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107TH CONGRESS

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H. R. 1459

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. HAYWORTH (for himself, Mr. ENGLISH, Mr. MATSUI, Mr. WELLER, Mr. NEAL of Massachusetts, Mr. HOUGHTON, Ms. BALDWIN, Mr. KING, Mr. SPRATT, and Mr. GRAHAM) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electric Power Industry Tax Modernization Act".

SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELECTRIC FACILITIES.

(a) RULES APPLICABLE TO ELECTRIC OUTPUT FACILITIES.-Subpart A of part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to tax exemption requirements for State and local bonds) is amended by adding after section 141 the following

new section:

"SEC. 141A. ELECTRIC OUTPUT FACILITIES.

"(a) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.-

"(1) IN GENERAL.-A governmental unit may make an irrevocable election under this paragraph to terminate the issuance of certain obligations described in section 103(a) for electric output facilities. If the governmental unit makes such election, then-

"(A) except as provided in paragraph (2), on or after the date of such election the governmental unit may not issue with respect to any electric output facility any bond the interest on which is excluded from gross income under section 103, and

"(B) notwithstanding paragraph (1) or (2) of section 141(a) or paragraph (4) or (5) of section 141(b), no bond-

"(i) which was issued by such unit with respect to an electric output facility before the date of enactment of this subsection, the interest on which was exempt from tax on such date,

"(ii) which is an eligible refunding bond that directly or indirectly refunds a bond issued prior to the date of enactment of this section, or

"(iii) which is described in paragraph (2)(D), (E), or (F),

shall be treated as a private activity bond.

"(2) EXCEPTIONS.-If an election is made under paragraph (1), paragraph (1)(A) does not apply to any of the following bonds:

"(A) Any qualified bond (as defined in section 141(e)).

"(B) Any eligible refunding bond (as defined in subsection (d)(6)).

"(C) Any bond issued to finance a qualifying transmission facility or a qualifying distribution facility owned by the governmental unit.

"(D) Any bond issued to finance equipment or facilities necessary to meet Federal or State environmental requirements applicable to an existing generation facility owned by the governmental unit.

"(E) Any bond issued to finance repair of any existing generation facility owned by the governmental unit. Repairs of facilities may not increase the generation capacity of the facility by more than 3 percent above the greater of its nameplate or rated capacity as of the date of enactment of this section.

"(F) Any bond issued to acquire or construct-

"(i) a qualified facility (as defined in section 45(c)(3)) if such facility is owned by the governmental unit and is placed in service during a period in which a qualified facility may be placed in service under such section, or

"(ii) any energy property (as defined in section 48(a)(3)) that is owned by the governmental unit.

This subparagraph shall not apply to any facility or property that is constructed, acquired or financed for the principal purpose of providing the facility (or the output thereof) to nongovernmental persons.

"(3) FORM AND EFFECT OF ELECTION.-

"(A) IN GENERAL.-An election under paragraph (1) shall be made in such a manner as the Secretary prescribes and shall be binding on any successor in interest to, or any related party with respect to, the electing governmental unit. For purposes of this paragraph, a governmental unit shall be treated as related to another governmental unit if it is a member of the same controlled group.

"(B) TREATMENT OF ELECTING GOVERNMENTAL UNIT.-A governmental unit which makes an election under paragraph (1) shall be treated for purposes of section 141 as a person which is not a governmental unit and which is engaged in a trade or business, with respect to its purchase of electricity generated by an electric output facility placed in service after such election, if such purchase is under a contract executed after such election.

"(4) DEFINITIONS.-For purposes of this subsection:

"(A) EXISTING GENERATION FACILITY.-The term `existing generation facility' means an electric generation facility owned by the governmental unit on the date of enactment of this subsection and either in service on such date or the construction of which commenced prior to June 1, 2000.

"(B) QUALIFYING DISTRIBUTION FACILITY.-The term `qualifying distribution facility' means a distribution facility over which open access distribution services described in subsection (b)(2)(C) are available.

"(C) QUALIFYING TRANSMISSION FACILITY.-The term `qualifying transmission facility' means a local transmission facility (as described in subsection (c)(3)(A)) over which open access transmission services described in subparagraph (A) or (B) of subsection (b)(2) are available.

