CILITIES.—Subpart A of part IV of subchapter B of chap-
10 ter 1 of the Internal Revenue Code of 1986 (relating to

1 tax exemption requirements for State and local bonds) is
 2 amended by inserting after section 141 the following new
 3 section:

4 **“SEC. 141A. ELECTRIC OUTPUT FACILITIES.**

5 “(a) ELECTION TO TERMINATE TAX-EXEMPT BOND
 6 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
 7 TIES.—

8 “(1) IN GENERAL.—A governmental unit may
 9 make an irrevocable election under this paragraph to
 10 terminate certain tax-exempt financing for electric
 11 output facilities. If the governmental unit makes
 12 such election, then—

13 “(A) except as provided in paragraph (2),
 14 on or after the date of such election the govern-
 15 mental unit may not issue with respect to an
 16 electric output facility any bond the interest on
 17 which is exempt from tax under section 103,
 18 and

19 “(B) notwithstanding paragraph (1) or (2)
 20 of section 141(a) or paragraph (4) or (5) of
 21 section 141(b), no bond which was issued by
 22 such unit with respect to an electric output fa-
 23 cility before the date of enactment of this sub-
 24 section (or which is described in paragraph
 25 (2)(B), (D), (E) or (F)) the interest on which

1 was exempt from tax on such date, shall be
2 treated as a private activity bond.

3 “(2) EXCEPTIONS.—An election under para-
4 graph (1) does not apply to any of the following
5 bonds:

6 “(A) Any qualified bond (as defined in sec-
7 tion 141(e)).

8 “(B) Any eligible refunding bond (as de-
9 fined in subsection (d)(6)).

10 “(C) Any bond issued to finance a quali-
11 fying transmission facility or a qualifying dis-
12 tribution facility.

13 “(D) Any bond issued to finance equip-
14 ment or facilities necessary to meet Federal or
15 State environmental requirements applicable to
16 an existing generation facility.

17 “(E) Any bond issued to finance repair of
18 any existing generation facility. Repairs of fa-
19 cilities may not increase the generation capacity
20 of the facility by more than 3 percent above the
21 greater of its nameplate or rated capacity as of
22 the date of enactment of this section.

23 “(F) Any bond issued to acquire or con-
24 struct (i) a qualified facility, as defined in sec-
25 tion 45(c)(3), if such facility is placed in service

1 during a period in which a qualified facility may
2 be placed in service under such section, or (ii)
3 any energy property, as defined in section
4 48(a)(3).

5 “(3) FORM AND EFFECT OF ELECTION.—

6 “(A) IN GENERAL.—An election under
7 paragraph (1) shall be made in such a manner
8 as the Secretary prescribes and shall be binding
9 on any successor in interest to, or any related
10 party with respect to, the electing governmental
11 unit. For purposes of this paragraph, a govern-
12 mental unit shall be treated as related to an-
13 other governmental unit if it is a member of the
14 same controlled group.

15 “(B) TREATMENT OF ELECTING GOVERN-
16 MENTAL UNIT.—A governmental unit which
17 makes an election under paragraph (1) shall be
18 treated for purposes of section 141 as a person
19 which is not a governmental unit and which is
20 engaged in a trade or business, with respect to
21 its purchase of electricity generated by an elec-
22 tric output facility placed in service after such
23 election, if such purchase is under a contract
24 executed after such election.

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) EXISTING GENERATION FACILITY.—
4 The term ‘existing generation facility’ means an
5 electric generation facility in service on the date
6 of the enactment of this subsection or the con-
7 struction of which commenced before June 1,
8 2000.

9 “(B) QUALIFYING DISTRIBUTION FACIL-
10 ITY.—The term ‘qualifying distribution facility’
11 means a distribution facility over which open
12 access distribution services described in sub-
13 section (b)(2)(C) are provided.

14 “(C) QUALIFYING TRANSMISSION FACIL-
15 ITY.—The term ‘qualifying transmission facil-
16 ity’ means a local transmission facility (as de-
17 fined in subsection (c)(3)(A)) over which open
18 access transmission services described in sub-
19 paragraph (A), (B), or (E) of subsection (b)(2)
20 are provided.

