

CRS Report for Congress

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Electric Utility Policy: Comparison of House-Passed H.R. 6 and S.Amdt. 1412, 108th Congress

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Electric Utility Policy: Comparison of House-Passed H.R. 6 and S.Amdt. 1412, 108th Congress

Summary

Electric utility provisions are included in comprehensive energy legislation that has passed both the House and Senate. The House passed H.R. 6 on April 11, 2003. On July 31, 2003, the Senate suspended debate on S. 14, the comprehensive energy bill that had been reported by the Energy and Natural Resources Committee. It then passed H.R. 6 with the text of the Senate-passed version of H.R. 4 from the 107th Congress. For a comparison of the House- and Senate-passed versions of H.R. 6, see CRS Report RL32033, *Omnibus Energy Legislation (H.R. 6): Side-by-Side Comparison of Non-Tax Provisions*.

Before debate on S. 14 was suspended, Senator Domenici proposed S.Amdt. 1412 on July 29, 2003, to completely replace the electricity title of S. 14 as introduced in the Senate. The proposed amendment was withdrawn on July 31, 2003. Although S.Amdt. 1412 is not included in the Senate-passed bill that will be considered in conference, there are indications that provisions of the amendment might be brought up.

Both the House-passed electricity provisions in H.R. 6 and those in S.Amdt. 1412 would give limited rate authority to the Federal Energy Regulatory Commission (FERC) over municipal and cooperative transmission systems; create an electric reliability organization; repeal the Public Utility Holding Company Act (PUHCA) and give FERC and state public utility commissions access to books and records; prospectively repeal the mandatory purchase requirement of the Public Utility Regulatory Policies Act (PURPA); explicitly prohibit round-trip trading; establish market transparency rules; protect native load consumers (existing customers); and increase criminal penalties under the Federal Power Act.

Title VI of the House-passed H.R. 6 would, in part, provide for incentive-based transmission rates, allow transmission owners in certain instances to exercise the right of eminent domain to site new transmission lines, create an electric reliability organization, and clarify the right of transmission owners to serve existing customers (native load). Unlike the House-passed H.R. 6, S.Amdt. 1412 does not contain provisions that would allow transmission owners to exercise the right of eminent domain to site new transmission lines.

S.Amdt. 1412 contains provisions that are not included in the House-passed H.R. 6. These include provisions that prohibit FERC from requiring utilities to transfer operational control of transmission facilities to a regional transmission organization (RTO), give authority to power marketing administrations and the Tennessee Valley Authority (TVA) to join RTOs, remand the FERC Standard Market Design (SMD) notice of proposed rulemaking, and strengthen FERC's merger review authority.

This report will not be updated.

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Electric Utility Policy: Comparison of House-Passed H.R. 6 and S.Amdt. 1412, 108th Congress

Introduction

Historically, electric utilities have been regarded as natural monopolies requiring regulation at the state and federal levels. The Energy Policy Act of 1992 (EPACT, P.L. 102-486) removed a number of regulatory barriers to electricity generation in an effort to increase supply and introduce competition, and further legislation has been introduced and debated to resolve remaining issues affecting transmission, reliability, and other restructuring concerns.

Electric utility provisions are included in comprehensive energy legislation that has passed both the House and Senate. The House passed H.R. 6 on April 11, 2003. On July 31, 2003, the Senate suspended debate on S. 14, the comprehensive energy bill that had been drafted by the Energy and Natural Resources Committee, and instead passed H.R. 6 with the text of the Senate-passed version of H.R. 4 from the 107th Congress. For a comparison of the House- and Senate-passed versions of H.R. 6, see CRS Report RL32033, *Omnibus Energy Legislation (H.R. 6): Side-by-Side Comparison of Non-Tax Provisions*.

Before debate on S. 14 was suspended, Senator Domenici proposed S.Amdt. 1412 on July 29, 2003, to completely replace the electricity title of S. 14 as introduced in the Senate. The proposed amendment was withdrawn on July 31, 2003, and is not included in the Senate-passed energy bill. However, majority staff of the Senate Energy and Natural Resources Committee have indicated that provisions of the amendment might be brought up in conference.¹

Title VI of the House-passed H.R. 6 would, in part, provide for incentive-based transmission rates, allow transmission owners in certain instances to exercise the right of eminent domain to site new transmission lines, create an electric reliability organization, give new, but limited, authority to the Federal Energy Regulatory Commission (FERC) over municipal and cooperative transmission systems, and clarify the right of transmission owners to serve existing customers (native load).

In addition, the House bill would repeal the Public Utility Holding Company Act (PUHCA) and give FERC and state public utility commissions access to books and records, prospectively repeal the mandatory purchase requirement of the Public Utility Regulatory Policies Act of 1978 (PURPA), and require utilities to provide

¹ CRS communication with majority senior staff of the Senate Energy and Natural Resources Committee, Aug. 19, 2003.

real-time rates and time-of-use metering. The House version of H.R. 6 would establish market transparency rules, explicitly prohibit round-trip trading, and increase criminal penalties under the Federal Power Act.

