PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Utility Regulatory Policies Act of 1978". (92 Stat. 3117; 16 U.S.C. § 2601 note)

(b) TABLE OF CONTENTS.—

EXPLANATORY NOTES

Popular Name. This Act is frequently referred to as "PURPA".

Amendments to the Federal Power Act. Various sections of Title II of PURPA amend the Federal Power Act. Section 201 adds definitions of the following terms to section 3: small power production facility; cogeneration facility; Federal power marketing agency; evidentiary hearings and evidentiary proceeding; State regulatory authority; and electric utility. Sections 202, 203, and 204 add sections 210, 211 and 212. Section 206 adds subsection 202 (g). Section 213 adds section 30. These amendments appear in Supplement I under "Federal Water Power Act—June 10, 1920" or "Federal Power Act—August 26, 1935", as appropriate. Sections 207, 208, 211 and 212 of PURPA also amend the Federal Power Act, but these amendments do not appear in Supplement I.

SEC. 2. FINDINGS.

The Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require—

(1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers,

(2) a program to improve the wholesale distribution of electric energy, the reliability of electric service, the procedures concerning consideration of wholesale rate applications before the Federal Energy Regulatory Commission, the participation of the public in matters before the Commission, and to provide other measures with respect to the regulation of the wholesale sale of electric energy,

(3) a program to provide for the expeditious development of hydroelectric potential at existing small dams to provide needed hydroelectric power,

(4) a program for the conservation of natural gas while insuring that rates to natural gas consumers are equitable,

(5) a program to encourage the development of crude oil transportation systems, and

(6) the establishment of certain other authorities as provided in title VI of this Act. (92 Stat. 3119; 16 U.S.C. § 2601)

SEC. 3. DEFINITIONS.

As used in this Act, except as otherwise specifically provided—

(1) The term "antitrust laws" includes the Sherman Antitrust Act (15 U.S.C. 1 and following), the Clayton Act (15 U.S.C. 12 and following), the Federal Trade Commission Act (15 U.S.C. 14 and following), the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(2) The term "class" means, with respect to electric consumers, any group of such consumers who have similar characteristics of electric energy use.

(3) The term "Commission" means the Federal Energy Regulatory Commission.

(4) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(5) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(6) The term "evidentiary hearing" means—

(A) in the case of a State agency, a proceeding which (i) is open to the public, (ii) includes notice to participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (iii) includes a written decision, based upon evidence appearing in a written record of the proceeding, and (iv) is subject to judicial review;

(B) in the case of a Federal agency, a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code; and

(C) in the case of a proceeding conducted by any entity other than a State or Federal agency, a proceeding which conforms, to the extent appropriate, with the requirements of subparagraph (A).

(7) The term "Federal agency" means an executive agency (as defined in section 105 of title 5 of the United States Code).

(8) The term "load management technique" means any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including ripple or radio control mechanisms, and other types of interruptible electric service, energy storage devices, and load-limiting devices.

(9) The term "nonregulated electric utility" means any electric utility other than a State regulated electric utility.

(10) The term "rate" means (A) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of electric energy to an electric consumer.

(11) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(12) The term "rate schedule" means the designation of the rates which an electric utility charges for electric energy.

(13) The term "sale" when used with respect to electric energy includes any exchange of electric energy.

(14) The term "Secretary" means the Secretary of Energy.

(15) The term "State" means a State, the District of Columbia, and Puerto Rico.

(16) The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

(17) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(18) The term "State regulated electric utility" means any electric utility with respect to which a State regulatory authority has ratemaking authority. (92 Stat. 3119; 16 U.S.C. § 2602)

EXPLANATORY NOTE

Reference in the Text; Popular Name. The Act of June 19, 1936, referred to in section 3 (1), is commonly referred to as the Robinson-Patman Act. The Act does not appear herein.

SEC. 4. RELATIONSHIP TO ANTITRUST LAWS.

Nothing in this Act or in any amendment made by this Act affects—

(1) the applicability of the antitrust laws to any electric utility or gas utility (as defined in section 302), or

(2) any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act and the Natural Gas Act) respecting unfair methods of competition or anticompetitive acts or practices. (92 Stat. 3120; 16 U.S.C. § 2603)

PUBLIC UTILITY REGULATORY POLICIES ACT

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

SEC. 101. PURPOSES.

The purposes of this title are to encourage—

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers. (92 Stat. 3121; 16 U.S.C. § 2611)

SEC. 102. COVERAGE.

(a) VOLUME OF TOTAL RETAIL SALES.—This title applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(b) EXCLUSION OF WHOLESALE SALES—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

(c) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each electric utility to which this title applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which such State regulatory authority has ratemaking authority. (92 Stat. 3121; 16 U.S.C. § 2612)

SEC. 103. FEDERAL CONTRACTS.

Notwithstanding the limitation contained in section 102 (b), no contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into or renewed after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any requirement of subtitle B or C. Any provision in any such contract which has such effect shall be null and void. (92 Stat. 3121; 16 U.S.C. § 2613)

Subtitle B—Standards For Electric Utilities

SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.

(a) CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning

whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.—(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112 (a), and in sections 121 and 122, the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.—(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(d) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) COST OF SERVICE.—Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115 (a).

(2) DECLINING BLOCK RATES.—The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such

utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decrease as such consumption increases during such period.

(3) TIME-OF-DAY RATES.—The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115 (b).

