

Public Law 95-617
95th Congress

An Act

To suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics.

Nov. 9, 1978
 [H.R. 4018]

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

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”.

(b) **TABLE OF CONTENTS.**—

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- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Relationship to antitrust laws.

Public Utility
 Regulatory
 Policies Act of
 1978.
 16 USC 2601
 note.

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SEC. 2. FINDINGS.

16 USC 2601.

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.

SEC. 3. DEFINITIONS.

16 USC 2602.

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 con-

forms, 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.

16 USC 2603.

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.

Post, p. 3150.

16 USC 791a, 15
USC 717w.

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

16 USC 2611.

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.

SEC. 102. COVERAGE.

16 USC 2612.

(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.

SEC. 103. FEDERAL CONTRACTS.

16 USC 2613.

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.

Subtitle B—Standards For Electric Utilities**SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS.**

16 USC 2621.

(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—

Notice and hearing.

(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.

Federal
standards.

16 USC 2622.

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.

SEC. 113. ADOPTION OF CERTAIN STANDARDS.

16 USC 2623.

(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.

16 USC 2624.

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.

Federal
standards.

(c) **PRIOR PROCEEDINGS.**—Section 124 shall not apply to the requirements of this section.

SEC. 115. SPECIAL RULES FOR STANDARDS.

16 USC 2625.

(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).

Definition.

(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 Definitions.

(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.

16 USC 2626.

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 annually 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.

16 USC 2627.

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.

Subtitle C—Intervention and Judicial Review

16 USC 2631.

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 informa-

tion 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.

SEC. 122. CONSUMER REPRESENTATION.

16 USC 2632.

(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 attorneys' 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.

16 USC 2633.

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 Conservation and Production Act.

42 USC 6804.

16 USC 2634.

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).

Subtitle D—Administrative Provisions

SEC. 131. VOLUNTARY GUIDELINES.

16 USC 2641.

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.

SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.

16 USC 2642.

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

Notification.

(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.

(c) **APPROPRIATIONS.**—There are authorized to be appropriated to carry out the purposes of subsection (b) not to exceed \$1,000,000 for each of the fiscal years 1979 and 1980.

16 USC 2643.

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.

Review.

(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 thereafter, 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.

15 USC 797.

SEC. 134. RELATIONSHIP TO OTHER AUTHORITY.

16 USC 2644.

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.

Subtitle E—State Utility Regulatory Assistance

SEC. 141. GRANTS TO CARRY OUT TITLES I AND III.

Section 207 of title II of the Energy Conservation and Production Act is amended to read as follows:

42 USC 6807.

“STATE UTILITY REGULATORY ASSISTANCE

“SEC. 207. (a) The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978) to carry out duties and responsibilities under titles I and III, and section 210, of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

Grants.

Ante, p. 3117.*Ante*, p. 3120,
post, pp. 3149,
3144.

“(b) Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) or such as are otherwise required by law.

“(c) No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

“(d) The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

“(1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or

“(2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State.”.

SEC. 142. AUTHORIZATIONS.

Title II of the Energy Conservation and Production Act is amended by adding the following at the end thereof:

“AUTHORIZATION OF APPROPRIATIONS

42 USC 6808.

“SEC. 208. There are authorized to be appropriated—

“(1) not to exceed \$40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 207 (relating to State utility regulatory assistance);

“(2) not to exceed \$10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 205 (relating to State offices of consumer services); and

“(3) not to exceed \$8,000,000 for the fiscal year 1979, and \$10,000,000 for the fiscal year 1980 to carry out section 204(1) (B) (relating to innovative rate structures).”.

SEC. 143. CONFORMING AMENDMENTS.42 USC 6801
et seq.

(a) **ADMINISTRATOR.**—Title II of the Energy Conservation and Production Act is amended by striking out “Administrator” in each place it appears and substituting “Secretary”. Section 202(1) of the Energy Conservation and Production Act is amended to read as follows:

42 USC 6802.

“(b) **DEFINITION.**—

“(1) The term ‘Secretary’ means the Secretary of Energy.”.

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

SEC. 201. DEFINITIONS.