Like the House-passed electricity provisions of H.R. 6, S.Amdt. 1412 would, in a more limited fashion, give FERC rate authority over municipal and cooperative transmission systems, create an electric reliability organization, repeal PUHCA and give FERC and state public utility commissions access to books and records, prospectively repeal the mandatory purchase requirement of PURPA, clarify the right of transmission owners to serve native load, explicitly prohibit round-trip trading, establish market transparency rules, and increase criminal penalties under the Federal Power Act.

Unlike the House-passed H.R. 6, S.Amdt. 1412 does not contain provisions that would allow transmission owners to exercise the right of eminent domain to site new transmission lines.

S.Amdt. 1412 contains provisions that are not included in the House-passed H.R. 6. These include provisions that prohibit FERC from requiring utilities to transfer operational control of transmission facilities to a regional transmission organization (RTO), give authority to power marketing administrations and the Tennessee Valley Authority to join RTOs, remand FERC's Standard Market Design (SMD) notice of proposed rulemaking, and strengthen FERC's merger review authority.

For additional information, see CRS Report RL32728, *Electric Utility Regulatory Reform: Issues for the 109th Congress*.

Definitions

Provision	Current Law	House	S.Amdt. 1412	Comments
Definitions	The Federal Power Act (FPA) does not include any federal power marketing agency in the definition of 'electric utility.' The Federal Power Act does not include municipalities and states, (entities described in 201(f)) in the definition of 'transmitting utility' (16 U.S.C. 796).	No similar provision.	<i>Sec. 1101.</i> In part, modifies definition of 'electric utility' to include federal power marketing agencies. Changes definition of 'transmitting utility' to include the Tennessee Valley Authority. Defines unregulated transmitting utility, electric cooperative, Regional Transmission Organization, and Independent System Operator.	

Transmission Capacity

Provision	Current Law	House	S.Amdt. 1412	Comments
Transmission infrastructure improvement rulemaking (continued on next row).	FERC must approve transmission rates charged by utilities. These rates must be just and reasonable (16 U.S.C. 824d).	<i>Sec. 16011.</i> FERC is required to establish a rule to create incentive-based transmission rates. Under the rule, FERC must approve a transmission organization's request that new transmission facilities that increase the transfer capability of the system be participant-funded.	<i>Sec. 1133.</i> Requires FERC to promulgate rules within 180 days of enactment to establish pricing policies for the construction of new interstate transmission facilities or for expansion and upgrades of the existing transmission infrastructure. (continued on next row)	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Transmission infrastructure improvement rulemaking.</p>	(see row above)	(see row above)	<p>(continued from row above) The regulation is to promote economic capital investment in transmission, encourage construction and operation of generation and transmission to minimize risk and provide just and reasonable rates to consumers, encourage use of transmission technologies that increase the transfer capacity of existing lines, and ensure that transmission expansion costs are allocated in a fair manner. RTOs or ISOs are required to submit a plan to FERC that determines how costs will be allocated for transmission expansion. This section allows costs to be: 1) directly assigned; 2) participant funded; or 3) rolled into regional or sub-regional rates. RTOs or ISOs could also propose other methods for cost allocation.</p>	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Siting of interstate electrical transmission facilities (continued in next row).</p>	<p>Transmission siting is the responsibility of the states.</p> <p>Federal Land Policy and Management Act (43 U.S.C. 1763).</p>	<p><i>Sec. 16012.</i> The Secretary of Energy is required to conduct a study of electric transmission congestion every three years. Based on the findings, the Secretary of Energy may designate a geographic area as being congested. Under certain conditions, FERC is authorized to issue construction permits. Permit holders will be allowed to petition in District Court to acquire rights-of-way through the exercise of the right of eminent domain. Any exercise of eminent domain authority is considered to be takings of private property for which just compensation is due. This section does not apply to the Electric Reliability Council of Texas (ERCOT). An applicant for federal authorization to site transmission facilities on federal lands may request that the Department of Energy be the lead agency to coordinate environmental review and other federal authorization. (continued in next row)</p>	<p>No similar provision.</p>	<p>Under House proposed FPA section 216(d) there is no specific comment period required. New FPA section 216(e) appears to be exercising federal power of eminent domain to cross private land. New FPA section 216(g) does not clearly state whether companies using condemnation authority to cross private land must comply with the National Environmental Policy Act of 1969 (NEPA). New section 216(h) does not state whether property owners will be required to reimburse compensation if land is transferred back to the owner. New FPA section 216(j)(1) gives the Department of Energy (DOE) new authority to prepare environmental documents and appears to give DOE additional decision-making authority for rights-of-way and siting on federal lands. This would appear to give DOE input into the decision process for creating rights-of-way. New FPA section 216(l) would not apply to monuments that are not managed by the National Park Service.</p>

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Provision	Current Law	House	S.Amdt. 1412	Comments
Siting of interstate electrical transmission facilities (continued from row above).	(See row above.)	<i>Sec. 16012</i> (continued from row above). Once a completed application is submitted, all related environmental reviews must be completed within 1 year unless existing federal law environmental review document is to be used for all decisions on the proposed project. Review under section 503 of the Federal Land Policy and Management Act may be streamlined by relying on prior analyses. Any denial of federal rights-of-way may be appealed by the applicant or relevant state to the Secretary of Energy. The Secretary of Energy must issue a decision within 90 days of the appeal's filing. States may enter into interstate compacts for the purposes of siting transmission facilities and the Secretary of Energy may provide technical assistance.	(See row above.)	(See row above.)