(4) SEASONAL RATES.—The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.

(5) INTERRUPTIBLE RATES.—Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member.

(6) LOAD MANAGEMENT TECHNIQUES.—Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will—

(A) be practicable and cost-effective, as determined under section 115 (c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility. (92 Stat. 3121; 16 U.S.C. § 2621)

NOTE OF OPINION

1. Rate design

Neither section 7 of the Bonneville Project Act nor the Public Utility Regulatory Policies Act impose a cost-of-service standard for the design of wholesale power rates for the Bonneville Power Administration. Although costs must be considered, other factors may be considered as well. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 682-83 (D. Ore. 1980).

SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.

(a) REQUEST FOR CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 111 with respect to any standard established by section 111 (d) in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 121) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 111 (d), a State regulatory authority (with respect to an electric utility for which it has ratemaking

authority) or nonregulated electric utility may take into account in such proceeding—

(1) any appropriate prior determination with respect to such standard—

(A) which is made in a proceeding which takes place after the date of the enactment of this Act, or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 124, with the requirements of this title; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) TIME LIMITATIONS.—(1) Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111 (d).

(2) Not later than three years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111 (d).

(c) FAILURE TO COMPLY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 with respect to each standard established by section 111 (d) in the first rate proceeding commenced after the date three years after the date of enactment of this Act respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b) (2) with respect to such standard. (92 Stat. 3122; 16 U.S.C. § 2622)

SEC. 113. ADOPTION OF CERTAIN STANDARDS.

(a) ADOPTION OF STANDARDS.—Not later than two years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall—

(1) adopt the standards established by subsection (b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b) (4) if, and to the extent, such authority or nonregulated electric utility determines that

such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.

(b) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) MASTER METERING.—To the extent determined appropriate under section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title.

(2) AUTOMATIC ADJUSTMENT CLAUSES.—No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e).

(3) INFORMATION TO CONSUMERS.—Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f).

(4) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—No electric utility may terminate electric service to any electric consumer except pursuant to procedures described in section 115(g).

(5) ADVERTISING.—No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h).

(c) PROCEDURAL REQUIREMENTS.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, within the two-year period specified in subsection (a), shall (1) adopt, pursuant to subsection (a), each of the standards established by subsection (b) or, (2) with respect to any such standard which is not adopted, such authority or nonregulated electric utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public. (92 Stat. 3123; 16 U.S.C. § 2623)

SEC. 114. LIFELINE RATES.

(a) LOWER RATES.—No provision of this title prohibits a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or a nonregulated electric utility from fixing, approving, or allowing to go into effect a rate for essential needs (as defined by the State regulatory authority or by the nonregulated electric utility, as the case may be) of residential electric consumers which is lower than a rate under the standard referred to in section 111 (d) (1).

(b) DETERMINATION.—If any State regulated electric utility or nonregulated electric utility does not have a lower rate as described in subsection

(a) in effect two years after the date of the enactment of this Act, the State regulatory authority having ratemaking authority with respect to such State regulated electric utility or the nonregulated electric utility, as the case may be, shall determine, after an evidentiary hearing, whether such a rate should be implemented by such utility.

(c) PRIOR PROCEEDINGS.—Section 124 shall not apply to the requirements of this section. (92 Stat. 3124; 16 U.S.C. § 2624)

SEC. 115. SPECIAL RULES FOR STANDARDS.

(a) COST OF SERVICE.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111 (d) (1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated electric utility). Such methods shall to the maximum extent practicable—

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer demand, and energy components of cost. In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if—

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers.

(b) TIME-OF-DAY RATES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111 (d) (3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates.

(c) LOAD MANAGEMENT TECHNIQUES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if—

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

(d) MASTER METERING.—Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if—

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

(e) AUTOMATIC ADJUSTMENT CLAUSES.—(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(B) such clause is reviewed not less often than every two years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.

(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other items).

(3) As used in this subsection and section 113 (b), the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

(f) INFORMATION TO CONSUMERS.—(1) For purposes of the standard for information to consumers established by section 113 (b) (3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer—

(A) not later than sixty days after the date of commencement of service to such consumer or ninety days after the standard established by section 113 (b) (3) is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than thirty days (sixty days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

(2) For purposes of the standard for information to consumers established by section 113 (b) (3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized.

Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).

(g) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—The procedures for termination of service referred to in section 113(b)(4) are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the nonregulated electric utility which provide that—

(1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(h) ADVERTISING.—(1) For purposes of this section and section 113(b)(5)—

(A) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this subsection and section 113(b)(5), the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon. (92 Stat. 3125; 16 U.S.C. § 2625)

SEC. 116. REPORTS RESPECTING STANDARDS.

(a) STATE AUTHORITIES AND NONREGULATED UTILITIES.—Not later than one year after the date of the enactment of this Act and annualy thereafter for ten years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by sections 111(d) and 113(b). Such report shall include a summary of the determinations made and actions taken with respect to each such standard on a utility-by-utility basis.

(b) SECRETARY.—Not later than eighteen months after the date of the enactment of this Act and annually thereafter for ten years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a).

(2) his analysis of such reports, and

(3) his actions under this title, and his recommendations for such further Federal actions, including any legislation, regarding retail electric utility rates (and other practices) as may be necessary to carry out the purposes of this title. (92 Stat. 3128; 16 U.S.C. § 2626)

SEC. 117. RELATIONSHIP TO STATE LAW.