16 USC 796.

Section 3 of the Federal Power Act is amended by inserting the following before the period at the end thereof:

“(17) (A) ‘small power production facility’ means a facility which—

“(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof; and

“(ii) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;

“(B) ‘primary energy source’ means the fuel or fuels used for the generation of electric energy, except that such term does not include, as determined under rules prescribed by the Commission, in consultation with the Secretary of Energy—

“(i) the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and

“(ii) the minimum amounts of fuel required to alleviate or prevent—

“(I) unanticipated equipment outages, and

“(II) emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages;

“(C) ‘qualifying small power production facility’ means a small power production facility—

“(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel

efficiency, and reliability) as the Commission may, by rule, prescribe; and

“(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

“(D) ‘qualifying small power producer’ means the owner or operator of a qualifying small power production facility;

“(18) (A) ‘cogeneration facility’ means a facility which produces—

“(i) electric energy, and

“(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

“(B) ‘qualifying cogeneration facility’ means a cogeneration facility which—

“(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

“(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

“(C) ‘qualifying cogenerator’ means the owner or operator of a qualifying cogeneration facility;

“(19) ‘Federal power marketing agency’ means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

“(20) ‘evidentiary hearings’ and ‘evidentiary proceeding’ mean a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code;

“(21) ‘State regulatory authority’ has the same meaning as the term ‘State commission’, except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 3 of the Public Utility Regulatory Policies Act of 1978), such term means the Tennessee Valley Authority;

“(22) ‘electric utility’ means any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency”.

SEC. 202. INTERCONNECTION.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

“CERTAIN INTERCONNECTION AUTHORITY

“Sec. 210. (a) (1) Upon application of any electric utility, Federal power marketing agency, qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

16 USC 824i.

“(A) the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of such applicant,

“(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability,

“(C) such sale or exchange of electric energy or other coordination, as may be necessary to carry out the purposes of any order under subparagraph (A) or (B), or

“(D) such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraph (A) or (B).

“(2) Any State regulatory authority may apply to the Commission for an order for any action referred to in subparagraph (A), (B), (C), or (D) of paragraph (1). No such order may be issued by the Commission with respect to a Federal power marketing agency upon application of a State regulatory authority.

“(b) Upon receipt of an application under subsection (a), the Commission shall—

“(1) issue notice to each affected State regulatory authority, each affected electric utility, each affected Federal power marketing agency, each affected owner or operator of a cogeneration facility or of a small power production facility, and to the public.

“(2) afford an opportunity for an evidentiary hearing, and

“(3) make a determination with respect to the matters referred to in subsection (c).

“(c) No order may be issued by the Commission under subsection (a) unless the Commission determines that such order—

“(1) is in the public interest,

“(2) would—

“(A) encourage overall conservation of energy or capital,

“(B) optimize the efficiency of use of facilities and resources, or

“(C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

“(3) meets the requirements of section 212.

“(d) The Commission may, on its own motion, after compliance with the requirements of paragraphs (1) and (2) of subsection (b), issue an order requiring any action described in subsection (a) (1) if the Commission determines that such order meets the requirements of subsection (c). No such order may be issued upon the Commission's own motion with respect to a Federal power marketing agency.

“(e) (1) As used in this section, the term ‘facilities’ means only facilities used for the generation or transmission of electric energy.

“(2) With respect to an order issued pursuant to an application of a qualifying cogenerator or qualifying small power producer under subsection (a) (1), the term ‘facilities of such applicant’ means the qualifying cogeneration facilities or qualifying small power production facilities of the applicant, as specified in the application. With respect to an order issued pursuant to an application under subsection (a) (2), the term ‘facilities of such applicant’ means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the application. With respect to an order issued by the Commission on its own motion under subsection (d), such term means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the proposed order.”

SEC. 203. WHEELING.

Part II of the Federal Power Act, as amended by section 202 of this Act, is further amended by adding the following new section at the end thereof:

Post, p. 3138.

Definitions.

"CERTAIN WHEELING AUTHORITY

"SEC. 211. (a) Any electric utility or Federal power marketing agency may apply to the Commission for an order under this subsection requiring any other electric utility to provide transmission services to the applicant (including any enlargement of transmission capacity necessary to provide such services). Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order—

"(1) is in the public interest,

"(2) would—

"(A) conserve a significant amount of energy,

"(B) significantly promote the efficient use of facilities and resources, or

"(C) improve the reliability of any electric utility system to which the order applies, and

"(3) meets the requirements of section 212.