"(b) PERMITTED OPEN ACCESS ACTIVITIES AND SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE RULES.-

"(1) GENERAL RULE.-For purposes of this section and section 141, the term `private business use' shall not include a permitted open access activity or a permitted sales transaction.

"(2) PERMITTED OPEN ACCESS ACTIVITIES.-For purposes of this section, the term `permitted open access activity' means any of the following transactions or activities with respect to an electric output facility owned by a governmental unit:

"(A) Providing nondiscriminatory open access transmission service and ancillary services-

"(i) pursuant to an open access transmission tariff filed with and approved by FERC, including an acceptable reciprocity tariff but, in the case of a voluntarily filed tariff, only if the governmental unit voluntarily files a report with the FERC within 90 days of the date of enactment of this section relating to whether or not the issuer will join a regional transmission organization,

"(ii) under an independent system operator or regional transmission organization agreement approved by FERC, or

"(iii) in the case of an ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))), pursuant to a tariff approved by the Public Utility Commission of Texas.

"(B) Participation in-

"(i) an independent system operator agreement, or

"(ii) a regional transmission organization agreement,

which has been approved by FERC, or by the Public Utility Commission of Texas in the case of an ERCOT utility (as so defined). Such participation may include transfer of control of transmission facilities to an organization described in clause (i) or (ii).

"(C) Delivery on a nondiscriminatory open access basis of electric energy sold to end-users served by distribution facilities owned by such governmental unit.

"(D) Delivery on a nondiscriminatory open access basis of electric energy generated by generation facilities connected to distribution facilities owned by such governmental unit.

"(3) PERMITTED SALES TRANSACTION.-For purposes of this subsection, the term 'permitted sales transaction' means any of the following sales of electric energy from existing generation facilities (as defined in subsection (a)(4)(A)):

"(A) The sale of electricity to an on-system purchaser, if the seller makes available open access distribution service under paragraph (2)(C) and, in the case of a seller that owns or operates transmission facilities, if such seller makes available open access transmission under subparagraph (A) or (B) of paragraph (2).

"(B) The sale of electricity to a wholesale native load purchaser or in a wholesale stranded cost mitigation sale-

"(i) if the seller makes available open access transmission service described in subparagraph (A) or (B) of paragraph (2), or

"(ii) if the seller owns or operates no transmission facilities and transmission providers to the seller's wholesale native load purchasers make available open access transmission service described in subparagraph (A) or (B) of paragraph (2).

"(4) DEFINITIONS AND SPECIAL RULES.-For purposes of this subsection:

"(A) ON-SYSTEM PURCHASER.-The term 'on-system purchaser' means a person whose electric facilities or equipment are directly connected with transmission or distribution facilities which are owned by such governmental unit, and such person-

"(i) purchases electric energy from such governmental unit at retail and either was within such unit's distribution area in the base year or is a person as to whom the governmental unit has a service obligation, or

"(ii) is a wholesale native load purchaser from such governmental unit.

"(B) WHOLESALE NATIVE LOAD PURCHASER.-The term 'wholesale native load purchaser' means a wholesale purchaser as to whom the governmental unit had-

"(i) a service obligation at wholesale in the base year, or

"(ii) an obligation in the base year under a requirements contract, or under a firm sales contract that has been in effect for (or has an initial term of) at least 10 years,

but only to the extent that in either case such purchaser resells the electricity (I) directly at retail to persons within the purchaser's distribution area or (II) indirectly through one or more intermediate wholesale purchasers (each of whom as of June 30, 2000, was a party to a requirements contract or a firm power contract described in clause (ii)) to retail purchasers in the ultimate wholesale purchaser's distribution area.

"(C) **WHOLESALE STRANDED COST MITIGATION SALE.**-The term 'wholesale stranded cost mitigation sale' means one or more wholesale sales made in accordance with the following requirements:

"(i) A governmental unit's allowable sales under this subparagraph during the recovery period may not exceed the sum of its annual load losses for each year of the recovery period.

"(ii) The governmental unit's annual load loss for each year of the recovery period is the amount (if any) by which-

"(I) sales in the base year to wholesale native load purchasers which do not constitute a private business use, exceed

"(II) sales during that year of the recovery period to wholesale native load purchasers which do not constitute a private business use.

"(iii) If actual sales under this subparagraph during the recovery period are less than allowable sales under clause (i), the amount not sold (but not more than 10 percent of the aggregate allowable sales under clause (i)) may be carried over and sold as wholesale stranded cost mitigation sales in the calendar year following the recovery period.