Provision	Current Law	House	S.Amdt. 1412	Comments
Transmission technologies.	The Federal Power Act (16 U.S.C. 791a and following) gives FERC authority to order interconnections with the transmission system and transmission capacity additions necessary to support the interconnection (Section 210). Section 212 allows the costs of transmission system enlargement to be included in the rates for wholesale transmission services.	<i>Sec. 16013.</i> FERC is to exercise its authority under the Federal Power Act to encourage technologies that will increase the efficiency and transfer capability of transmission networks.	No similar provision.	Investment in the transmission system has not kept pace with increases in generation. This section is intended to increase the capacity of existing lines through the implementation of technology.

Transmission Operation

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Open access transmission by certain utilities.</p>	<p>The Federal Power Act (Section 201(f)) does not apply to federal power marketing administrations, state entities, or rural electric cooperatives (16 U.S.C. 824).</p>	<p><i>Sec. 16021.</i> FERC is authorized, by rule or order, to require unregulated transmitting utilities (power marketing administrations, state entities, and rural electric cooperatives) to charge rates comparable to what they charge themselves, and also require that the terms and conditions of the sales are comparable to those required of other utilities. Exemptions are established for utilities selling less than 4 million megawatt-hours (mwh) of electricity per year, for distribution utilities, and for utilities that own or operate transmission facilities that are not necessary to facilitate a nationwide interconnected transmission system. FERC may remand transmission rates to an unregulated transmitting utility if the rates do not comply with this section.</p>	<p><i>Sec. 1132.</i> FERC is authorized, by rule or order, to require unregulated transmitting utilities (power marketing administrations, state entities, and rural electric cooperatives) to charge rates comparable to what they charge themselves and requires that the terms and conditions of the sales are comparable to those required of other utilities. Exemptions are established for utilities selling less than 4 million mwh of electricity per year, for distribution utilities, and for utilities that own or operate transmission facilities that are not necessary to facilitate a nationwide interconnected transmission system. FERC is not authorized to order states or municipalities to take action under this section if it constitutes a private use under section 141 of the Internal Revenue Code of 1986. FERC is not authorized to require unregulated transmitting utilities to join a transmission organization.</p>	<p>Both provisions are often referred to as “FERC-lite.”</p>

Provision	Current Law	House	S.Amdt. 1412	Comments
Sense of Congress on Regional Transmission Organizations.	No current law.	<i>Sec. 16022.</i> It is the sense of the Congress that utilities should voluntarily become members of regional transmission organizations (RTO). It is the sense of the Congress that FERC should provide incentive rates for transmission for those utilities that join regional transmission organizations. FERC is required to report to Congress within 120 days of enactment the status of all regional transmission organization applications. Federal utilities (power marketing administrations or Tennessee Valley Authority) are authorized to participate in regional transmission organizations.	<i>Sec. 1122.</i> It is the sense of the Congress that utilities should voluntarily become members of regional transmission organizations.	
Participation in Regional Transmission Organizations.	Section 202 (a) of the Federal Power Act directs FERC to promote and encourage regional districts for the voluntary interconnection and coordination of transmission facilities by public utilities and non-public utilities for the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy.	No similar Provision.	<i>Sec. 1123.</i> FERC may not require a transmitting utility to transfer operational control of its transmitting facilities to an RTO or Independent System Operator (ISO).	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Federal utility participation in regional transmission organizations.</p>	<p>Enabling statutes for power marketing administrations may restrict participation in RTOs. (16 U.S.C. 832 (Bonneville Power Administration), 16 U.S.C. 460(Southeastern and Southwestern Power Marketing Administration), and 43 U.S.C. 485 (Western Area Power Administration))</p> <p>16 U.S.C. 831. The Tennessee Valley Authority Act prohibits the Tennessee Valley Authority (TVA) from performing any transmission service that would result in the delivery of power generated by TVA outside of its service territory (the “fence”).</p>	<p>No similar Provision.</p>	<p><i>Sec. 1124.</i> Federal entities, such as the power marketing administrations and the Tennessee Valley Authority, are allowed to enter into a contract to transfer control and use of all or part of a federal utility’s transmission system to an RTO.</p>	