Post, p. 3138.

"(b) Any electric utility, or Federal power marketing agency, which purchases electric energy for resale from any other electric utility may apply to the Commission for an order under this subsection requiring such other electric utility to provide transmission services to the applicant (including any increase in transmission capacity necessary to provide such services). Upon receipt of an application under this subsection, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such an order if the Commission determines that—

"(1) such other electric utility has given actual or constructive notice that it is unwilling or unable to provide electric service to the applicant and has been requested by the applicant to provide the transmission services requested in the application under this subsection, and

"(2) such order meets the requirements of section 212.

"(c) (1) No order may be issued under subsection (a) unless the Commission determines that such order would reasonably preserve existing competitive relationships.

"(2) No order may be issued under subsection (a) or (b) which requires the electric utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy—

"(A) required to be provided to such applicant pursuant to a contract during such period, or

"(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission.

"(3) No order may be issued under the authority of subsection (a) or (b) which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

"(4) No order may be issued under subsection (a) or (b) which provides for the transmission of electric energy directly to an ultimate consumer.

"(d) (1) Any electric utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an

order permitting such electric utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the electric utility providing such transmission services has demonstrated, and the Commission has found, that—

Infra.

“(A) due to changed circumstances, the requirements applicable, under this section and section 212, to the issuance of an order under subsection (a) or (b) are no longer met, or

“(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes.

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

“(2) Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) shall—

“(A) provide for any appropriate compensation, and

“(B) provide the affected electric utilities adequate opportunity and time to—

“(i) make suitable alternative arrangements for any transmission services terminated or modified, and

“(ii) insure that the interests of ratepayers of such utilities are adequately protected.

“(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) if the order under subsection (a) or (b) includes terms and conditions agreed upon by the parties which—

“(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b), or

“(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the electric utility subject to such order for transmission capacity).

“(e) As used in this section, the term ‘facilities’ means only facilities used for the generation or transmission of electric energy.”

SEC. 204. GENERAL PROVISIONS REGARDING CERTAIN INTERCONNECTION AND WHEELING AUTHORITY.

16 USC 824.

(a) RESTRICTIONS AND OTHER PROVISIONS.—Part II of the Federal Power Act, as amended by sections 202 and 203 of this Act, is further amended by adding the following new section at the end thereof:

“PROVISIONS REGARDING CERTAIN ORDERS REQUIRING INTERCONNECTION OR WHEELING

16 USC 824k.
Ante, pp. 3135,
3137.

“Sec. 212. (a) No order may be issued by the Commission under section 210 or subsection (a) or (b) of section 211 unless the Commission determines that such order—

“(1) is not likely to result in a reasonably ascertainable uncompensated economic loss for any electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

“(2) will not place an undue burden on an electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

“(3) will not unreasonably impair the reliability of any electric utility affected by the order; and

“(4) will not impair the ability of any electric utility affected by the order to render adequate service to its customers.

The determination under paragraph (1) shall be based upon a showing of the parties. The Commission shall have no authority under section 210 or 211 to compel the enlargement of generating facilities.

Ante, pp. 3135, 3137.

“(b) No order may be issued under section 210 or subsection (a) or (b) of section 211 unless the applicant for such order demonstrates that he is ready, willing, and able to reimburse the party subject to such order for—

“(1) in the case of an order under section 210, such party's share of the reasonably anticipated costs incurred under such order, and

“(2) in the case of an order under subsection (a) or (b) of section 211—

“(A) the reasonable costs of transmission services, including the costs of any enlargement of transmission facilities, and

“(B) a reasonable rate of return on such costs, as appropriate, as determined by the Commission.

“(c) (1) Before issuing an order under section 210 or subsection (a) or (b) of section 211, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

“(2) (A) If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such agreement, the terms and conditions shall be included in the final order. In the case of an order under section 210, if the parties fail to agree within the time set by the Commission or if the Commission does not approve any such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

“(B) In the case of any order applied for under section 211, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

“(d) If the Commission does not issue any order applied for under section 210 or 211, the Commission shall, by order, deny such application and state the reasons for such denial.