(a) REVENUE AND RATE OF RETURN.—Nothing in this title shall authorize or require the recovery by an electric utility of revenues, or of a

rate of return, in excess of, or less than, the amount of revenues or the rate of return determined to be lawful under any other provision of law.

(b) STATE AUTHORITY.—Nothing in this title prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle.

(c) FEDERAL AGENCIES.—With respect to any electric utility which is a Federal agency, and with respect to the Tennessee Valley Authority when it is treated as a State regulatory authority as provided in section 3 (17), any reference in section 111 or 113 to State law shall be treated as a reference to Federal law. (92 Stat. 3128; 16 U.S.C. § 2627)

Subtitle C—Intervention and Judicial Review

SEC. 121. INTERVENTION IN PROCEEDINGS.

(a) AUTHORITY TO INTERVENE AND PARTICIPATE.—In order to initiate and participate in the consideration of one or more of the standards established by subtitle B or other concepts which contribute to the achievement of the purposes of this title, the Secretary, any affected electric utility, or any electric consumer of an affected electric utility may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by a nonregulated electric utility.

(b) ACCESS TO INFORMATION.—Any intervenor or participant in a proceeding described in subsection (a) shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his intervention or participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State regulatory authority (in the case of proceedings concerning electric utilities for which it has ratemaking authority) or by the nonregulated electric utility (in the case of a proceeding conducted by a nonregulated electric utility).

(c) EFFECTIVE DATE; PROCEDURES.—Any intervention or participation under this section, in any proceeding commenced before the date of the enactment of this Act but not completed before such date, shall be permitted under this section only to the extent such intervention or participation is timely under otherwise applicable law. (92 Stat. 3128; 16 U.S.C. § 2631)

SEC. 122. CONSUMER REPRESENTATION.

(a) COMPENSATION FOR COSTS OF PARTICIPATION OR INTERVENTION.—(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subtitle B, such utility shall be liable to compensate such consumer (pursuant to paragraph (2)) for reasonable attorney's fees, expert witness fees, and other

reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

(b) ALTERNATIVE MEANS.—Compensation shall not be required under subsection (a) if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding).

(c) TRANSCRIPTS.—The State regulatory authority or nonregulated electric utility, as the case may be shall make transcripts of the proceeding available, at cost of reproduction, to parties or intervenors in any ratemaking proceeding, or other regulatory proceeding relating to rates or rate design, before a State regulatory authority or nonregulated electric utility.

(d) FEDERAL AGENCIES.—Any claim under this section against any Federal agency shall be subject to the availability of appropriated funds.

(e) RIGHTS UNDER OTHER AUTHORITY.—Nothing in this section affects or restricts any rights of any participant or intervenor in any proceeding under any other applicable law or rule of law. (92 Stat. 3129; 16 U.S.C. § 2632)

SEC. 123. JUDICIAL REVIEW AND ENFORCEMENT.

(a) LIMITATION OF FEDERAL JURISDICTION.—Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of subtitle A or B or of this subtitle except for—

(1) an action over which a court of the United States has jurisdiction under subsection (b) or (c) (2); and

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28 of the United States Code.

(b) ENFORCEMENT OF INTERVENTION RIGHT.—(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 121(a), and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 121(a) is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) REVIEW AND ENFORCEMENT.—(1) Any person (including the Secretary) may obtain review of any determination made under subtitle A or B or under this subtitle with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this title in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or action in a State court shall be pursuant to any applicable State procedures.

(2) Any person (including the Secretary) may obtain review in the appropriate court of the United States of any determination made under subtitle A or B or this subtitle by a Federal agency if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if otherwise applicable law permits such review. Such court shall have jurisdiction to grant appropriate relief. Any person (including the Secretary) may bring an action to enforce the requirements of subtitle A or B or this

subtitle with respect to any Federal agency in the appropriate court of the United States and such court shall have jurisdiction to grant appropriate relief.

(3) In addition to his authority to obtain review under paragraph (1) or (2), the Secretary may also participate as an amicus curiae in any review by any court of an action arising under the provisions of subtitle A or B or this subtitle.

(d) OTHER AUTHORITY OF THE SECRETARY.—Nothing in this section prohibits the Secretary from—

(1) intervening and participating in any proceeding, or

(2) intervening and participating in any review by any court of any action under section 204 of the Energy Conservaton and Production Act. (92 Stat. 3130; 16 U.S.C. § 2633)

SEC. 124. PRIOR AND PENDING PROCEEDINGS.

For purposes of subtitles A and B, and this subtitle, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated as complying with the requirements of subtitles A and B, and this subtitle if such proceedings and actions substantially conform to such requirements. For purposes of subtitles A and B, and this subtitle, any such proceeding or action commenced before the date of enactment of this Act, but not completed before such date, shall comply with the requirements of subtitles A and B, and this subtitle, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 121(c). (92 Stat. 3131; 16 U.S.C. § 2634)

Subtitle D—Administrative Provisions

SEC. 131. VOLUNTARY GUIDELINES.

The Secretary may prescribe voluntary guidelines respecting the standards established by sections 111(d) and 113(b). Such guidelines may not expand the scope or legal effect of such standards or establish additional standards respecting electric utility rates. (92 Stat. 3131; 16 U.S.C. § 2641)

SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.