21 “(b) PERMITTED OPEN ACCESS ACTIVITIES AND
22 SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE
23 FOR BONDS WHICH REMAIN SUBJECT TO PRIVATE USE
24 RULES.—

1 “(1) GENERAL RULE.—For purposes of this
2 section and section 141, the term ‘private business
3 use’ shall not include a permitted open access activ-
4 ity or a permitted sales transaction.

5 “(2) PERMITTED OPEN ACCESS ACTIVITIES.—
6 For purposes of this section, the term ‘permitted
7 open access activity’ means any of the following
8 transactions or activities with respect to an electric
9 output facility owned by a governmental unit:

10 “(A) Providing nondiscriminatory open ac-
11 cess transmission service and ancillary
12 services—

13 “(i) pursuant to an open access trans-
14 mission tariff filed with and approved by
15 FERC, but, in the case of a voluntarily
16 filed tariff, only if the governmental unit
17 voluntarily files a report described in para-
18 graph (c) or (h) of section 35.34 of title 18
19 of the Code of Federal Regulations or suc-
20 cessor provision (relating to whether or not
21 the issuer will join a regional transmission
22 organization) not later than the later of
23 the applicable date prescribed in such
24 paragraphs or 60 days after the date of
25 the enactment of this section,

1 “(ii) under an independent system op-
2 erator agreement, regional transmission or-
3 ganization agreement, or regional trans-
4 mission group agreement approved by
5 FERC, or

6 “(iii) in the case of an ERCOT utility
7 (as defined in section 212(k)(2)(B) of the
8 Federal Power Act (16 U.S.C.
9 824k(k)(2)(B)), pursuant to a tariff ap-
10 proved by the Public Utility Commission of
11 Texas.

12 “(B) Participation in—

13 “(i) an independent system operator
14 agreement,

15 “(ii) a regional transmission organiza-
16 tion agreement, or

17 “(iii) a regional transmission group,
18 which has been approved by FERC, or by the
19 Public Utility Commission of Texas in the case
20 of an ERCOT utility (as so defined). Such par-
21 ticipation may include transfer of control of
22 transmission facilities to an organization de-
23 scribed in clause (i), (ii), or (iii).

24 “(C) Delivery on a nondiscriminatory open
25 access basis of electric energy sold to end-users

1 served by distribution facilities owned by such
2 governmental unit.

3 “(D) Delivery on a nondiscriminatory open
4 access basis of electric energy generated by gen-
5 eration facilities connected to distribution facili-
6 ties owned by such governmental unit.

7 “(E) Other transactions providing non-
8 discriminatory open access transmission or dis-
9 tribution services under Federal, State, or local
10 open access, retail competition, or similar pro-
11 grams, to the extent provided in regulations
12 prescribed by the Secretary.

13 “(3) PERMITTED SALES TRANSACTION.—For
14 purposes of this subsection, the term ‘permitted
15 sales transaction’ means any of the following sales of
16 electric energy from existing generation facilities (as
17 defined in subsection (a)(4)(A)):

18 “(A) The sale of electricity to an on-system
19 purchaser, if the seller provides open access dis-
20 tribution service under paragraph (2)(C) and,
21 in the case of a seller which owns or operates
22 transmission facilities, if such seller provides
23 open access transmission under subparagraph
24 (A), (B), or (E) of paragraph (2).

1 “(B) The sale of electricity to a wholesale
2 native load purchaser or in a wholesale strand-
3 ed cost mitigation sale—

4 “(i) if the seller provides open access
5 transmission service described in subpara-
6 graph (A), (B), or (E) of paragraph (2), or

7 “(ii) if the seller owns or operates no
8 transmission facilities and transmission
9 providers to the seller’s wholesale native
10 load purchasers provide open access trans-
11 mission service described in subparagraph
12 (A), (B), or (E) of paragraph (2).

13 “(4) DEFINITIONS AND SPECIAL RULES.—For
14 purposes of this subsection:

15 “(A) ON-SYSTEM PURCHASER.—The term
16 ‘on-system purchaser’ means a person whose
17 electric facilities or equipment are directly con-
18 nected with transmission or distribution facili-
19 ties which are owned by a governmental unit,
20 and such person—

21 “(i) purchases electric energy from
22 such governmental unit at retail and either
23 was within such unit’s distribution area in
24 the base year or is a person as to whom

1 the governmental unit has a service obliga-
2 tion, or

3 “(ii) is a wholesale native load pur-
4 chaser from such governmental unit.