“(e) No provision of section 210 or 211 shall be treated—

“(1) as requiring any person to utilize the authority of such section 210 or 211 in lieu of any other authority of law, or

“(2) as limiting, impairing, or otherwise affecting any authority of the Commission under any other provision of law.

“(f) (1) No order under section 210 or 211 requiring the Tennessee Valley Authority (hereinafter in this subsection referred to as the

'TVA') to take any action shall take effect for 60 days following the date of issuance of the order. Within 60 days following the issuance by the Commission of any order under section 210 or of section 211 requiring the TVA to enter into any contract for the sale or delivery of power, the Commission may on its own motion initiate, or upon petition of any aggrieved person shall initiate, an evidentiary hearing to determine whether or not such sale or delivery would result in violation of the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4), hereinafter in this subsection referred to as the TVA Act.

"(2) Upon initiation of any evidentiary hearing under paragraph (1), the Commission shall give notice thereof to any applicant who applied for and obtained the order from the Commission, to any electric utility or other entity subject to such order, and to the public, and shall promptly make the determination referred to in paragraph (1). Upon initiation of such hearing, the Commission shall stay the effectiveness of the order under section 210 or 211 until whichever of the following dates is applicable—

"(A) the date on which there is a final determination (including any judicial review thereof under paragraph (3)) that no such violation would result from such order, or

"(B) the date on which a specific authorization of the Congress (within the meaning of the third sentence of section 15d(a) of the TVA Act) takes effect.

"(3) Any determination under paragraph (1) shall be reviewable only in the appropriate court of the United States upon petition filed by any aggrieved person or municipality within 60 days after such determination, and such court shall have jurisdiction to grant appropriate relief. Any applicant who applied for and obtained the order under section 210 or 211, and any electric utility or other entity subject to such order shall have the right to intervene in any such proceeding in such court. Except for review by such court (and any appeal or other review by an appellate court of the United States), no court shall have jurisdiction to consider any action brought by any person to enjoin the carrying out of any order of the Commission under section 210 or section 211 requiring the TVA to take any action on the grounds that such action requires a specific authorization of the Congress pursuant to the third sentence of section 15d(a) of the TVA Act."

(b) APPLICATION OF FEDERAL POWER ACT.—(1) Section 201(b) of such Act is amended by inserting "(1)" after "(b)", by inserting "except as provided in paragraph (2)" after "but" in the first sentence thereof, and by adding the following at the end thereof:

"(2) The provisions of sections 210, 211, and 212 shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions. Compliance with any order of the Commission under the provisions of section 210 or 211, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence."

(2) Section 201(e) of such Act is amended by inserting "(other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212)" after "under this part".

Ante, pp. 2135,
2137.

16 USC 824.

Ante, p. 3138.

16 USC 824a-1.

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—

16 USC 824a.

(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.

Report to
President and
Congress.

42 USC 7101
note.

SEC. 206. CONTINUANCE OF SERVICE.

(a) **AMENDMENT OF FEDERAL POWER ACT.**—Section 202 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

16 USC 824a.

“(g) In order to insure continuity of service to customers of public utilities, the Commission shall require, by rule, each public utility to—

“(1) report promptly to the Commission and any appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect such utility's capability of serving its wholesale customers,

“(2) submit to the Commission, and to any appropriate State regulatory authority, and periodically revise, contingency plans respecting—

“(A) shortages of electric energy or capacity, and

“(B) circumstances which may result in such shortages,

and

“(3) accommodate any such shortages or circumstances in a manner which shall—

“(A) give due consideration to the public health, safety, and welfare, and

“(B) provide that all persons served directly or indirectly by such public utility will be treated, without undue prejudice or disadvantage.”.

16 USC 824a
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall not affect any proceeding of the Commission pending on the date of the enactment of this Act or any case pending on such date respecting a proceeding of the Commission.

SEC. 207. CONSIDERATION OF PROPOSED RATE INCREASES.

16 USC 824d.

(a) **NOTICE PERIOD.**—Section 205(d) of the Federal Power Act is amended by striking out “thirty” each place it appears and substituting “sixty”.