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Provision	Current Law	House	S.Amdt. 1412	Comments
<p>State regulatory authorities.</p>	<p>No current law.</p>	<p>No similar provision.</p>	<p><i>Sec. 1125.</i> FERC is required to convene regional discussions with state regulatory authorities to determine whether wholesale electric markets in the region are being effective in providing reliable service at the lowest reasonable cost. These discussions, in part, are required to consider whether an RTO is needed, the process to consider planning for multi-state transmission facilities, whether economic dispatch should be implemented, a method to provide proper price signals so new transmission and generation facilities alleviate congestion on the transmission system, and whether a new transmission pricing system is necessary to enhance efficiency and reliability of the transmission grid. FERC is required to report to Congress within one year of enactment its progress with implementing this section.</p>	

Provision	Current Law	House	S.Amdt. 1412	Comments
Native load.	Section 201 of the Federal Power Act gives FERC jurisdiction over “the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce.” Section 205 of the Federal Power Act prohibits utilities from granting “undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage” (16 U.S.C. 824).	<i>Sec. 16023.</i> A load-serving entity is entitled to use its transmission facilities or transmission rights to serve its existing customers before it is obligated to make its transmission capacity available for other uses.	<i>Sec. 1131.</i> Similar provision.	This section is intended to clarify that reserving transmission for existing customers (native load) is not considered unduly discriminatory.
Standard Market Design.	No current law.	No similar provision.	<i>Section 1121.</i> This section would remand the Standard Market Design (SMD) notice of proposed rulemaking back to FERC. FERC would not be able to issue a final rule on standard market design before July 1, 2005.	

Reliability

Provision	Current Law	House	S.Amdt. 1412	Comments
Electric reliability standards.	No current law.	<p><i>Sec. 16031.</i> Requires FERC to promulgate rules within 180 days of enactment to create a FERC-certified electric reliability organization (ERO). The ERO would develop and enforce reliability standards for the bulk-power system. All ERO standards must be approved by FERC. Under this title, the ERO could impose penalties on a user, owner, or operator of the bulk-power system that violates any FERC-approved reliability standard. In addition, FERC could order compliance with a reliability standard and could impose a penalty if FERC finds that a user, owner, or operator of the bulk-power system has engaged in or is about to engage in a violation of a reliability standard. This provision does not give an ERO or FERC authorization to order construction of additional generation or transmission capacity. (continued on next row)</p>	<p><i>Section 1111.</i> Similar provision.</p>	

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Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Electric reliability standards (continued from row above).</p>	<p>(See row above.)</p>	<p>(Continued from row above) This provision also requires that FERC establish a regional advisory body if at least two-thirds of the states within a region petition FERC. The advisory body would be composed of one member from each participating state in the region, appointed by the Governor of each state, and could provide advice to the ERO or FERC on reliability standards, proposed regional entities, proposed fees, and any other responsibilities requested by FERC. The entire reliability provision would not apply to Alaska or Hawaii.</p>	<p>(See row above.)</p>	<p>(See row above.)</p>

Public Utility Holding Company Act Amendments

Provision	Current Law	House	S.Amdt. 1412	Comments
Short title.	The Public Utility Holding Company Act of 1935 (PUHCA, 15 U.S.C. 79 et seq.).	<i>Sec. 16041.</i> This subtitle may be cited as the Public Utility Holding Company Act of 2003.	<i>Subtitle E.</i> This subtitle may be cited as the Public Utility Holding Company Act of 2003.	
Definitions.	Various terms are defined at 15 U.S.C. 79b.	<i>Sec. 16042.</i> The following terms are defined: affiliates; associate company; Commission; company; electric utility company; exempt wholesale generator; gas utility company; holding company; holding company system; jurisdictional rates; natural gas company; person; public utility; public utility company; State commission; subsidiary company; and voting security.	<i>Sec. 1151.</i> The following terms are defined: holding company, holding company system, jurisdictional rates, natural gas company, person, public utility, public-utility company, subsidiary company, voting security.	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Repeal of the Public Utility Holding Company Act of 1935.</p>	<p>In general, the Public Utility Holding Company Act of 1935 regulates the structure of holding companies by prohibiting all holding companies that are more than twice removed from their operating subsidiaries, federally regulates holding companies of investor-owned utilities, and provides for Securities and Exchange Commission (SEC) regulation of mergers and diversification proposals. Registered holding companies of subsidiaries are required to have SEC approval prior to issuing securities; all loans and intercompany financial transactions are regulated by the SEC. A holding company can be exempt from PUHCA if its business operations and those of its subsidiaries occur within one state or within contiguous states (15 U.S.C. 79 et seq.).</p>	<p><i>Sec. 16043.</i> The Public Utility Holding Company Act of 1935 is repealed.</p>	<p><i>Sec. 1152.</i> Similar provision.</p>	