5 “(B) WHOLESALe NATIVE LOAD PUR-
6 CHASER.—The term ‘wholesale native load pur-
7 chaser’ means a wholesale purchaser as to
8 whom the governmental unit had—

9 “(i) a service obligation at wholesale
10 in the base year, or

11 “(ii) an obligation in the base year
12 under a requirements contract, or under a
13 firm sales contract which has been in effect
14 for (or has an initial term of) at least 10
15 years,

16 but only to the extent that in either case such
17 purchaser resells the electricity at retail to per-
18 sons within the purchaser’s distribution area.

19 “(C) WHOLESALe STRANDED COST MITI-
20 GATION SALE.—The term ‘wholesale stranded
21 cost mitigation sale’ means 1 or more wholesale
22 sales made in accordance with the following re-
23 quirements:

24 “(i) A governmental unit’s allowable
25 sales under this subparagraph during the

1 recovery period may not exceed the sum of
2 its annual load losses for each year of the
3 recovery period.

4 “(ii) The governmental unit’s annual
5 load loss for each year of the recovery pe-
6 riod is the amount (if any) by which—

7 “(I) sales in the base year to
8 wholesale native load purchasers
9 which do not constitute a private busi-
10 ness use, exceed

11 “(II) sales during that year of
12 the recovery period to wholesale native
13 load purchasers which do not con-
14 stitute a private business use.

15 “(iii) If actual sales under this sub-
16 paragraph during the recovery period are
17 less than allowable sales under clause (i),
18 the amount not sold (but not more than 10
19 percent of the aggregate allowable sales
20 under clause (i)) may be carried over and
21 sold as wholesale stranded cost mitigation
22 sales in the calendar year following the re-
23 covery period.

1 “(D) RECOVERY PERIOD.—The recovery
2 period is the 7-year period beginning with the
3 start-up year.

4 “(E) START-UP YEAR.—The start-up year
5 is whichever of the following calendar years the
6 governmental unit elects:

7 “(i) The year the governmental unit
8 first offers open transmission access.

9 “(ii) The first year in which at least
10 10 percent of the governmental unit’s
11 wholesale customers’ aggregate retail na-
12 tive load is open to retail competition.

13 “(iii) The calendar year which in-
14 cludes the date of the enactment of this
15 section, if later than the year described in
16 clause (i) or (ii).

17 “(F) PERMITTED SALES TRANSACTIONS
18 UNDER EXISTING CONTRACTS.—A sale to a
19 wholesale native load purchaser (other than a
20 person to whom the governmental unit had a
21 service obligation) under a contract which re-
22 sulted in private business use in the base year
23 shall be treated as a permitted sales transaction
24 only to the extent that sales under the contract
25 exceed the lesser of—

1 “(i) in any year, the private business
2 use which resulted during the base year, or

3 “(ii) the maximum amount of private
4 business use which could occur (absent the
5 enactment of this section) without causing
6 the bonds to be private activity bonds.

7 This subparagraph shall only apply to the ex-
8 tent that the sale is allocable to bonds issued
9 before the date of the enactment of this section
10 (or bonds issued to refund such bonds).

11 “(G) JOINT ACTION AGENCIES.—A joint
12 action agency, or a member of (or a wholesale
13 native load purchaser from) a joint action agen-
14 cy, which is entitled to make a sale described in
15 subparagraph (A) or (B) in a year, may trans-
16 fer the entitlement to make that sale to the
17 member (or purchaser), or the joint action
18 agency, respectively.

19 “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-
20 TRIBUTION FACILITIES NOT TAX EXEMPT.—

21 “(1) GENERAL RULE.—For purposes of this
22 title, no bond the interest on which is exempt from
23 taxation under section 103 may be issued on or after
24 the date of the enactment of this subsection if any
25 of the proceeds of such issue are used to finance—

1 “(A) any transmission facility which is not
2 a local transmission facility, or

3 “(B) a start-up utility distribution facility.