"(D) **RECOVERY PERIOD.**-The recovery period is the 7-year period beginning with the start-up year.

"(E) **START-UP YEAR.**-The start-up year is whichever of the following calendar years the governmental unit elects:

"(i) The year the governmental unit first offers open transmission access.

"(ii) The first year in which at least 10 percent of the governmental unit's wholesale customers' aggregate retail native load is open to retail competition.

"(iii) The calendar year which includes the date of the enactment of this section, if later than the year described in clause (i) or (ii).

"(F) **PERMITTED SALES TRANSACTIONS UNDER EXISTING CONTRACTS.**-A sale to a wholesale native load purchaser (other than a person to whom the governmental unit had a service obligation) under a contract which resulted in private business use in the base year shall be treated as a permitted sales transaction only to the extent that sales under the contract exceed the lesser of-

"(i) in any year the private business use that resulted from the contract during the base year, or

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

This subparagraph shall only apply to the extent that the sale is allocable to bonds issued prior to the date of enactment of this section (or bonds issued to refund such bonds).

"(G) **TIME OF SALE RULE.**-For purposes of paragraphs (C)(ii) and (F), private business use shall be determined under the law in effect in the year of the sale.

"(H) JOINT ACTION AGENCIES.-A joint action agency, or a member of (or a wholesale native load purchaser from) a joint action agency, which is entitled to make a sale described in subparagraph (A) or (B) in a year, may transfer the entitlement to make that sale to the member (or purchaser), or the joint action agency, respectively.

"(c) CERTAIN BONDS FOR TRANSMISSION AND DISTRIBUTION FACILITIES NOT TAX EXEMPT.-

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

"(A) any transmission facility which is not a local transmission facility, or

"(B) a start-up utility distribution facility.

"(2) EXCEPTIONS.-Paragraph (1) shall not apply to-

"(A) any qualified bond (as defined in section 141(e)),

"(B) any eligible refunding bond (as defined in subsection (d)(6)), or

"(C) any bond issued to finance-

"(i) any repair of a transmission facility in service on the date of the enactment of this section, so long as the repair does not increase the voltage level over its level in the base year or increase the thermal load limit of the transmission facility by more than 3 percent over such limit in the base year,

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

"(iii) a transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on the date of enactment of this section.

"(3) LOCAL TRANSMISSION FACILITY DEFINITIONS.-For purposes of this subsection-

"(A) LOCAL TRANSMISSION FACILITY.-The term 'local transmission facility' means a transmission facility which is located within the governmental unit's distribution area or which is, or will be, necessary to supply electricity to serve retail native load or wholesale native load of 1 or more governmental units. For purposes of this subparagraph, the distribution area of a public power authority which was created in 1931 by a State statute and which, as of January 1, 1999, owned at least one-third of the transmission circuit miles rated at 230 kV or higher in the State, shall be determined under regulations of the Secretary.

"(B) RETAIL NATIVE LOAD.-The term 'retail native load' with respect to a governmental unit (or an entity other than a governmental unit that operates an electric utility) is the electric load of end-users in the distribution area of the governmental unit or entity.

"(C) WHOLESALE NATIVE LOAD.-The term 'wholesale native load' is-

"(i) the retail native load of such unit's wholesale native load purchasers (or of an ultimate wholesale purchaser described in subsection (b)(4)(B)(ii)), and

"(ii) the electric load of purchasers (not described in clause (i)) under wholesale requirements contracts which-

"(I) do not constitute private business use under the rules in effect absent this subsection, and

"(II) were in effect in the base year.

"(D) NECESSARY TO SERVE LOAD.-For purposes of determining whether a transmission or distribution facility is, or will be, necessary to supply electricity to retail native load or wholesale native load-

"(i) the governmental unit's available transmission rights shall be taken into account,

"(ii) electric reliability standards or requirements of national or regional reliability organizations, regional transmission organizations and the Electric Reliability Council of Texas shall be taken into account, and

"(iii) transmission, siting and construction decisions of regional transmission organizations or independent system operators and State and Federal regulatory and siting agencies, after a proceeding that provides for public input, shall be presumptive evidence regarding whether transmission facilities are necessary to serve native load.