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Provision	Current Law	House	S.Amdt. 1412	Comments
Federal access to books and records.	Registered holding companies and subsidiary companies are required to preserve accounts, cost-accounting procedures, correspondence, memoranda, papers, and books that FERC deems necessary or appropriate in the public interest or for protection of investors and consumers (15 U.S.C. 79o).	<i>Sec. 16044.</i> Federal access is provided to books and records of holding companies and their affiliates. Affiliate companies must make available to the Commission the books and records of affiliate transactions. Federal officials must maintain the confidentiality of such books and records.	<i>Sec. 1153.</i> Similar provision.	
State access to books and records.	Under the Federal Power Act, state commissions may examine the books, accounts, memoranda, contracts, and records of a jurisdictional electric utility company, an exempt wholesale generator that sells to such electric utility, and any electric utility company or holding company that is an associate company or affiliate of an exempt wholesale generator (16 U.S.C. 824).	<i>Sec. 16045.</i> A jurisdictional state commission may make a reasonably detailed written request to a holding company or any associate company for access to specific books and records, which must be kept confidential. This section does not apply to a holding company that is such solely by reason of ownership of one or more qualifying facilities. Response to such requests is mandatory. Compliance with this section is enforceable in U.S. District Court.	<i>Sec. 1154.</i> Similar provision.	
Exemption authority.	No current law.	<i>Sec. 16046.</i> FERC is directed to promulgate rules to exempt qualifying facilities, exempt wholesale generators, and foreign utility companies from the requirements of Section 16044.	<i>Sec. 1155.</i> FERC is directed to promulgate rules to exempt qualifying facilities, exempt wholesale generators, and foreign utility companies from the requirements of Section 1153.	

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Provision	Current Law	House	S.Amdt. 1412	Comments
Affiliate transactions.	The Federal Power Act requires that jurisdictional rates are just and reasonable and prohibits cross-subsidization (16 U.S.C. 791a et seq.).	<i>Sec. 16047.</i> FERC retains the authority to prevent cross-subsidization and to assure that jurisdictional rates are just and reasonable. FERC and state commissions retain jurisdiction to determine whether associate company activities may be recovered in rates.	<i>Sec. 1156.</i> FERC and state commissions retain authority to determine if a public-utility company, public utility, or natural gas company may recover in rates the costs of goods or services acquired from an affiliate company.	
Applicability.	No specific provision.	<i>Sec. 16048.</i> Except as specifically noted, this subtitle does not apply to the U.S. Government, a state or any political subdivision of a state, or a foreign governmental authority operating outside the United States.	<i>Sec. 1157.</i> Similar provision.	
Effect on other regulations.	No specific provision.	<i>Sec. 16049.</i> FERC or a state commission is not precluded from exercising its jurisdiction under otherwise applicable laws to protect utility customers.	<i>Sec. 1158.</i> Similar provision.	
Enforcement.	15 U.S.C. 79r. The Securities and Exchange Commission has authority to investigate and enforce provisions of the Public Utility Holding Company Act of 1935.	<i>Sec. 16050.</i> FERC has authority to enforce this provision under sections 306-317 of the Federal Power Act.	<i>Sec. 1159.</i> Similar provision.	

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Provision	Current Law	House	S.Amdt. 1412	Comments
Savings provisions.	Not applicable.	<i>Sec. 16051.</i> Persons may continue to engage in legal activities in which they have been engaged or are authorized to engage in on the effective date of the Act. The subtitle does not limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act or the Natural Gas Act.	<i>Sec. 1160.</i> Similar provision.	
Implementation.	Not applicable.	<i>Sec. 16052.</i> Not later than 12 months after enactment, FERC will promulgate regulations necessary to implement this subtitle and submit to Congress recommendations for technical or conforming amendments to federal law that might be necessary to carry out this subtitle.	<i>Sec. 1161.</i> Similar provision.	
Transfer of resources.	The Securities and Exchange Commission maintains books and records and regulates security transactions (15 U.S.C. 79 et seq.).	<i>Sec. 16053.</i> The Securities and Exchange Commission will transfer all applicable books and records to FERC.	<i>Sec. 1162.</i> Similar provision.	No time frame for transfer of books and records is provided.
Effective date.	Not applicable.	<i>Sec. 16054.</i> Twelve months after enactment, this subtitle will take effect.	<i>Sec. 1163.</i> Similar provision.	
Authorization of appropriations.	Not applicable.	<i>Sec. 16055.</i> Necessary funds to carry out this subtitle are authorized to be appropriated.	No similar provision.	

Provision	Current Law	House	S.Amdt. 1412	Comments
Conforming amendments to the Federal Power Act.	The current jurisdiction of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 is referenced by 16 U.S.C. 825q; 16 U.S.C. 824(g)(5); 16 U.S.C. 824m.	<i>Sec. 16056.</i> The Federal Power Act is amended to reflect the changes to the Public Utility Holding Company Act of 1935.	<i>Sec. 1164.</i> Similar provision.	