16 USC 824d
note.

(b) **STUDY.**—The chairman of the Federal Energy Regulatory Commission, in consultation with the Secretary, is directed to conduct a study of the legal requirements and administrative procedures involved in the consideration and resolution of proposed wholesale electric rate increases under the Federal Power Act for the purposes of (1) providing for expeditious handling of hearings consistent with due process, (2) preventing the imposition of successive rate increases before they have been determined by the Commission to be just and reasonable and otherwise lawful, and (3) improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates, or both. The chairman shall report to Congress within nine months from the date of enactment of this Act on the results of the study required under this section, on the administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid the purposes of this section.

Report to
Congress.

SEC. 208. AUTOMATIC ADJUSTMENT CLAUSES.

Section 205 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

“(f) (1) Not later than 2 years after the date of the enactment of this subsection and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

“(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

“(B) whether any such clause reflects any costs other than costs which are—

“(i) subject to periodic fluctuations and

“(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

“(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

“(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

“(A) modify the terms and provisions of any automatic adjustment clause, or

“(B) cease any practice in connection with the clause, if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

"(4) As used in this subsection, 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 any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate."

"Automatic adjustment clause."

SEC. 209. RELIABILITY.

16 USC 824a-2.

(a) **STUDY.**—(1) The Secretary, in consultation with the Commission, shall conduct a study with respect to—

(A) the level of reliability appropriate to adequately serve the needs of electric consumers, taking into account cost effectiveness and the need for energy conservation,

(B) the various methods which could be used in order to achieve such level of reliability and the cost effectiveness of such methods, and

(C) the various procedures that might be used in case of an emergency outage to minimize the public disruption and economic loss that might be caused by such an outage and the cost effectiveness of such procedures.

Such study shall be completed and submitted to the President and the Congress not later than 18 months after the date of the enactment of this Act. Before such submittal the Secretary shall provide an opportunity for public comment on the results of such study.

Report to President and Congress.

(2) The study under paragraph (1) shall include consideration of the following:

(A) the cost effectiveness of investments in each of the components involved in providing adequate and reliable electric service, including generation, transmission, and distribution facilities, and devices available to the electric consumer;

(B) the environmental and other effects of the investments considered under subparagraph (A);

(C) various types of electric utility systems in terms of generation, transmission, distribution and customer mix, the extent to which differences in reliability levels may be desirable, and the cost-effectiveness of the various methods which could be used to decrease the number and severity of any outages among the various types of systems;

(D) alternatives to adding new generation facilities to achieve such desired levels of reliability (including conservation);

(E) the cost-effectiveness of adding a number of small, decentralized conventional and nonconventional generating units rather than a small number of large generating units with a similar total megawatt capacity for achieving the desired level of reliability; and

(F) any standards for electric utility reliability used by, or suggested for use by, the electric utility industry in terms of cost-effectiveness in achieving the desired level of reliability, including equipment standards, standards for operating procedures and training of personnel, and standards relating the number and severity of outages to periods of time.

(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

16 USC 824a.

Report to
Congress.

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.

16 USC 824a-3.

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 which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small power 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 producer, 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 State 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 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.

Rules.

16 USC 791a.
15 USC 79.

(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 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.

Ante, pp. 3135,
3137, 3138.

(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.

Notice and
hearing.

(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).

Notice and
hearing.

(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.

16 USC 824.

(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.

16 USC 791a.

(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 regulatory 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.

Ante, p. 3134.

SEC. 211. INTERLOCKING DIRECTORATES.

(a) **AMENDMENT OF FEDERAL POWER ACT.**—Section 305 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

16 USC 825d.

“(c) (1) On or before April 30 of each year, any person, who, during the calendar year preceding the filing date under this subsection, was an officer or director of a public utility and who held, during such calendar year, the position of officer, director, partner, appointee, or representative of any other entity listed in paragraph (2) shall file with the Commission, in such form and manner as the Commission shall by rule prescribe, a written statement concerning such positions held by such person. Such statement shall be available to the public.

“(2) The entities listed for purposes of paragraph (1) are as follows—

“(A) any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

“(B) any company, firm, or organization which is authorized by law to underwrite or participate in the marketing of securities of a public utility;

“(C) any company, firm, or organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;

“(D) any company, firm, or organization which during any one of the 3 calendar years immediately preceding the filing date was one of the 20 purchasers of electric energy which purchased (for purposes other than for resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years;

“(E) any entity referred to in subsection (b); and

“(F) any company, firm, or organization which is controlled by any company, firm, or organization referred to in this paragraph.

