

[DISCUSSION DRAFT]

1 TITLE IV—ENERGY EFFICIENCY
2 AND ACCOUNTABILITY

3 Subtitle B—Accountability

4 CHAPTER 1—MARKET MANIPULATION,
5 ENFORCEMENT, AND COMPLIANCE

6 SEC. 4211. FERC OFFICE OF COMPLIANCE ASSISTANCE.

7 The Federal Power Act (16 U.S.C. 792 et seq.) is
8 amended by—

9 (1) redesignating sections 320 and 321 as sec-
10 tions 321 and 322, respectively; and

11 (2) by inserting after section 319 the following
12 new section:

13 “SEC. 320. OFFICE OF COMPLIANCE ASSISTANCE.

14 “(a) ESTABLISHMENT.—There is established within
15 the Commission an Office of Compliance Assistance (re-
16 ferred to in this section as the ‘Office’). The Office shall
17 be headed by a Director, who shall be selected by, and
18 report solely to, the Commission.

19 “(b) DUTIES OF DIRECTOR.—

20 “(1) IN GENERAL.—The Director of the Office
21 shall promote improved compliance with Commission
22 rules and orders by—

1 “(A) making recommendations to the Com-
2 mission regarding—

3 “(i) the protection of consumers;

4 “(ii) market integrity and support for
5 the development of responsible market be-
6 havior; and

7 “(iii) the application of Commission
8 rules and orders in a manner that ensures
9 markets are not impaired and consumers
10 are not damaged by inconsistent applica-
11 tion;

12 “(B) providing entities regulated by the
13 Commission the opportunity to obtain timely,
14 including real-time, compliance guidance; and

15 “(C) providing information to the Commis-
16 sion and Congress to inform policy with respect
17 to energy issues under the jurisdiction of the
18 Commission.

19 “(2) REPORTS AND GUIDANCE.—The Director
20 shall, as the Director determines appropriate, issue
21 reports and guidance to the Commission and to enti-
22 ties regulated by the Commission, identifying and
23 monitoring market practices, proposing initiatives,
24 and addressing potential improvements to both in-
25 dustry and Commission practices.

1 “(3) OUTREACH.—The Director shall promote
2 improved compliance with Commission rules and or-
3 ders through outreach, publications, and, where ap-
4 propriate, direct communication with entities regu-
5 lated by the Commission.

6 “(c) STAFFING.—Not later than 60 days after the
7 date of enactment of this section, the Office of Compliance
8 Assistance shall have no fewer than 10 full time employ-
9 ees. Such personnel shall be drawn, if possible, from Fed-
10 eral employees then working at the Commission.”.

11 **SEC. 4212. IMPROVING TRANSPARENCY IN FERC INVES-**
12 **TIGATIONS.**

13 Not later than one year after the date of enactment
14 of this Act, the Federal Energy Regulatory Commission
15 shall promulgate a final rule that provides that in any in-
16 vestigation, or any proceeding in which the Commission
17 may assess a civil penalty, the Commission shall—

18 (1) not later than 7 days after the Commission
19 issues a preliminary findings letter with respect to
20 such an investigation or proceeding, disclose to any
21 entity or person subject to such investigation or pro-
22 ceeding any exculpatory materials, potentially excul-
23 patory materials, or materials helpful or potentially
24 helpful to the defense of such entity or person, in-
25 cluding by ensuring disclosure of materials in the

1 possession of other Federal or State agencies or non-
2 governmental entities (including State regulatory au-
3 thorities, Commission-approved regional trans-
4 mission entities, and market monitors) assisting the
5 Commission in such investigation or proceeding;

6 (2) provide any entity or person subject to such
7 an investigation or proceeding access to the official
8 transcripts of any deposition involving such entity or
9 person within a reasonable period of time after the
10 conclusion of such deposition;

11 (3) require that in any such investigation or
12 proceeding, all communications regarding the merits
13 of the investigation or proceeding between the inves-
14 tigatory staff of the Commission and the advisory
15 staff of the Commission shall be in writing and in-
16 cluded in the formal record of the investigation or
17 proceeding; and

18 (4) allow an entity or person subject to such an
19 investigation or proceeding to communicate with the
20 Commissioners regarding the substance of settle-
21 ment considerations to the same extent as such com-
22 munications occur between the Commissioners and
23 the investigatory staff of the Commission.