4 “(2) EXCEPTIONS.—Paragraph (1) shall not
5 apply to—

6 “(A) any qualified bond (as defined in sec-
7 tion 141(e)),

8 “(B) any eligible refunding bond (as de-
9 fined in subsection (d)(6)), or

10 “(C) any bond issued to finance—

11 “(i) any repair of a transmission facil-
12 ity in service on the date of the enactment
13 of this section, so long as the repair does
14 not increase the voltage level over its level
15 in the base year or increase the thermal
16 load limit of the transmission facility by
17 more than 3 percent over such limit in the
18 base year,

19 “(ii) any qualifying upgrade of a
20 transmission facility in service on the date
21 of the enactment of this section, or

22 “(iii) a transmission facility necessary
23 to comply with an obligation under a
24 shared or reciprocal transmission agree-

1 ment in effect on the date of the enact-
2 ment of this section.

3 “(3) LOCAL TRANSMISSION FACILITY DEFINI-
4 TIONS AND SPECIAL RULES.—For purposes of this
5 subsection—

6 “(A) LOCAL TRANSMISSION FACILITY.—
7 The term ‘local transmission facility’ means a
8 transmission facility which is located within the
9 governmental unit’s distribution area or which
10 is, or will be, necessary to supply electricity to
11 serve retail native load or wholesale native load
12 of 1 or more governmental units. For purposes
13 of this subparagraph, the distribution area of a
14 public power authority which was created in
15 1931 by a State statute and which, as of Janu-
16 ary 1, 1999, owned at least one-third of the
17 transmission circuit miles rated at 230kV or
18 greater in the State, shall be determined under
19 regulations of the Secretary.

20 “(B) RETAIL NATIVE LOAD.—The term
21 ‘retail native load’ is the electric load of end-
22 users served by distribution facilities owned by
23 a governmental unit.

24 “(C) WHOLESALE NATIVE LOAD.—The
25 term ‘wholesale native load’ is—

1 “(i) the retail native load of a govern-
2 mental unit’s wholesale native load pur-
3 chasers, and

4 “(ii) the electric load of purchasers
5 (not described in clause (i)) under whole-
6 sale requirements contracts which—

7 “(I) do not constitute private
8 business use under the rules in effect
9 absent this subsection, and

10 “(II) were in effect in the base
11 year.

12 “(D) NECESSARY TO SERVE LOAD.—For
13 purposes of determining whether a transmission
14 or distribution facility is, or will be, necessary
15 to supply electricity to retail native load or
16 wholesale native load—

17 “(i) electric reliability standards or re-
18 quirements of national or regional reli-
19 ability organizations, regional transmission
20 organizations, and the Electric Reliability
21 Council of Texas shall be taken into ac-
22 count, and

23 “(ii) transmission, siting, and con-
24 struction decisions of regional transmission
25 organizations or independent system opera-

1 tors and State and Federal agencies shall
2 be presumptive evidence regarding whether
3 transmission facilities are necessary to
4 serve native load.

5 “(E) QUALIFYING UPGRADE.—The term
6 ‘qualifying upgrade’ means an improvement or
7 addition to transmission facilities in service on
8 the date of the enactment of this section which
9 is ordered or approved by a regional trans-
10 mission organization, by an independent system
11 operator, or by a State regulatory or siting
12 agency.

13 “(4) START-UP UTILITY DISTRIBUTION FACIL-
14 ITY DEFINED.—For purposes of this subsection, the
15 term ‘start-up utility distribution facility’ means any
16 distribution facility to provide electric service to the
17 public that is placed in service—

18 “(A) by a governmental unit which did not
19 operate an electric utility on the date of the en-
20 actment of this section, and

21 “(B) before the date on which such govern-
22 mental unit operates in a qualified service area
23 (as such term is defined in section
24 141(d)(3)(B)).

1 A governmental unit is deemed to have operated an
2 electric utility on the date of the enactment of this
3 section if it operates electric output facilities which
4 were operated by another governmental unit to pro-
5 vide electric service to the public on such date.

6 “(d) DEFINITIONS; SPECIAL RULES.—For purposes
7 of this section—

8 “(1) BASE YEAR.—The term ‘base year’ means
9 the calendar year which includes the date of the en-
10 actment of this section or, at the election of the gov-
11 ernmental unit, either of the 2 immediately pre-
12 ceding calendar years.

13 “(2) DISTRIBUTION AREA.—The term ‘distribu-
14 tion area’ means the area in which a governmental
15 unit owns distribution facilities.