(a) AUTHORITY.—The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 102(c), of—

(1) load management techniques and the results of studies and experiments concerning load management techniques;

(2) developments and innovations in electric utility ratemaking throughout the United States, including the results of studies and experiments in rate structure and rate reform;

(3) methods for determining cost of service; and

(4) any other data or information which the Secretary determines

would assist such authorities and utilities in carrying out the provisions of this title.

(b) TECHNICAL ASSISTANCE.—The Secretary may provide such technical assistance as he determines appropriate to assist the State regulatory authorities in carrying out their responsibilities under subtitle B and as is requested by any State regulatory authority relating to the standards established by subtitle B.

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(92 Stat. 3132; 16 U.S.C. § 2642)

SEC. 133. GATHERING INFORMATION ON COSTS OF SERVICE.

(a) INFORMATION REQUIRED TO BE GATHERED.—Each electric utility shall periodically gather information under such rules (promulgated by the Commission) as the Commission determines necessary to allow determination of the costs associated with providing electric service. For purposes of this section, and for purposes of any consideration and determination respecting the standard established by section 111(d)(2), such costs shall be separated, to the maximum extent practicable, into the following components: customer cost component, demand cost component, and energy cost component. Rules under this subsection shall include requirements for the gathering of the following information with respect to each electric utility—

(1) the costs of serving each electric consumer class, including costs of serving different consumption patterns within such class, based on voltage level, time of use, and other appropriate factors;

(2) daily kilowatt demand load curves for all electric consumer classes combined representative of daily and seasonal differences in demand, and daily kilowatt demand load curves for each electric consumer class for which there is a separate rate, representative of daily and seasonal differences in demand;

(3) annual capital, operating, and maintenance costs—

(A) for transmission and distribution services, and

(B) for each type of generating unit; and

(4) costs of purchased power, including representative daily and seasonal differences in the amount of such costs.

Such rules shall provide that information required to be gathered under this section shall be presented in such categories and such detail as may be necessary to carry out the purposes of this section.

(b) COMMISSION RULES.—The Commission shall, within 180 days after the date of enactment of this Act, by rule, prescribe the methods, procedure, and format to be used by electric utilities in gathering the information described in this section. Such rules may provide for the exemption by the Commission of an electric utility or class of electric utilities from gathering all or part of such information, in cases where such utility or utilities show and the Commission finds, after public notice and opportunity for the presentation of written data, views, and arguments, that gathering such information is not likely to carry out the purposes of this section. The

Commission shall periodically review such findings and may revise such rules.

(c) FILING AND PUBLICATION.—Not later than two years after the date of enactment of this Act, and periodically, but not less frequently than every two years therefter, each electric utility shall file with—

(1) the Commission, and

(2) any State regulatory authority which has ratemaking authority for such utility,

the information gathered pursuant to this section and make such information available to the public in such form and manner as the Commission shall prescribe. In addition, at the time of application for, or proposal of, any rate increase, each electric utility shall make such information available to the public in such form and manner as the Commission shall prescribe. The two-year period after the date of the enactment specified in this subsection may be extended by the Commission for a reasonable additional period in the case of any electric utility for good cause shown.

(d) ENFORCEMENT.—For purposes of enforcement, any violation of a requirement of this section shall be treated as a violation of a provision of the Energy Supply and Environmental Coordination Act of 1974 enforceable under section 12 of such Act (notwithstanding any expiration date in such Act) except that in applying the provisions of such section 12 any reference to the Federal Energy Administrator shall be treated as a reference to the Commission. (92 Stat. 3132; 16 U.S.C. § 2643)

SEC. 134. RELATIONSHIP TO OTHER AUTHORITY.

Nothing in this title shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law. (92 Stat. 3133; 16 U.S.C. § 2644)

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TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

* * * * *

SEC. 205. POOLING.

(a) STATE LAWS.—The Commission may, on its own motion, and shall, on application of any person or governmental entity, after public notice and notice to the Governor of the affected State and after affording an opportunity for public hearing, exempt electric utilities, in whole or in part, from any provision of State law, or from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area. No such exemption may be granted if the Commission finds that such provision of State law, or rule or regulation—

(1) is required by any authority of Federal law, or

(2) is designed to protect public health, safety, or welfare, or the environment or conserve energy or is designed to mitigate the effects of emergencies resulting from fuel shortages.

(b) POOLING STUDY.—(1) The Commission, in consultation with the reliability councils established under section 202(a) of the Federal Power Act, the Secretary, and the electric utility industry shall study the opportunities for—

(A) conservation of energy,

(B) optimization in the efficiency of use of facilities and resources, and

(C) increased reliability,

through pooling arrangements. Not later than 18 months after the date of the enactment of this Act, the Commission shall submit a report containing the results of such study to the President and the Congress.

(2) The Commission may recommend to electric utilities that such utilities should voluntarily enter into negotiations where the opportunities referred to in paragraph (1) exist. The Commission shall report annually to the President and the Congress regarding any such recommendations and subsequent actions taken by electric utilities, by the Commission, and by the Secretary under this Act, the Federal Power Act, and any other provision of law. Such annual reports shall be included in the Commission's annual report required under the Department of Energy Organization Act. (92 Stat. 3140; 16 U.S.C. § 824a-1)

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SEC. 209. RELIABILITY.