CHAPTER 2—MARKET REFORMS

SEC. 4221. EVALUATING AND IMPROVING WHOLESALE ELECTRICITY MARKETS.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Federal Energy Regulatory Commission shall direct each regional transmission entity to develop, in consultation with the stakeholders of the regional transmission entity, submit to the Commission, and implement a plan that—

(1) describes how the current market rules, practices, and structures of the regional transmission entity meet, or fail to meet, the criteria established in subsection (b);

(2) identifies specific actions to be undertaken by the regional transmission entity to revise or amend the market rules, practices, or structures of the regional transmission entity to meet the criteria established in subsection (b); and

(3) establishes a timeframe for implementation by the regional transmission entity of the specific actions identified under paragraph (2).

(b) CRITERIA.—The market rules, practices, and structures of each regional transmission entity shall, as applicable—

1 (1) result in just and reasonable rates for rate-
2 payers;

3 (2) properly value generation facilities that have
4 reliability attributes that include—

5 (A) operational characteristics that enable
6 the generation of electric energy on a contin-
7 uous basis for an extended period of time per
8 day over a period of not less than 10 days;

9 (B) operational characteristics that enable
10 the generation of electric energy during emer-
11 gency and severe weather conditions; and

12 (C) essential reliability services, including
13 frequency support and voltage support, to main-
14 tain reliability of the bulk-power system;

15 (3) facilitate fuel diversity, resource adequacy,
16 and reliability, including the cost-effective retention
17 and development of needed generation;

18 (4) promote the equitable integration and treat-
19 ment of generation resources, business models, and
20 advanced grid technologies;

21 (5) identify and address regulatory barriers to
22 entry, market-distorting incentives, and artificial
23 constraints on competition;

24 (6) provide accurate price formation in energy
25 markets, including by—

1 (A) reflecting the real value and marginal
2 cost of providing electric energy;

3 (B) observing the principles of dispatch-
4 based pricing;

5 (C) minimizing out-of-market actions and
6 payments;

7 (D) improving transparency regarding dis-
8 patch decisions, including the need for out-of-
9 market actions and payments; and

10 (E) ensuring accurate day-ahead unit com-
11 mitments;

12 (7) ensure fairness and improved transparency
13 in governance structures and stakeholder processes,
14 including meaningful participation by both voting
15 and non-voting stakeholder representatives;

16 (8) facilitate the development of necessary nat-
17 ural gas and electric transmission infrastructure;

18 (9) consider, as appropriate, State and local re-
19 source planning; and

20 (10) mitigate, to the extent practicable, any dis-
21 ruptive effects of tariff revisions on the economic de-
22 cision-making of market participants.

23 (c) PLAN SUBMISSION DATES.—The Commission
24 shall direct each regional transmission entity to submit a
25 plan described in subsection (a) by not later than 180 days

1 after being directed to develop such a plan by the Commis-
2 sion.

3 (d) PERIODIC REPORTING.—The Commission shall
4 require quarterly reporting from each regional trans-
5 mission entity to allow the Commission to monitor timely
6 implementation of the plan submitted by the regional
7 transmission entity under subsection (a).

8 (e) DEFINITION.—For purposes of this section:

9 (1) BULK-POWER SYSTEM.—The term “bulk-
10 power system” has the meaning given that term in
11 section 215(a) of the Federal Power Act (16 U.S.C.
12 824o(a)).

13 (2) REGIONAL TRANSMISSION ENTITY.—The
14 term “regional transmission entity” means a Re-
15 gional Transmission Organization or an Independent
16 System Operator, as such terms are defined in sec-
17 tion 3 of the Federal Power Act (16 U.S.C. 796).

18 **CHAPTER 3—PURPA MODERNIZATION**

19 **SEC. 4231. PURPA MODERNIZATION.**

20 (a) NONDISCRIMINATORY ACCESS.—Section 210(m)
21 of the Public Utility Regulatory Policies Act of 1978 (16
22 U.S.C. 824a-3(m)) is amended by adding at the end the
23 following new paragraph:

24 “(8) PRESUMPTION OF NONDISCRIMINATORY
25 ACCESS TO WHOLESALE MARKETS.—For purposes of

1 paragraph (1), a qualifying cogeneration facility of
2 any size or a qualifying small power production facil-
3 ity of any size is presumed to have nondiscrim-
4 inatory access to wholesale markets described in sub-
5 paragraph (A), (B), or (C) of such paragraph if the
6 facility, in the relevant market—

7 “(A) is eligible for service under—

8 “(i) a Commission-approved open ac-
9 cess transmission tariff or a Commission-
10 filed reciprocity tariff; and

11 “(ii) Commission-approved inter-
12 connection rules; and

13 “(B) is eligible to participate in competi-
14 tive solicitations overseen by a State regulatory
15 authority.”.

16 (b) REGULATIONS.—Not later than 120 days after
17 the date of enactment of this section, the Federal Energy
18 Regulatory Commission shall revise its regulations to
19 carry out the amendment made by subsection (a).