16 “(3) ELECTRIC OUTPUT FACILITY.—The term
17 ‘electric output facility’ means an output facility
18 that is an electric generation, transmission, or dis-
19 tribution facility.

20 “(4) DISTRIBUTION FACILITY.—The term ‘dis-
21 tribution facility’ means an electric output facility
22 that is not a generation or transmission facility.

23 “(5) TRANSMISSION FACILITY.—The term
24 ‘transmission facility’ means an electric output facil-
25 ity (other than a generation facility) that operates at

1 an electric voltage of 69kV or greater, except that
2 the owner of the facility may elect to treat any out-
3 put facility that is a transmission facility for pur-
4 poses of the Federal Power Act as a transmission fa-
5 cility for purposes of this section.

6 “(6) ELIGIBLE REFUNDING BOND.—The term
7 ‘eligible refunding bond’ means any State or local
8 bond issued after an election described in subsection
9 (a) that directly or indirectly refunds any tax-exempt
10 bond (other than a qualified bond) issued before
11 such election, if the weighted average maturity of
12 the issue of which the refunding bond is a part does
13 not exceed the remaining weighted average maturity
14 of the bonds issued before the election. In applying
15 such term for purposes of subsection (c)(2)(B), the
16 date of election shall be deemed to be the date of the
17 enactment of this section.

18 “(7) FERC.—The term ‘FERC’ means the
19 Federal Energy Regulatory Commission.

20 “(8) GOVERNMENT-OWNED FACILITY.—An elec-
21 tric output facility shall be treated as owned by a
22 governmental unit if it is an electric output facility
23 that either is—

24 “(A) owned or leased by such govern-
25 mental unit, or

1 “(B) a transmission facility in which the
2 governmental unit acquired before the base year
3 long-term firm capacity for the purposes of
4 serving customers to which the unit had at that
5 time either—

6 “(i) a service obligation, or

7 “(ii) an obligation under a require-
8 ments contract.

9 “(9) REPAIR.—The term ‘repair’ shall include
10 replacement of components of an electric output fa-
11 cility, but shall not include replacement of the facil-
12 ity.

13 “(10) SERVICE OBLIGATION.—The term ‘service
14 obligation’ means an obligation under State or Fed-
15 eral law (exclusive of an obligation arising solely
16 from a contract entered into with a person) to pro-
17 vide electric distribution services or electric sales
18 service, as provided in such law.

19 “(e) SAVINGS CLAUSE.—Subsection (b) shall not af-
20 fect the applicability of section 141 to (or the Secretary’s
21 authority to prescribe, amend, or rescind regulations re-
22 specting) any transaction which is not a permitted open
23 access transaction or permitted sales transaction.”.

24 (b) REPEAL OF EXCEPTION FOR CERTAIN NON-
25 GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-

1 tion 141(d)(5) of the Internal Revenue Code of 1986 is
 2 amended by inserting “(except in the case of an electric
 3 output facility which is a distribution facility),” after “this
 4 subsection”.

5 (c) CONFORMING AMENDMENT.—The table of sec-
 6 tions for subpart A of part IV of subchapter B of chapter
 7 1 of the Internal Revenue Code of 1986 is amended by
 8 inserting after the item relating to section 141 the fol-
 9 lowing new item:

“Sec. 141A. Electric output facilities.”

10 (d) EFFECTIVE DATE; APPLICABILITY.—

11 (1) EFFECTIVE DATE.—The amendments made
 12 by this section shall take effect on the date of the
 13 enactment of this Act, except that a governmental
 14 unit may elect to apply paragraphs (1) and (2) of
 15 section 141A(b), as added by subsection (a), with re-
 16 spect to permitted open access activities entered into
 17 on or after April 14, 1996.

18 (2) CERTAIN EXISTING AGREEMENTS.—The
 19 amendment made by subsection (b) (relating to re-
 20 peal of the exception for certain nongovernmental
 21 output facilities) does not apply to any acquisition of
 22 facilities made pursuant to an agreement that was
 23 entered into before the date of the enactment of this
 24 Act.

1 (3) APPLICABILITY.—References in this Act to
 2 sections of the Internal Revenue Code of 1986, shall
 3 be deemed to include references to comparable sec-
 4 tions of the Internal Revenue Code of 1954.