* * * * *

(b) EXAMINATION OF RELIABILITY ISSUES BY RELIABILITY COUNCILS.—The Secretary, in consultation with the Commission, may, from time to time, request the reliability councils established under section 202(a) of the Federal Power Act or other appropriate persons (including Federal agencies) to examine and report to him concerning any electric utility reliability issue. The Secretary shall report to the Congress (in its annual report or in the report required under subsection (a) if appropriate) the results of any examination under the preceding sentence.

(c) DEPARTMENT OF ENERGY RECOMMENDATIONS.—The Secretary, in consultation with the Commission, and after opportunity for public comment, may recommend industry standards for reliability to the electric utility industry, including standards with respect to equipment, operating procedures and training of personnel, and standards relating to the level or levels of reliability appropriate to adequately and reliably serve the needs of electric consumers. The Secretary shall include in his annual report—

(1) any recommendations made under this subsection or any recommendations respecting electric utility reliability problems under any other provision of law, and

(2) a description of actions taken by electric utilities with respect to such recommendations. (92 Stat. 3140; 16 U.S.C. § 824a-2)

SEC. 210. COGENERATION AND SMALL POWER PRODUCTION.

(a) COGENERATION AND SMALL POWER PRODUCTION RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities at not more than 80 megawatts capacity, which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) RATES FOR PURCHASES BY ELECTRIC UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) RATES FOR SALES BY UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) DEFINITION.—For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power pro-

ducer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) EXEMPTIONS.—(1) Not later than 1 year after the date of enactment of this Act and from time to time thereafter, the Commission shall, after consultation with representatives of Sate regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which geothermal small power production facilities of not more than 80 megawatts capacity, qualifying cogeneration facilities, and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts or 80 megawatts for a qualifying small power production facility using geothermal energy as the primary energy source, may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f).

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

(f) IMPLEMENTATION OF RULES FOR QUALIFYING COGENERATION AND QUALIFYING SMALL POWER PRODUCTION FACILITIES.—(1) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

(g) JUDICIAL REVIEW AND ENFORCEMENT.—(1) Judicial review may be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) COMMISSION ENFORCEMENT.—(1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under part II of the Federal Power Act.

(2)(A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f)(1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than—

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection (f) or

(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State reg-

ulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) FEDERAL CONTRACTS.—No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) DEFINITIONS.—For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act. (92 Stat. 3144; § 643(b), Act of June 30, 1980, 94 Stat. 770; 16 U.S.C. § 824a-3)

EXPLANATORY NOTE

1980 Amendment. Section 643(b) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 770), known as the Energy Security Act, inserted references to geothermal small power production facilities in subsections (a), (e) (1) and (e) (2). Title VI of that act, in which section 643 is located, is known as the Geothermal Energy Act of 1980. The Act does not appear herein.

* * * * *

SEC. 214. PRIOR ACTION: EFFECT ON OTHER AUTHORITIES.

(a) PRIOR ACTIONS.—No provision of this title or of any amendment made by this title shall apply to, or affect, any action taken by the Commission before the date of the enactment of this Act.

(b) OTHER AUTHORITIES.—No provision of this title or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law except as specifically provided in this title. (92 Stat. 3149; 16 U.S.C. § 824 note)

* * * * *

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

SEC. 401. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program in accordance with this title to encourage municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and other persons to undertake the development of small hydroelectric power projects in connection with existing

dams which are not being used to generate electric power. (92 Stat. 3154; 16 U.S.C. § 2701)

SEC. 402. LOANS FOR FEASIBILITY STUDIES.

(a) LOAN AUTHORITY.—The Secretary, after consultation with the Commission, is authorized to make a loan to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person to assist such person in defraying up to 90 percent of the costs of—

(1) studies to determine the feasibility of undertaking a small hydroelectric power project at an existing dam or dams and

(2) preparing any application for a necessary license or other Federal, State, and local approval respecting such a project at an existing dam or dams and of participating in any administrative proceeding regarding any such application.

(b) CANCELLATION.—The Secretary may cancel the unpaid balance and any accrued interest on any loan granted pursuant to this section if he determines on the basis of the study that the small hydroelectric power project would not be technically or economically feasible. (92 Stat. 3154; 16 U.S.C. § 2701)

SEC. 403. LOANS FOR PROJECT COSTS.

(a) AUTHORITY.—The Secretary is authorized to make loans to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person of up to 75 percent of the project costs of a small hydroelectric power project. No such loan may be made unless the Secretary finds that—

(1) the project will be constructed in connection with an existing dam or dams,

(2) all licenses and other required Federal, State, and local approvals necessary for construction of the project have been issued,

(3) the project will have no significant adverse environmental effects, including significant adverse effects on fish and wildlife, on recreational use of water, and on stream flow, and

(4) the project will not have a significant adverse effect on any other use of the water used by such project.

The Secretary may make a commitment to make a loan under this subsection to an applicant who has not met the requirements of paragraph (2), pending compliance by such applicant with such requirements. Such commitment shall be for period of not to exceed 3 years unless the Secretary, in consultation with the Commission, extends such period for good cause shown. Notwithstanding any such commitment, no such loan shall be made before such person has complied with such requirements.

(b) PREFERENCE.—The Secretary shall give preference to applicants under this section who do not have available alternative financing which the Secretary deems appropriate to carry out the project and whose projects will provide useful information as to the technical and economic feasibility of—

(1) the generation of electric energy by such projects, and
(2) the use of energy produced by such projects.