On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of the purchasers to which subparagraph (D) applies, for purposes of any filing under paragraph (1) of such calendar year.

“(3) For purposes of this subsection—

Definitions.

“(A) The term ‘public utility’ includes any company which is a part of a holding company system which includes a registered holding company, unless no company in such system is an electric utility.

“(B) The terms ‘holding company’, ‘registered holding company’, and ‘holding company system’ have the same meaning as when used in the Public Utility Holding Company Act of 1935.”

(b) **EFFECTIVE DATE.**—No person shall be required to file a statement under section 305(c) (1) of the Federal Power Act before April

16 USC 825d
note.

30 of the second calendar year which begins after the date of the enactment of this Act and no public utility shall be required to publish a list under section 305(c)(2) of such Act before January 31 of such second calendar year.

SEC. 212. PUBLIC PARTICIPATION BEFORE FEDERAL ENERGY REGULATORY COMMISSION.

The Federal Power Act is amended by redesignating sections 319 and 320 as 320 and 321, respectively, and by inserting the following new section after section 318:

16 USC 791a
note, 825r.
16 USC 825q.

“OFFICE OF PUBLIC PARTICIPATION

16 USC 825q-1.

“SEC. 319. (a) (1) There shall be an office in the Commission to be known as the Office of Public Participation (hereinafter in this section referred to as the ‘Office’).

“(2) (A) The Office shall be administered by a Director. The Director shall be appointed by the Chairman with the approval of the Commission. The Director may be removed during his term of office by the Chairman, with the approval of the Commission, only for inefficiency, neglect of duty, or malfeasance in office.

“(B) The term of office of the Director shall be 4 years. The Director shall be responsible for the discharge of the functions and duties of the Office. He shall be appointed and compensated at a rate not in excess of the maximum rate prescribed for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

5 USC 5332
note.

“(3) The Director may appoint, and assign the duties of, employees of such Office, and with the concurrence of the Commission he may fix the compensation of such employees and procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code.

“(b) (1) The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.

“(2) The Commission may, under rules promulgated by it, provide compensation for reasonable attorney’s fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that—

“(A) the proceeding is significant, and

“(B) such person’s intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him.

“(3) Nothing in this subsection affects or restricts any rights of any intervenor or participant under any other applicable law or rule of law.

“(4) There are authorized to be appropriated to the Secretary of Energy to be used by the Office for purposes of compensation of persons under the provisions of this subsection not to exceed \$500,000 for the fiscal year 1978, not to exceed \$2,000,000 for the fiscal year 1979, not to exceed \$2,200,000 for the fiscal year 1980, and not to exceed \$2,400,000 for the fiscal year 1981.”

Appropriation
authorization.

SEC. 213. CONDUIT HYDROELECTRIC FACILITIES.

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

“SEC. 30. (a) Except as provided in subsection (b) or (c), the Commission may grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

“(1) is located on non-Federal lands, and

“(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

“(b) The Commission may not grant any exemption under subsection (a) to any facility the installed capacity of which exceeds 15 megawatts.

“(c) In making the determination under subsection (a) the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

“(1) such terms and conditions as the Fish and Wildlife Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

“(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

“(d) Any violation of a term or condition of any exemption granted under subsection (a) shall be treated as a violation of a rule or order of the Commission under this Act.”

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

16 USC 824 note.

(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.

TITLE III—RETAIL POLICIES FOR NATURAL GAS UTILITIES

SEC. 301. PURPOSES; COVERAGE.

15 USC 3201.

(a) **PURPOSES.**—The purposes of this title are to encourage—

(1) conservation of energy supplied by gas utilities;

(2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and

(3) equitable rates to gas consumers of natural gas.

(b) **VOLUME OF TOTAL RETAIL SALES.**—This title applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(c) **EXCLUSION OF WHOLESALE SALES.**—The requirements of this title do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(d) **LIST OF COVERED UTILITIES.**—Before the beginning of each calendar year, the Secretary shall publish a list identifying each gas 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 gas utility on the list for which such State regulatory authority has ratemaking authority.

15 USC 3202.

SEC. 302. DEFINITIONS.

For purposes of this title—

(1) The term “gas consumer” means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term “gas utility” means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(3) The term “State regulated gas utility” means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(4) The term “nonregulated gas utility” means any gas utility other than a State regulated gas utility.