Public Utility Regulatory Policies Act (PURPA) Amendments

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Real-time pricing and time-of-use metering standards.</p>	<p>States are required to consider whether to implement standards for the purchase of long-term wholesale power supplies (16 U.S.C. 2621(d)).</p>	<p><i>Sec. 16061.</i> Not later than one year after enactment, each state regulatory authority is required to consider implementing the following standards: (1) if requested by an electric consumer, each electric utility must provide customers with a real-time rate schedule; and (2) if requested by an electric consumer, each electric utility is required to provide time-of-use metering technology.</p>	<p><i>Sec. 1142.</i> Not later than one year after enactment, each state regulatory body is required to determine if it will adopt a standard for time-based metering. The standard could implement time-of-use pricing, critical peak pricing, and real-time pricing. Utilities are to be required to provide customers with meters necessary to implement time-based metering.</p> <p>The Secretary of Energy is required to prepare an annual report to Congress that assesses demand response resources on a regional basis. The report will assess the use of advanced meters and communications systems, existing demand response programs, and the potential use of demand response for regional planning purposes. This section establishes that it is the policy of the United States to encourage time-based pricing and other forms of demand response.</p>	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Cogeneration and small power production purchase and sale requirements.</p>	<p>Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) requires utilities to purchase power from qualifying facilities and small power producers at a rate of the utilities' avoided cost (16 U.S.C. 824a-3).</p>	<p><i>Sec. 16062.</i> Mandatory power purchase requirements under §210 of PURPA will not apply to new contracts after the date of enactment if FERC finds that a competitive electric market exists and a qualifying facility (QF) has access to independently administered, auction-based day-ahead and real-time wholesale markets and long-term wholesale markets. FERC may enforce recovery of “stranded costs” incurred by utilities because of PURPA-mandated cogeneration and small power purchases. Ownership limitations under PURPA are repealed. FERC is required to issue a rule to ensure that the electrical, thermal, and chemical outputs of new QFs are intended for industrial, commercial, or institutional use and not for sale to an electric utility.</p>	<p><i>Sec. 1145.</i> Mandatory power purchase requirements under §210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) will not apply to new contracts after the date of enactment if FERC finds that a competitive electric market provides meaningful opportunity to sell capacity to buyers other than the utility to which the QF is interconnected, and a QF has access to independently administered, auction-based day-ahead and real-time wholesale markets and long-term wholesale markets. FERC would be required to promulgate and enforce regulations for the recovery of “stranded costs” incurred by utilities because of PURPA-mandated cogeneration and small power purchases. Ownership limitations under PURPA are repealed. FERC is required to issue a rule to ensure that the electrical, thermal, and chemical outputs of new QFs are intended for industrial, commercial, or institutional use and not for sale to an electric utility.</p>	

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Provision	Current Law	House	S.Amdt. 1412	Comments
Smart metering.	No current law.	<i>Sec. 16063.</i> States must consider whether to implement time-based rate schedules and time-based metering.	<i>Sec. 1142.</i> As described above, each state regulatory body is required to determine if it will adopt a standard for time-based metering that could implement time-of-use pricing, critical peak pricing, and real-time pricing.	
Adoption of additional standards.	No current law.	No similar provision	<i>Sec. 1143.</i> States must consider whether to implement a standard that would require that utilities provide interconnection for distributed generation, combined heat and power, and district heating and cooling systems that have a generation capacity of 250 kilowatts (kW) or less if the owner or operator of the generating facility complies with technical standards adopted by the state regulatory authority. In addition, the generating facility is required to pay the cost established by the state regulatory authority for interconnection.	
Technical assistance for certain responsibilities.	No current law.	No similar provision.	<i>Sec. 1144.</i> The Secretary of Energy is required to offer technical assistance to assist the regulatory authorities with developing and implementing technical standards required under this section.	

Renewable Energy

Provision	Current Law	House	S.Amdt. 1412	Comments
Net metering.	No current law.	<i>Sec. 16071.</i> Each state public utility commission is authorized to decide if net metering will be implemented. All utilities are required to provide net metering for eligible generating facilities that conform to size and fuel requirements. Size limits are 500 kilowatts (kw) for commercial systems and 10 kw for residential systems. Residential generators are limited to solar energy, wind energy or fuel cells. Commercial facilities are limited to solar, wind, biomass, geothermal, fuel cells or combined heat and power.	<i>Sec. 1141.</i> Similar provision.	
Renewable energy production incentive.	EPACT Sec. 1212 provides a 1.5 cent/kwh incentive for power produced from wind and biomass by state and local governments and non-profit electrical cooperatives. Funded by appropriations, it was created to parallel the renewable energy production tax credit for businesses (Title XIX).	<i>Sec. 16072.</i> Eligibility is extended through 2023 and expanded to include electric cooperatives and tribal governments. Qualifying resources are expanded to include landfill gas.	No similar provision.	

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Provision	Current Law	House	S.Amdt. 1412	Comments
Renewable energy on Federal lands.	No existing requirement.	<i>Sec. 16073.</i> The Secretary of the Interior, assisted by the Secretary of Agriculture, is required to study the potential for solar and wind energy resources on federal lands. Also, the National Academy of Sciences (NAS) is directed to study the potential for solar, wind, and ocean energy on the Outer Continental Shelf.	No similar provision.	
Assessment of renewable energy resources.	No existing requirement.	<i>Sec. 16074.</i> DOE is required to report annually on resource potential, including solar, wind, biomass, ocean, geothermal, and hydro.	No similar provision.	