5 **SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.**

6 (a) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 7 ERAL ENERGY REGULATORY COMMISSION OR STATE
 8 ELECTRIC RESTRUCTURING POLICY.—

9 (1) IN GENERAL.—Section 1033 of the Internal
 10 Revenue Code of 1986 (relating to involuntary con-
 11 versions) is amended by redesignating subsection (k)
 12 as subsection (l) and by inserting after subsection (j)
 13 the following new subsection:

14 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 15 ERAL ENERGY REGULATORY COMMISSION OR STATE
 16 ELECTRIC RESTRUCTURING POLICY.—

17 “(1) IN GENERAL.—For purposes of this sub-
 18 title, if a taxpayer elects the application of this sub-
 19 section to a qualifying electric transmission trans-
 20 action and the proceeds received from such trans-
 21 action are invested in exempt utility property, such
 22 transaction shall be treated as an involuntary con-
 23 version to which this section applies.

24 “(2) EXTENSION OF REPLACEMENT PERIOD.—
 25 In the case of any involuntary conversion described

1 in paragraph (1), subsection (a)(2)(B) shall be ap-
2 plied by substituting ‘4 years’ for ‘2 years’ in clause
3 (i) thereof.

4 “(3) QUALIFYING ELECTRIC TRANSMISSION
5 TRANSACTION.—For purposes of this subsection, the
6 term ‘qualifying electric transmission transaction’
7 means any sale or other disposition of property used
8 in the trade or business of electric transmission, or
9 an ownership interest in a person whose primary
10 trade or business consists of providing electric trans-
11 mission services, to another person that is an inde-
12 pendent transmission company.

13 “(4) INDEPENDENT TRANSMISSION COM-
14 PANY.—For purposes of this subsection, the term
15 ‘independent transmission company’ means—

16 “(A) a regional transmission organization
17 approved by the Federal Energy Regulatory
18 Commission,

19 “(B) a person—

20 “(i) who the Federal Energy Regu-
21 latory Commission determines in its au-
22 thorization of the transaction under section
23 203 of the Federal Power Act (16 U.S.C.
24 823b) is not a market participant within
25 the meaning of such Commission’s rules

1 applicable to regional transmission organi-
2 zations, and

3 “(ii) whose transmission facilities to
4 which the election under this subsection
5 applies are placed under the operational
6 control of a Federal Energy Regulatory
7 Commission-approved regional trans-
8 mission organization within the period
9 specified in such order, but not later than
10 the close of the replacement period, or

11 “(C) in the case of facilities subject to the
12 exclusive jurisdiction of the Public Utility Com-
13 mission of Texas, a person which is approved by
14 that Commission as consistent with Texas State
15 law regarding an independent transmission or-
16 ganization.

17 “(5) EXEMPT UTILITY PROPERTY.—For pur-
18 poses of this subsection, the term ‘exempt utility
19 property’ means—

20 “(A) property used in the trade or business
21 of generating, transmitting, distributing, or sell-
22 ing electricity or producing, transmitting, dis-
23 tributing, or selling natural gas, or

24 “(B) stock in a person whose primary
25 trade or business consists of generating, trans-

1 mitting, distributing, or selling electricity or
2 producing, transmitting, distributing, or selling
3 natural gas.

4 “(6) SPECIAL RULES FOR CONSOLIDATED
5 GROUPS.—

6 “(A) INVESTMENT BY QUALIFYING GROUP
7 MEMBERS.—

8 “(i) IN GENERAL.—This subsection
9 shall apply to a qualifying electric trans-
10 mission transaction engaged in by a tax-
11 payer if the proceeds are invested in ex-
12 empt utility property by a qualifying group
13 member.

14 “(ii) QUALIFYING GROUP MEMBER.—
15 For purposes of this subparagraph, the
16 term ‘qualifying group member’ means any
17 member of a consolidated group within the
18 meaning of section 1502 and the regula-
19 tions promulgated thereunder of which the
20 taxpayer is also a member.