(5) The term “rate” means any (A) price, rate, charge, or classification made, demanded, observed, or received with respect to sale of natural gas to a gas consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of natural gas to a gas consumer.

(6) The term “ratemaking authority” means authority to fix, modify, approve, or disapprove rates.

(7) The term “sale”, when used with respect to natural gas, includes an exchange of natural gas.

(8) The term “State regulatory authority” means any State agency which has ratemaking authority with respect to the sale of natural gas by any gas utility (other than by such State agency).

15 USC 3203.

SEC. 303. ADOPTION OF CERTAIN STANDARDS.

Notice and hearing.

(a) **ADOPTION OF STANDARDS.**—Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas 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 standard established by subsection (b)(1) if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(2) if, and to the extent, such authority or nonregulated 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.

For purposes of any determination under paragraphs (1) and (2) and any review of such determination in any court under section 307, the

purposes of this title supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated 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) **ESTABLISHMENT.**—The following Federal standards are hereby established:

Federal
standards.

(1) **PROCEDURES FOR TERMINATION OF NATURAL GAS SERVICE.**—No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 304(a).

(2) **ADVERTISING.**—No gas 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 304(b).

(c) **PROCEDURAL REQUIREMENTS.**—Each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a), shall adopt, pursuant to subsection (a), each of the standards established by subsection (b) or, with respect to any such standard which is not adopted, such authority or nonregulated gas 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.

SEC. 304. SPECIAL RULES FOR STANDARDS.

15 USC 3204.

(a) **PROCEDURES FOR TERMINATION OF GAS SERVICE.**—The procedures for termination of service referred to in section 303(b)(1) are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas 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 a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas 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.

(b) **ADVERTISING.**—(1) For purposes of this section and section 303—

Definitions.

(A) The term "advertising" means the commercial use, by a gas 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 gas 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 a gas utility or the selection or installa-

tion of any appliance or equipment designed to use such utility's service.

(2) For purposes of this section and section 303, the terms "political advertising" and "promotional advertising" do not include—

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

(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 notification of hearings thereon.

Post, p. 3209.

15 USC 3205.

SEC. 305. FEDERAL PARTICIPATION.

(a) **INTERVENTION.**—In addition to the authorities vested in the Secretary pursuant to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 301 of this title.

(b) **RIGHTS.**—The Secretary shall have the same rights as any other party to a proceeding before a State regulatory authority which relates to gas utility rates or rate design.

(c) **NONREGULATED GAS UTILITIES.**—The Secretary, on his own motion, may, to the same extent as provided in subsections (a) through (b), intervene as a matter of right in any proceeding which relates to rates or rate design of nonregulated gas utilities.

15 USC 3206.

SEC. 306. GAS UTILITY RATE DESIGN PROPOSALS.

Report to Congress.

(a) **STUDY.**—(1) the Secretary, in consultation with the Commission and, after affording an opportunity for consultation and comment by representatives of the State regulatory commissions, gas utilities, and gas consumers, shall study and report to Congress on gas utility rate design within 18 months after the date of the enactment of this Act. Such study shall address the effect (both separately and in combination) of the following factors upon the items listed in paragraph (2): incremental pricing; marginal cost pricing; end user gas consumption taxes; wellhead natural gas pricing policies; demand-commodity rate design; declining block rates; interruptible service; seasonal rate differentials; and end user rate schedules.

(2) The items referred to in paragraph (1) are as follows:

(A) natural gas pipeline and local distribution company load factors;

(B) rates to each class of user, including residential, commercial, and industrial users;

(C) the change in total costs resulting from gas utility designs (including capital and operating costs) to gas consumers or classes thereof;

(D) demand for, and consumption of, natural gas;

(E) end use profiles of natural gas pipelines and local distribution companies; and

(F) competition with alternative fuels.

(b) **PROPOSALS.**—Based upon the study prepared pursuant to subsection (a), the Secretary shall develop proposals to improve gas utility rate design and to encourage conservation of natural gas. Such proposals shall include any comments and recommendations of the Commission.