Market Transparency, Round Trip Trading Prohibition, and Enforcement

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Market transparency rules.</p>	<p>In part, Commodity Exchange Act (7 U.S.C. 1 et seq.)</p>	<p><i>Sec. 1608I.</i> Within 180 days after enactment, FERC is required to issue rules to establish an electronic system that provides information about the availability and price of wholesale electric energy and transmission services. Commercial or financial information that FERC determines to be privileged, confidential, or otherwise sensitive is exempt from disclosure.</p>	<p><i>Sec. 1171.</i> Within 180 days after enactment, FERC is required to issue rules to establish an electronic system that provides information about the availability and price of wholesale electric energy and transmission services. Commercial or financial information that FERC determines to be privileged, confidential, or otherwise sensitive is exempt from disclosure. FERC is to ensure that markets are protected from possible collusion or other anti-competitive actions that could occur with public disclosure of transaction-specific information. The section does not affect the jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act.</p>	

Provision	Current Law	House	S.Amdt. 1412	Comments
Market transparency.	Commodity Exchange Act (7 U.S.C. 1 et seq.).	No similar provision.	<i>Sec. 1173.</i> Paragraph (a) makes it a violation of the Commodity Exchange Act to knowingly provide false information to a government entity or other data compiler in an attempt to manipulate reports relating to natural gas or electricity markets. The section also changes the wording of Section 4b of the Commodity Exchange Act. Clarifies CFTC authority to bring administrative or civil actions against violators of the Commodity Exchange Act. For FY2004 such funds as necessary to carry out this section are authorized.	It appears that the broad anti-fraud authority granted to the Commodity Futures Trading Commission (CFTC) in section 4b (in current law or under the proposed amendment) may already encompass the type of manipulative behavior specified in paragraph (a).

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Prohibition on round trip trading.	<p>18 U.S.C. 1341 (mail fraud): This in part applies to use of the mail for the purpose of executing, or attempting to execute, a scheme or artifice to defraud or for obtaining money or property by false or fraudulent pretenses, representations, or promises.</p> <p>18 U.S.C. 1343 (wire fraud): Covers use of wire, radio, or television communication in interstate or foreign commerce to transmit or to cause to be transmitted any writings, signs, signals, pictures, or sounds, for the purpose of executing a scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.</p>	<p><i>Sec. 16082.</i> It is unlawful for any individual, corporation, or any government entity (municipality, state, power marketing administration) to engage in round-trip electricity trading. Round-trip trading is defined to include contracts where purchase and sale transactions have no specific financial gain or loss and are entered into with the intent to distort reported revenues, trading volumes, or prices.</p>	<p><i>Sec. 1172.</i> It is a violation of this Act to knowingly and willfully report false information relating to the price of electricity sold at wholesale or the availability of transmission capacity. It is unlawful for any individual, corporation, or any government entity (municipality, state, power marketing administration) to engage in round-trip electricity trading. Round-trip trading includes contracts where purchase and sale transactions have no specific financial gain or loss and are entered into with the intent to distort reported revenues, trading volumes, or prices.</p>	<p>This section explicitly applies existing fraud statutes to round-trip electricity trading.</p>
Conforming changes.	16 U.S.C. 824.	<p><i>Sec. 16083.</i> Changes reflect amendments to the Federal Power Act.</p>	No similar provision.	

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Enforcement.	Criminal penalties may not exceed \$5,000 and/or 2 years imprisonment. A civil penalty not exceeding \$10,000 per day of violation may be assessed for violations of Sections 211, 212, 213, or 214 of the Federal Power Act (16 U.S.C. 825e and 16 U.S.C. 825o).	<i>Sec. 16084.</i> The Federal Power Act is amended to allow electric utilities to file a complaint with FERC and to allow complaints to be filed against transmitting utilities. Criminal and civil penalties under the Federal Power Act are increased.	<i>Sec. 1174.</i> Similar provision (see comment.)	In the House version, Section 16084(b) clarifies that all entities that have filed complaints may request a rehearing if FERC denies a petition. S.Amdt 1412 includes a provision to increase penalties under the Natural Gas Act (15 U.S.C. 717t). This is not included in S.Amdt. 1412.

Consumer Protections

Provision	Current Law	House	S.Amdt. 1412	Comments
Refund effective date.	Refunds for rates that FERC finds to be unjust, unreasonable, unduly discriminatory, or preferential begin a minimum of 60 days after a complaint is filed (16 U.S.C. 824e(b)).	<i>Sec. 16091.</i> Section 206(b) of the Federal Power Act is amended to allow the effective date for refunds to begin at the time of the filing of a complaint with FERC but not later than 5 months after filing of a complaint.	<i>Sec. 1175.</i> Similar provision.	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Jurisdiction over interstate sales.</p>	<p>Section 201(f) of the Federal Power Act exempts government entities from FERC rate regulation (16 U.S.C. 824).</p>	<p><i>Sec. 16092.</i> Any entity that is not a public utility (including an entity referred to under §201(f) of the Federal Power Act) and that enters into spot market transactions will be subject to FERC refund authority. This section does not apply to cooperatives or government entities (power marketing administrations, state-owned utilities, municipalities) that sell no more than 4 million megawatt-hours of electricity per year. Upon finding that action is necessary to protect the public interest, FERC may modify or abrogate any contract entered into after enactment of this section unless the contract expressly provides for a different standard of review.</p>	<p>No similar provision.</p>	<p>As engrossed in the House, this section is intended to exempt any coop or an entity described in §201(f) of the Federal Power Act that does not sell more than 4 million megawatt-hours of electricity in one year. However, as drafted, this section could be interpreted as exempting all §201(f) entities from FERC refund authority.</p>