"(E) QUALIFYING UPGRADE.-The term 'qualifying upgrade' means an improvement or addition to transmission facilities of the governmental unit in service on the date of enactment of this section which is ordered or approved by a regional transmission organization, by an independent system operator, or by a State regulatory or siting agency, after a proceeding that provides for public input.

"(4) START-UP UTILITY DISTRIBUTION FACILITY DEFINED.-For purposes of this subsection, the term 'start-up utility distribution facility' means any distribution facility to provide electric service to the public that is placed in service-

"(A) by a governmental unit that did not operate an electric utility on the date of the enactment of this section, and

"(B) during the first ten years after the date such governmental unit begins operating an electric utility.

A governmental unit is treated as having operated an electric utility on the date of the enactment of this section if it operates electric output facilities which were operated by another governmental unit to provide electric service to the public on such date.

"(d) DEFINITIONS; SPECIAL RULES.-For purposes of this section-

"(1) BASE YEAR.-The term 'base year' means the calendar year which includes the date of the enactment of this section or, at the election of the governmental unit, either of the 2 immediately preceding calendar years.

"(2) DISTRIBUTION AREA.-The term 'distribution area' means the area in which a governmental unit (or an entity other than a governmental unit that operates an electric utility) owns distribution facilities.

"(3) ELECTRIC OUTPUT FACILITY.-The term 'electric output facility' means an output facility that is an electric generation, transmission, or distribution facility.

"(4) DISTRIBUTION FACILITY.-The term 'distribution facility' means an electric output facility that is not a generation or transmission facility.

"(5) TRANSMISSION FACILITY.-The term `transmission facility' means an electric output facility (other than a generation facility) that operates at an electric voltage of 69 kV or greater, except that the owner of the facility may elect to treat any output facility that the FERC determines is a transmission facility under standards applied by FERC under the Federal Power Act as a transmission facility for purposes of this section.

"(6) ELIGIBLE REFUNDING BOND.-The term `eligible refunding bond' means any State or local bond issued after an election described in subsection (a) that directly or indirectly refunds any bond described in section 103(a) (other than a qualified bond) issued before such election, if the weighted average maturity of the issue of which the refunding bond is a part does not exceed the remaining weighted average maturity of the bonds issued before the election. In applying such term for purposes of subsection (c)(2)(B), the date of election shall be deemed to be the date of the enactment of this section.

"(7) FERC.-The term `FERC' means the Federal Energy Regulatory Commission.

"(8) GOVERNMENT-OWNED FACILITY.-An electric output facility shall be treated as `owned by a governmental unit' if it is an electric output facility that either is-

"(A) owned or leased by such governmental unit, or

"(B) a transmission facility in which the governmental unit acquired before the base year long-term firm capacity for the purposes of serving customers to which the unit had at that time either-

"(i) a service obligation, or

"(ii) an obligation under a requirements contract.

"(9) REPAIR.-The term `repair' shall include replacement of components of an electric output facility, but shall not include replacement of the facility either at one time or incrementally.

"(10) SERVICE OBLIGATION.-The term `service obligation' means an obligation under State or Federal law (exclusive of an obligation arising solely under a contract entered into with a person) to provide electric distribution services or electric sales service, as provided in such law.

"(11) CONTRACT MODIFICATIONS.-A contract is treated as a new contract if it is substantially modified.

"(e) SAVINGS CLAUSE.-Subsection (b) does not affect the applicability of section 141 to (or the Secretary's authority to prescribe, amend or rescind regulations respecting) (1) any transaction that is not a permitted open access transaction or permitted sales transaction, or (2) any facilities other than electric output facilities."

(b) REPEAL OF EXCEPTION FOR CERTAIN NONGOVERNMENTAL ELECTRIC OUTPUT FACILITIES.-Section 141(d)(5) of the Internal Revenue Code of 1986 is amended by inserting "(except in the case of an electric output facility that is a distribution facility)," after "this subsection".

(c) CONFORMING AMENDMENT.-The table of sections for subpart A of part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 141 the following new item:

"Sec. 141A. Electric output facilities."

(d) EFFECTIVE DATE; APPLICABILITY.-

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

(2) **CERTAIN EXISTING AGREEMENTS.**-The amendment made by subsection (b) (relating to repeal of the exception for certain nongovernmental output facilities) does not apply to any acquisition of facilities made pursuant to an agreement that was entered into before the date of the enactment of this Act.