(c) INFORMATION.—Every applicant for a license for a small hydroelectric power project receiving loans pursuant to this section shall furnish the Secretary with such information as the Secretary may require regarding equipment and services proposed to be used in the design, construction, and operation of such project. The Secretary shall have the right to forbid the use in such project of any equipment or services he finds inappropriate for such project by reason of cost, performance, or failure to carry out the purposes of this section. The Secretary shall make information which he obtains under this subsection available to the public, other than information described as entitled to confidentiality under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974.

(d) JOINT PARTICIPATION.—In making loans for small hydroelectric power projects under this section, the Secretary shall encourage joint participation, to the extent permitted by law, by applicants eligible to receive loans under this section with respect to the same project. (92 Stat. 3155; 16 U.S.C. § 2703)

SEC. 404. LOAN RATES AND REPAYMENT.

(a) INTEREST.—Each loan made pursuant to this title shall bear interest at the discount or interest rate used at the time the loan is made for water resources planning projects under section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962-17(a)). Each such loan shall be for such term, as the Secretary deems appropriate, but not in excess of—

(1) 10 years (in the case of a loan under section 402) or
(2) 30 years (in the case of a loan under section 403).

(b) REPAYMENTS.—Amounts repaid on loans made pursuant to this title shall be deposited into the United States Treasury as miscellaneous receipts. (92 Stat. 3155; 16 U.S.C. § 2704)

EXPLANATORY NOTE

Reference in the Text. Section 80 of the Water Resources Development Act of 1974 (Act of March 7, 1974, 88 Stat. 12), referred to in subsection (a) of the text, adopts the discount rate formula published by the Water Resources Council on December 24, 1968 (33 F.R. 19170; 18 C.F.R. 704.39) for use in formulating and evaluating water resource projects. Extracts from the 1974 Act, including section 80, appear in Volume IV in chronological order.

SEC. 405. SIMPLIFIED AND EXPEDITIOUS LICENSING PROCEDURES.

(a) ESTABLISHMENT OF PROGRAM.—The Commission shall establish, in such manner as the Commission deems appropriate, consistent with the applicable provisions of law, a program to use simple and expeditious licensing procedures under the Federal Power Act for small hydroelectric power projects in connection with existing dams.

(b) PREREQUISITES.—Before issuing any license under the Federal Power Act for the construction or operation of any small hydroelectric power project the Commission—

(1) shall assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structures), and

(2) shall provide an opportunity for consultation with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project.

Nothing in this subsection exempts any such project from any requirement applicable to any such project under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal law.

(c) FISH AND WILDLIFE FACILITIES.—The Commission shall encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

(d) EXEMPTIONS FROM LICENSING REQUIREMENTS IN CERTAIN CASES.—The Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements (including the licensing requirements) of part I of the Federal Power Act to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less, on a case-by-case basis or on the basis of classes or categories of projects, subject to the same limitations (to ensure protection for fish and wildlife as well as other environmental concerns) as those which are set forth in subsections (c) and (d) of section 30 of the Federal Power Act with respect to determinations made and exemptions granted under subsection (a) of such section 30; and subsections (c) and (d) of such section 30 shall apply with respect to actions taken and exemptions granted under this subsection. Except as specifically provided in this subsection, the granting of an exemption to a project under this subsection shall in no case have the effect of waiving or limiting the application (to such project) of the second sentence of subsection (b) of this section. (92 Stat. 3156; § 408, Act of June 30, 1980, 94 Stat. 718; 16 U.S.C. § 2705)

EXPLANATORY NOTES

1980 Amendment. Section 408(b) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 718), known as the Energy Security Act, added subsection (d). Title IV of that act, in which section 408 is located, is known as the Renewable Energy Resources Act of 1980. The Act does not appear herein.

NOTE OF OPINION

1. Lease of power privilege charge

The Secretary of the Interior may, but need not, impose upon a non-Federal power development at a Reclamation facility a charge for the lease of power privileges even though the Federal Energy Regulatory Commission has exempted the development from paying reasonable annual charges under the Federal Power Act for use of the Reclamation facility. Memorandum of Associate Solicitor Good, December 15, 1981.

SEC. 406. NEW IMPOUNDMENTS.

Nothing in this title authorizes (1) the loan of funds for construction of

any new dam or other impoundment, or (2) the simple and expeditious licensing of any such new dam or other impoundment. (92 Stat. 3156; 16 U.S.C. § 2706)

* * * * *

SEC. 408. DEFINITIONS.

(a) For purposes of this title, the term—

(1) "small hydroelectric power project" means any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, and which has not more than 30,000 kilowatts of installed capacity;

(2) "electric cooperative" means any cooperative association eligible to receive loans under section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "industrial development agency" means any agency which is permitted to issue obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954;

(4) "project costs" means the cost of acquisition or construction of all facilities and services and the cost of acquisition of all land and interests in land used in the design and construction and operation of a small hydroelectric power project;

(5) "nonprofit organization" means any organization described in section 501(c) (3) or 501(c) (4) of the Internal Revenue Code of 1954 and exempt from tax under section 501(a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization);

(6) "existing dam" means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project;

(7) "municipality" has the meaning provided in section 3 of the Federal Power Act; and

(8) "person" has the meaning provided in section 3 of the Federal Power Act.