Provision	Current Law	House	S.Amdt. 1412	Comments
Consumer privacy.	No current law.	<i>Sec. 16093.</i> The Federal Trade Commission (FTC) is required to issue rules to protect the privacy of electric consumers for the disclosure of consumer information obtained in connection with the sale or delivery of electric energy to consumers. If the Federal Trade Commission finds that a state's regulations provide equivalent or greater protection than the rules issued under this section, then state regulations will apply rather than federal rules.	<i>Sec. 1184.</i> Similar provision (see comments.)	The House version includes a provision that the FTC promulgate rules in accordance with 5 U.S.C. 553. This is not included in S. Amdt. 1412.
Unfair trade practices.	No current law.	<i>Sec. 16094.</i> The Federal Trade Commission is required to issue rules to prohibit slamming and cramming. If the Federal Trade Commission determines that a state's regulations provide equal or greater protection than the federal rule, then a state's regulations on slamming and cramming will apply.	<i>Sec. 1185.</i> Similar provision.	S.Amdt. 1412 would allow a state to approve a change of electric provider only to prevent the loss of service. The House version does not place this limit. The House version includes a provision that the FTC promulgate rules in accordance with 5 U.S.C. 553. Slamming occurs when an electric utility switches a customer's electric provider without the consumer's knowledge. Cramming occurs when an electric utility adds additional services and charges to a customer's account without the permission of the customer.

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Technical amendments.	Federal Power Act. 16 U.S.C. 824j.	No similar provision.	<i>Sec. 1191.</i> Redesignates subsections of Section 211 of the Federal Power Act. Provides for technical corrections.	Section 721(4) of the Energy Policy Act of 1992 (P.L. 102-486) struck paragraphs (1), (3), and (4) without redesignating paragraph (2). This section also replaces the word “of” that appears in this section with the word “or,” to conform with the original intent of the Energy Policy Act of 1992.
Market-based policy.	FERC approves wholesale rates for the sale of electric energy. These rates must be just and reasonable.	No similar provision.	<i>Sec. 1182.</i> FERC is required to issue a policy statement that establishes when utilities may charge market-based rates for electric energy. The policy must consider consumer protections and market power.	

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Inter-agency review of competition in the wholesale and retail markets for electric energy.</p>	<p>No current law.</p>	<p>No similar provision.</p>	<p><i>Sec. 1183.</i> Creates the “Electric Energy Market Competition Task Force” consisting of one member from the Department of Justice, one member from FERC, one member from the Federal Trade Commission, one member from the Department of Energy, and one member from the Rural Utilities Service. Within one year of enactment, the task force will complete a study and analysis of competition within the wholesale and retail markets for electric energy in the United States and issue a report to Congress.</p>	

Merger Review Reform and Accountability

Provision	Current Law	House	S.Amdt. 1412	Comments
<p>Merger review reform and accountability.</p>	<p>Under Section 203(a) of the Federal Power Act, FERC review of asset transfers applies to transactions valued at \$50,000 or more (16 U.S.C. 824b).</p>	<p><i>Sec. 16101.</i> Within 180 days of enactment, the Secretary of Energy shall transmit to Congress a study on whether FERC's merger review authority is duplicative with other agencies' authority and recommendations that would eliminate any unnecessary duplication. FERC is required to issue an annual report to Congress describing all conditions placed on mergers under Section 203(b) of the Federal Power Act. FERC is also required to include in its report whether such a condition could have been imposed under any other provision of the Federal Power Act.</p>	<p><i>Sec. 1181.</i> FERC is required to approve any merger, sale, lease, or disposition of entire electric facilities with a value in excess of \$10,000,000. FERC is required to notify the Governor and state regulatory body if the action would affect physical property in the state. FERC is required to approve the proposed disposition, consolidation, acquisition or change of control if the transaction is in the public interest. These changes are effective 12 months after enactment.</p>	

Study of Economic Dispatch

Provision	Current Law	House	S.Amdt. 1412	Comments
Study on the benefits of economic dispatch.	No current law.	<i>Sec. 16111.</i> The Secretary of Energy, in consultation with the states, will issue an annual report to Congress and the states on the current status of economic dispatch. Economic dispatch is defined as “the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operational limits of generation transmission facilities.”	No similar provision.	

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