(3) **APPLICABILITY.**-References in this Act to sections of the Internal Revenue Code of 1986, shall be deemed to include references to comparable sections of the Internal Revenue Code of 1954.

SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.

(a) SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.-

(1) **IN GENERAL.**-Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions) is amended by redesignating subsection (k) as subsection (l), and by inserting after subsection (j) the following new subsection:

"(k) SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.-

"(1) IN GENERAL.-For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction and the proceeds received from such transaction are invested in exempt utility property, such transaction shall be treated as an involuntary conversion to which this section applies. The part of the gain, if any, on a sale or exchange to which section 1033 is not applied by reason of section 1245 shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property, of a character subject to the allowance for depreciation under section 167, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary. Any election made by the taxpayer under this section shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent taxable years.

"(2) EXTENSION OF REPLACEMENT PERIOD.-In the case of any involuntary conversion described in paragraph (1), subsection (a)(2)(B) shall be applied by substituting '4 years' for '2 years' in clause (i) thereof.

"(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.-For purposes of this subsection, the term `qualifying electric transmission transaction' means any sale or other disposition of property used in the trade or business of electric transmission, or an ownership interest in a person whose primary trade or business consists of providing electric transmission services, to another person that is an independent transmission company.

"(4) INDEPENDENT TRANSMISSION COMPANY.-For purposes of this subsection, the term `independent transmission company' means-

"(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

"(B) a person-

"(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 823b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

"(ii) whose transmission facilities to which the election under this subsection applies are placed under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization within the period specified in such order, but not later than the close of the replacement period, or

"(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

"(5) EXEMPT UTILITY PROPERTY.-For purposes of this subsection, the term `exempt utility property' means-

"(A) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or

"(B) stock acquired in the acquisition of control of a corporation whose primary trade or business consists of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas.

"(6) SPECIAL RULES FOR CONSOLIDATED GROUPS.-

"(A) INVESTMENT BY QUALIFYING GROUP MEMBERS.-

"(i) IN GENERAL.-This subsection shall apply to a qualifying electric transmission transaction engaged in by a taxpayer if the proceeds are invested in exempt utility property by a qualifying group member.

"(ii) QUALIFYING GROUP MEMBER.-For purposes of this subparagraph, the term `qualifying group member' means any member of a consolidated group within the meaning of section 1502 and the regulations promulgated thereunder of which the taxpayer is also a member.

"(B) COORDINATION WITH CONSOLIDATED RETURN PROVISIONS.-A sale or other disposition of electric transmission property or an ownership interest in a qualifying electric transmission transaction, where an election is made under this subsection, shall not result in the recognition of income or gain under the consolidated return provisions of subchapter A of chapter 6. The Secretary shall prescribe such regulations as may be necessary to provide for the treatment of any exempt utility property received in a qualifying electric transmission transaction as successor assets subject to the application of such consolidated return provisions.

"(7) ELECTION.-Any election made by a taxpayer under this subsection shall be made by a statement to that effect in the return for the taxable year in which the qualifying electric transmission transaction takes place in such form and manner as the Secretary shall prescribe, and such election shall be binding for that taxable year and all subsequent taxable years."

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

(3) EFFECTIVE DATE.-The amendments made by this subsection shall apply to transactions occurring after the date of the enactment of this Act.

(b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.-

(1) IN GENERAL.-Section 355(e)(4) of the Internal Revenue Code of 1986 is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) DISTRIBUTIONS OF STOCK TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.-

"(i) IN GENERAL.-Paragraph (1) shall not apply to any distribution that is a qualifying electric transmission transaction. For purposes of this subparagraph, a 'qualifying electric transmission transaction' means any distribution of stock in a corporation whose primary trade or business consists of providing electric transmission services, where such stock is later acquired (or where the assets of such corporation are later acquired) by another person that is an independent transmission company.

"(ii) INDEPENDENT TRANSMISSION COMPANY.-For purposes of this subsection, the term 'independent transmission company' means-

"(I) a regional transmission organization approved by the Federal Energy Regulatory Commission,

"(II) a person who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and whose transmission facilities transferred as a part of such qualifying electric transmission transaction are placed under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization within the period specified in such order, but not later than the close of the replacement period (as defined in section 1033(k)(2)), or

"(III) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person that is approved by that Commission as consistent with Texas State law regarding an independent transmission organization."