21 “(B) COORDINATION WITH CONSOLIDATED
22 RETURN PROVISIONS.—A sale or other disposi-
23 tion of electric transmission property or an
24 ownership interest in a qualifying electric trans-
25 mission transaction, where an election is made

1 under this subsection, shall not result in the
2 recognition of income or gain under the consoli-
3 dated return provisions of subchapter A of
4 chapter 6. The Secretary shall prescribe such
5 regulations as may be necessary to provide for
6 the treatment of any exempt utility property re-
7 ceived in a qualifying electric transmission
8 transaction as successor assets subject to the
9 application of such consolidated return provi-
10 sions.

11 “(7) ELECTION.—Any election made by a tax-
12 payer under this subsection shall be made by a
13 statement to that effect in the return for the taxable
14 year in which the qualifying electric transmission
15 transaction takes place in such form and manner as
16 the Secretary shall prescribe, and such election shall
17 be binding for that taxable year and all subsequent
18 taxable years.”.

19 (2) SAVINGS CLAUSE.—Nothing in section
20 1033(k) of the Internal Revenue Code of 1986, as
21 added by subsection (a), shall affect Federal or
22 State regulatory policy respecting the extent to
23 which any acquisition premium paid in connection
24 with the purchase of an asset in a qualifying electric
25 transmission transaction can be recovered in rates.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to transactions occur-
3 ring after the date of the enactment of this Act.

4 (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
5 ERAL ENERGY REGULATORY COMMISSION OR STATE
6 ELECTRIC RESTRUCTURING POLICY.

7 (1) IN GENERAL.—Section 355(e)(4) of the In-
8 ternal Revenue Code of 1986 is amended by redesignig-
9 nating subparagraphs (C), (D), and (E) as subpara-
10 graphs (D), (E), and (F), respectively, and by in-
11 serting after subparagraph (B) the following new
12 subparagraph:

13 “(C) DISTRIBUTIONS OF STOCK TO IMPLE-
14 MENT FEDERAL ENERGY REGULATORY COMMIS-
15 SION OR STATE ELECTRIC RESTRUCTURING
16 POLICY.—

17 “(i) IN GENERAL.—Paragraph (1)
18 shall not apply to any distribution that is
19 a qualifying electric transmission trans-
20 action. For purposes of this subparagraph,
21 a ‘qualifying electric transmission trans-
22 action’ means any distribution of stock in
23 a corporation whose primary trade or busi-
24 ness consists of providing electric trans-
25 mission services, where such stock is later

1 acquired (or where the assets of such cor-
2 poration are later acquired) by another
3 person that is an independent transmission
4 company.

5 “(ii) INDEPENDENT TRANSMISSION
6 COMPANY.—For purposes of this sub-
7 section, the term ‘independent trans-
8 mission company’ means—

9 “(I) a regional transmission or-
10 ganization approved by the Federal
11 Energy Regulatory Commission,

12 “(II) a person who the Federal
13 Energy Regulatory Commission deter-
14 mines in its authorization of the
15 transaction under section 203 of the
16 Federal Power Act (16 U.S.C. 824b)
17 is not a market participant within the
18 meaning of such Commission’s rules
19 applicable to regional transmission or-
20 ganizations, and whose transmission
21 facilities transferred as a part of such
22 qualifying electric transmission trans-
23 action are placed under the oper-
24 ational control of a Federal Energy
25 Regulatory Commission-approved re-

1 regional transmission organization with-
 2 in the period specified in such order,
 3 but not later than the close of the re-
 4 placement period (as defined in sec-
 5 tion 1033(k)(2)), or

6 “(III) in the case of facilities
 7 subject to the exclusive jurisdiction of
 8 the Public Utility Commission of
 9 Texas, a person that is approved by
 10 that Commission as consistent with
 11 Texas State law regarding an inde-
 12 pendent transmission organization.”.

13 (2) EFFECTIVE DATE.—The amendments made
 14 by this subsection shall apply to distributions occur-
 15 ring after the date of the enactment of this Act.