(b) The requirement in subsection (a)(1) that a project be located at the site of an existing dam in order to qualify as a small hydroelectric power project, and the other provisions of this title which require that a project be at or in connection with an existing dam (or utilize the potential of such dam) in order to be assisted under or included within such provisions, shall not be construed to exclude—

(1) from the definition contained in such subsection (a)(1), or

(2) from any other provision of this title,

any project which utilizes or proposes to utilize natural water features for the generation of electricity, without the need for any dam or impound-

ment, in a manner which (as determined by the Commission) will achieve the purposes of this title and will do so without any adverse effect upon such natural water features. (92 Stat. 3156; § 408, Act of June 30, 1980, 94 Stat. 718; 16 U.S.C. § 2708)

EXPLANATORY NOTE

1980 Amendment. Subsection 408(a) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 718), known as the Energy Security Act, changed "15,000" in subsection a(1) to "30,000", and subsection 408(c) of the 1980 Act added subsection (b). Title IV of the act, in which section 408 is located, is known as the Renewable Energy Resources Act of 1980. The Act does not appear herein.

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TITLE VI—MISCELLANEOUS PROVISIONS

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SEC. 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE.

(a) AUTHORITY.—The Secretary may acquire rights-of-way by purchase, including eminent domain, through North Dakota, South Dakota, and Nebraska for transmission facilities for the seasonal diversity exchange of electric power to and from Canada if he determines—

(1) after opportunity for public hearing—

(A) that the exchange is in the public interest and would further the purposes referred to in section 101 (1) and (2) of this Act and that the acquisition of such rights-of-way and the construction and operation of such transmission facilities for such purposes is otherwise in the public interest,

(B) that a permit has been issued in accordance with subsection (b) for such construction, operation, maintenance, and connection of the facilities at the border for the transmission of electric energy between the United States and Canada as is necessary for such exchange of electric power, and

(C) that each affected State has approved the portion of the transmission route located in each State in accordance with applicable State law, or if there is no such applicable State law in such State, the Governor has approved such portion; and

(2) after consultation with the Secretary of the Interior and the heads of other affected Federal agencies, that the Secretary of the Interior and the heads of such, other agencies concur in writing in the location of such portion of the transmission facilities as crosses Federal land under the jurisdiction of such Secretary or such other Federal agency, as the case may be.

The Secretary shall provide to any State such cooperation and technical assistance as the State may request and he determines appropriate in the selection of a transmission route. If the transmission route approved by any

State does not appear to be feasible and in the public interest, the Secretary shall encourage such State to review such route and to develop a route that is feasible and in the public interest. Any exercise by the Secretary of the power of eminent domain under this section shall be in accordance with other applicable provisions of Federal law. The Secretary shall provide public notice of his intention to acquire any right-of-way before exercising such power of eminent domain with respect to such right-of-way.

(b) PERMIT.—Notwithstanding any transfer of functions under the first sentence of section 301(b) of the Department of Energy Organization Act, no permit referred to in subsection (a)(1)(B) may be issued unless the Commission has conducted hearings and made the findings required under section 202(e) of the Federal Power Act and under the applicable execution order respecting the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country. Any finding of the Commission under an applicable executive order referred to in this subsection shall be treated for purposes of judicial review as an order issued under section 202(e) of the Federal Power Act.

(c) TIMELY ACQUISITION BY OTHER MEANS.—The Secretary may not acquire any rights-of-day [sic] under this section unless he determines that the holder or holders of a permit referred to in subsection (a)(1)(B) are unable to acquire such rights-of-way under State condemnation authority, or after reasonable opportunity for negotiation, without unreasonably delaying construction, taking into consideration the impact of such delay on completion of the facilities in a timely fashion.

(d) PAYMENTS BY PERMITTEES.—(1) The property interest acquired by the Secretary under this section (whether by eminent domain or other purchase) shall be transferred by the Secretary to the holder of a permit referred to in subsection (b) if such holder has made payment to the Secretary of the entire costs of the acquisition of such property interest, including administrative costs. The Secretary may accept, and expend, for purposes of such acquisition, amounts from any such person before acquiring a property interest to be transferred to such person under this section.

(2) If no payment is made by a permit holder under paragraph (1), within a reasonable time, the Secretary shall offer such rights-of-way to the original owner for reacquisition at the original price paid by the Secretary. If such original owner refuses to reacquire such property after a reasonable period, the Secretary shall dispose of such property in accordance with applicable provisions of law governing disposal of property of the United States.

(e) FEDERAL LAW GOVERNING FEDERAL LANDS.—This section shall not affect any Federal law governing Federal lands.

(f) REPORTS.—The Secretary shall report annually to the Congress on the actions, if any, taken pursuant to this section. (92 Stat. 3164; 16 U.S.C. § 824a-4)

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PUBLIC UTILITY REGULATORY POLICIES ACT