(2) **EFFECTIVE DATE.**-The amendments made by this subsection shall apply to distributions occurring after the date of the enactment of this Act.

SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILITIES EXCLUDED FROM GROSS INCOME AS CONTRIBUTIONS TO CAPITAL.

(a) **IN GENERAL.**-Subsection (c) of section 118 of the Internal Revenue Code of 1986 (relating to contributions to the capital of a corporation) is amended-

(1) by striking "WATER AND SEWAGE DISPOSAL" in the heading, and inserting "CERTAIN",

(2) by striking "water or," in the matter preceding subparagraph (A) of paragraph (1) and inserting "electric energy, water, or",

(3) by striking "water or" in paragraph (1)(B) and inserting "electric energy (but not including assets used in the generation of electricity), water, or",

(4) by striking "water or" in paragraph (2)(A)(ii) and inserting "electric energy (but not including assets used in the generation of electricity), water, or",

(5) by inserting "such term shall include amounts paid as customer connection fees (including amounts paid to connect the customer's line to an electric line or a main water or sewer line) and" after "except that" in paragraph (3)(A), and

(6) by striking "water or" in paragraph (3)(C) and inserting "electric energy, water, or".

(b) **EFFECTIVE DATE.**-The amendments made by this section shall apply to amounts received after the date of the enactment of this Act.

SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING FUNDS.

(a) **INCREASE IN AMOUNT PERMITTED TO BE PAID INTO NUCLEAR DECOMMISSIONING RESERVE FUND.**-Subsection (b) of section 468A of the Internal Revenue Code of 1986 (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

"(b) **LIMITATION ON AMOUNTS PAID INTO FUND.**-

"(1) **IN GENERAL.**-The amount which a taxpayer may pay into the Fund for any taxable year during the funding period shall not exceed the level funding amount determined pursuant to subsection (d), except-

"(A) where the taxpayer is permitted by Federal or State law or regulation (including authorization by a public service commission) to charge customers a greater amount for nuclear decommissioning costs, in which case the taxpayer may pay into the Fund such greater amount, or

"(B) in connection with the transfer of a nuclear powerplant, where the transferor or transferee (or both) is required pursuant to the terms of the transfer to contribute a greater amount for nuclear decommissioning costs, in which case the transferor or transferee (or both) may pay into the Fund such greater amount.

"(2) CONTRIBUTIONS AFTER FUNDING PERIOD.-Notwithstanding any other provision of this section, a taxpayer may make deductible payments to the Fund in any taxable year between the end of the funding period and the termination of the license issued by the Nuclear > ≤Regulatory Commission for the ≤nuclear powerplant to which the Fund relates provided such payments do not cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear powerplant to which the Fund relates. The foregoing limitation shall be applied by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended."

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

"(2) DEDUCTION OF NUCLEAR DECOMMISSIONING COSTS.-In addition to any deduction under subsection (a), nuclear decommissioning costs paid or incurred by the taxpayer during any taxable year shall constitute ordinary and necessary expenses in carrying on a trade or business under section 162."

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

"(d) LEVEL FUNDING AMOUNTS.-

"(1) ANNUAL AMOUNTS.-For purposes of this section, the level funding amount for any taxable year shall equal the annual amount required to be contributed to the Fund in each year remaining in the funding period in order for the Fund to accumulate the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear powerplant to which the Fund relates. The annual amount described in the foregoing sentence shall be calculated by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.

"(2) FUNDING PERIOD.-The funding period for a Fund shall end on the last day of the last taxable year of the expected operating life of the nuclear powerplant.

"(3) NUCLEAR DECOMMISSIONING COSTS.-For purposes of this section-

"(A) IN GENERAL.-The term 'nuclear decommissioning costs' means all costs to be incurred in connection with entombing, decontaminating, dismantling, removing, and disposing of a nuclear powerplant, and shall include all associated preparation, security, fuel storage, and radiation monitoring costs. Such term shall include all such costs which, outside of the decommissioning context, might otherwise be capital expenditures.

"(B) IDENTIFICATION OF COSTS.-The taxpayer may identify nuclear decommissioning costs by reference either to a site-specific engineering study or to the financial assurance amount calculated pursuant to section 50.75 of title 10 of the Code of Federal Regulations."

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

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