16 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**
 17 **TIES EXCLUDED FROM GROSS INCOME AS**
 18 **CONTRIBUTIONS TO CAPITAL.**

19 (a) IN GENERAL.—Subsection (c) of section 118 of
 20 the Internal Revenue Code of 1986 (relating to contribu-
 21 tions to the capital of a corporation) is amended—

22 (1) by striking “WATER AND SEWAGE DIS-
 23 POSAL” in the heading and inserting “CERTAIN”,

1 Code of 1986 (relating to special rules for nuclear decom-
2 missioning costs) is amended to read as follows:

3 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

4 “(1) IN GENERAL.—The amount which a tax-
5 payer may pay into the Fund for any taxable year
6 during the funding period shall not exceed the level
7 funding amount determined pursuant to subsection
8 (d), except—

9 “(A) where the taxpayer is permitted by
10 Federal or State law or regulation (including
11 authorization by a public service commission) to
12 charge customers a greater amount for nuclear
13 decommissioning costs, in which case the tax-
14 payer may pay into the Fund such greater
15 amount, or

16 “(B) in connection with the transfer of a
17 nuclear powerplant, where the transferor or
18 transferee (or both) is required pursuant to the
19 terms of the transfer to contribute a greater
20 amount for nuclear decommissioning costs, in
21 which case the transferor or transferee (or
22 both) may pay into the Fund such greater
23 amount.

24 “(2) CONTRIBUTIONS AFTER FUNDING PE-
25 RIOD.—Notwithstanding any other provision of this

1 section, a taxpayer may make deductible payments
2 to the Fund in any taxable year between the end
3 of the funding period and the termination of the li-
4 cense issued by the Nuclear Regulatory Commission
5 for the nuclear powerplant to which the Fund relates
6 provided such payments do not cause the assets of
7 the Fund to exceed the nuclear decommissioning
8 costs allocable to the taxpayer's current or former
9 interest in the nuclear powerplant to which the Fund
10 relates. The foregoing limitation shall be applied by
11 taking into account a reasonable rate of inflation for
12 the nuclear decommissioning costs and a reasonable
13 after-tax rate of return on the assets of the Fund
14 until such assets are anticipated to be expended.”.

15 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING
16 COSTS WHEN PAID.— Paragraph (2) of section 468A(c)
17 of the Internal Revenue Code of 1986 (relating to income
18 and deductions of the taxpayer) is amended to read as
19 follows:

20 “(2) DEDUCTION OF NUCLEAR DECOMMISS-
21 SIONING COSTS.—In addition to any deduction under
22 subsection (a), nuclear decommissioning costs paid
23 or incurred by the taxpayer during any taxable year
24 shall constitute ordinary and necessary expenses in
25 carrying on a trade or business under section 162.”.

1 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of
2 section 468A of the Internal Revenue Code of 1986 is
3 amended to read as follows:

4 “(d) LEVEL FUNDING AMOUNTS.—

5 “(1) ANNUAL AMOUNTS.—For purposes of this
6 section, the level funding amount for any taxable
7 year shall equal the annual amount required to be
8 contributed to the Fund in each year remaining in
9 the funding period in order for the Fund to accumu-
10 late the nuclear decommissioning costs allocable to
11 the taxpayer’s current or former interest in the nu-
12 clear powerplant to which the Fund relates. The an-
13 nual amount described in the preceding sentence
14 shall be calculated by taking into account a reason-
15 able rate of inflation for the nuclear decommis-
16 sioning costs and a reasonable after-tax rate of re-
17 turn on the assets of the Fund until such assets are
18 anticipated to be expended.

19 “(2) FUNDING PERIOD.—The funding period
20 for a Fund shall end on the last day of the last tax-
21 able year of the expected operating life of the nu-
22 clear powerplant.

23 “(3) NUCLEAR DECOMMISSIONING COSTS.—For
24 purposes of this section—

1 “(A) IN GENERAL.—The term ‘nuclear de-
2 commissioning costs’ means all costs to be in-
3 curred in connection with entombing, decon-
4 taminating, dismantling, removing, and dis-
5 posing of a nuclear powerplant, and shall in-
6 clude all associated preparation, security, fuel
7 storage, and radiation monitoring costs. Such
8 term shall include all such costs which, outside
9 of the decommissioning context, might other-
10 wise be capital expenditures.

11 “(B) IDENTIFICATION OF COSTS.—The
12 taxpayer may identify nuclear decommissioning
13 costs by reference either to a site-specific engi-
14 neering study or to the financial assurance
15 amount calculated pursuant to section 50.75 of
16 title 10 of the Code of Federal Regulations.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to amounts paid after June 30,
19 2000, in taxable years ending after such date.

○