EXPLANATORY NOTE

Legislative History. H.R. 4018, Public Law 95-617 in the 95th Congress. PURPA was one of five national energy bills signed into law on November 9, 1978. The others were H.R. 5263, the Energy Tax Act of 1978, Public Law 95-618; H.R. 5037, the National Energy Conservation Policy Act, Public Law 95-619; H.R. 5146, the Powerplant and Industrial Fuel Use Act of 1978, Public Law 95-620; and H.R. 5289, the Natural Gas Policy Act of 1978, Public Law 95-621. The original proposals for public utility regulatory policies were contained in Title I, part E of H.R. 6831 and S. 1469. On July 19, 1977, the House Committee on Interstate and Foreign Commerce issued its report on various sections of H.R. 6831, including part V; H.R. Rept. No. 95-496, Part 4. On July 27, 1977, the Ad Hoc Committee on Energy of the U.S. House of Representatives reported H.R. 8444; H.R. Rept. No. 95-543, Volumes I and II. H.R. 8444 passed the House on August 5, 1977. On September 20, 1977, the Senate Committee on Energy and Natural Resources reported S. 2114; S. Rept. No. 95-442. On October 6, 1977, the Senate passed H.R. 4018, a duty bill selected for this purpose, after amending it to include S. 2114 and Part 5 of H.R. 8444 with various further amendments. On October 13, 1977, H.R. 4018 was referred to conference. Reports of the Committee of Conference on H.R. 4018 were filed in the Senate on October 6, 1978. (S. Rept. No. 95-1292) and in the House on October 10, 1968 (H.R. Rept. No. 95-1750). H.R. 4018, as amended by the conference committee, passed the Senate on October 9, 1978 and the House on October 14, 1978.

LIST OF COVERED ELECTRIC UTILITIES" UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 (PURPA)

The Energy Policy Act of 2005 (EPACT 2005) Subtitle E contains three sections (secs. 1251, 1252, and 1254) that add additional "States-must-consider" standards to the Public Utility Regulatory Policies Act of 1978 (PURPA).

Specifically, EPACT 2005 adds five new Federal standards to PURPA Section 111(d):

- (11) NET METERING (see EPACT 2005 Sec. 1251 for details)
- (12) FUEL SOURCES (see EPACT 2005 Sec. 1251 for details)
- (13) FOSSIL FUEL GENERATION EFFICIENCY (see EPACT 2005 Sec. 1251 for details)
- (14) TIME-BASED METERING AND COMMUNICATIONS (see EPACT 2005 Sec. 1252 for details), and
- (15) INTERCONNECTION (see EPACT 2005 Sec. 1254 for details).

The Energy Independence and Security Act of 2007 (EISA 2007) contains two sections (secs. 532 and 1307), that also add additional "States-must-consider" standards to the Public Utility Regulatory Policies Act of 1978 (PURPA).

Specifically, EISA 07 adds four new Federal standards to PURPA Section 111(d):

- (16) INTEGRATED RESOURCE PLANNING (see EISA 2007 Sec. 532(a) for details)
- (17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS (see EISA 2007 Sec. 532(a) for details)
- (16) (sic) CONSIDERATION OF SMART GRID INVESTMENTS (see EISA 2007 Sec. 1307(a) for details), and,
- (17) (sic) SMART GRID INFORMATION (see EISA 2007 Sec. 1307(a) for details

The impact of these EPACT 05 and EISA 07 changes to the 1978 PURPA law is that State electricity regulators (i.e., State public utility commissions) "must consider," for their regulated electric utilities (usually but not always only investor-owned utilities), whether to adopt verbatim all of these standards as requirements on those electric utilities.

By "must-consider," PURPA as amended says that States must start regulatory proceedings by a specified deadline and then make a yes or no

decision by another specified date on whether to actually adopt that standard verbatim as a requirement on its State-jurisdictional utilities.

Note that for non-State jurisdictional utilities, which means publicly- and cooperative-owned electric utilities, PURPA requires the same "must consider" steps on the governing boards (who are either locally elected or appointed) of these utilities. TVA is deemed to be the State regulatory authority for those electric utilities over which it has ratemaking authority.

As Congress has chosen not to itself regulate these retail-level decisions at the Federal level and thus preserve the legal authority of States (or local governing boards) to make these decisions, how PURPA (as amended) works can be difficult to understand. The reader may thus wish to consult two non-DOE guides that explain and interpret PURPA as modified respectively by EPACT 05 and EISA 07, and/or seek appropriate legal counsel:

- **EPACT PURPA Reference & Implementation Procedures Manual**
- **EISA Reference & Implementation Procedures Manual**

DOE itself is not involved in the implementation of PURPA — States (or local governing boards) are — and so DOE is not in a position to offer guidance or advice on these new PURPA provisions.

Note that PURPA requires that its "states-must-consider" provisions apply only to electric utilities over a certain minimum size threshold. Further, under PURPA Title I, the U.S. Department of Energy (DOE) is required to publish a list identifying each electric utility that Title I applies to, as stated by PURPA itself:

"Title I - RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES
Subtitle A—General Provisions

SEC. 102(a)
VOLUME OF TOTAL RETAIL SALES — This title applies to each utility in any calendar year, and to each proceeding relating to each electric utility in such a year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

SEC. 102(b)
EXCLUSION OF WHOLESALE SALES —The requirements of this title do not apply to the operations of an electric utility, or to proceedings

respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

SEC. 102(c)
LIST OF COVERED UTILITIES —Before the beginning of calendar year, the Secretary shall publish a list identifying each electric utility to which this title applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which State regulatory authority has ratemaking authority." (Source: 16 U.S.C. 2612)

Thus, DOE has published this list of PURPA-covered utilities:

- **2009 List of U.S. Electric Utilities Covered by Title I of PURPA**

As required by PURPA, State public utility commissions have the opportunity to point out any inaccuracies on the list, by emailing comments and/or edits to the following e-mail address: **PURPAlistupdate@energetics.com**, and DOE will periodically update the list as needed based on feedback as it is received from state commissions.

- **2008 List of U.S. Electric Utilities Covered by Title I of PURPA**
- **2006 List of U. S. Electric Utilities Covered by Title I of PURPA**

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