(c) **TRANSMISSION TO CONGRESS.**—The proposals prepared under subsection (b) shall be transmitted, together with any legislative recommendations, to each House of Congress not later than 6 months after the date of submission of the study under subsection (a). Such proposals shall be accompanied by an analyses of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources,

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of such proposals, and

(3) the effects of the proposals on other provisions of this Act on gas utility rate structures.

(d) **PUBLIC PARTICIPATION.**—The Secretary shall provide for public participation in the conduct of the study under subsection (a) and the preparation of proposals under subsection (b).

SEC. 307. JUDICIAL REVIEW AND ENFORCEMENT.

15 USC 3207.

(a) **LIMITATION OF FEDERAL JURISDICTION.**—(1) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of this title except for—

(A) an action over which a court of the United States has jurisdiction under paragraph (2), or

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

(2) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under section 305 and such court shall have jurisdiction to grant appropriate relief.

(b) **ENFORCEMENT.**—(1) Any person may bring an action to enforce the requirements of this title in the appropriate State court. Such action in a State court shall be pursuant to applicable State procedures.

(2) Nothing in this title shall authorize the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility or to become a party to any action to obtain such review or appeal. The Secretary may participate as an amicus curiae in any judicial review of an action arising under the provisions of this title.

SEC. 308. RELATIONSHIP TO OTHER APPLICABLE LAW.

15 USC 3208.

Nothing in this title prohibits any State regulatory authority or nonregulated gas utility from adopting, pursuant to State law, any standard or rule affecting gas utilities which is different from any standard established by this title.

SEC. 309. REPORTS RESPECTING STANDARDS.

15 USC 3209.

(a) **STATE AUTHORITIES AND NONREGULATED UTILITIES.**—Not later than 1 year after the date of the enactment of this Act and annually thereafter for 10 years, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority), and each nonregulated gas utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by this title. Such report shall include a summary of the determinations made and actions taken with respect to each of such standards on a utility-by-utility basis.

(b) **SECRETARY.**—Not later than 18 months after the date of the enactment of this Act and annually thereafter for 10 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 gas utility rates (and other practices) as may be necessary to carry out the purposes of this title.

15 USC 3210. **SEC. 310. PRIOR AND PENDING PROCEEDINGS.**

For purposes of this title, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has rate-making authority) and any nonregulated gas utility 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 this title if such proceedings and actions substantially conform to such requirements. For purposes of this title, 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 this title, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

15 USC 3211. **SEC. 311. 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.

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

16 USC 2701. **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.

16 USC 2702. **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.

SEC. 403. LOANS FOR PROJECT COSTS.

16 USC 2703.

(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.

15 USC 796.

(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.

SEC. 404. LOAN RATES AND REPAYMENT.

16 USC 2704.

(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.

16 USC 2705.

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.

16 USC 791a.

(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.

42 USC 4321
note, 16 USC 661
note.16 USC 1531
note.

(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.

16 USC 2706.

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.

16 USC 2707.

SEC. 407. AUTHORIZATIONS.

There are hereby authorized to be appropriated for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, not to exceed \$10,000,000 for loans to be made pursuant to section 402, such funds to remain available until expended. There are hereby authorized to be appropriated for each of the fiscal years ending September 30, 1978, September 30, 1979, September 30, 1980, not to exceed \$100,000,000 for loans to be made pursuant to section 403, such funds to remain available until expended.

16 USC 2708.

SEC. 408. DEFINITIONS.

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 15,000 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;

26 USC 103.

(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);

26 USC 501.

26 USC 513.

(6) "existing dam" means any dam, the construction of which was completed or on 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

16 USC 796.

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

TITLE V—CRUDE OIL TRANSPORTATION SYSTEMS

SEC. 501. FINDINGS.

43 USC 2001.

The Congress finds and declares that—

(1) a serious crude oil supply shortage may soon exist in portions of the United States;

(2) a large surplus of crude oil on the west coast of the United States is projected;

(3) any substantial curtailment of Canadian crude oil exports to the United States could create a severe crude oil shortage in the northern tier States;

(4) pending the authorization and completion of west-to-east crude oil delivery systems, Alaskan crude oil in excess of west coast needs will be transhipped through the Panama Canal at a high transportation cost;

(5) national security and regional supply requirements may be such that west-to-east crude delivery systems serving both the northern tier States and inland States, consistent with the requirements of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act, are needed;

43 USC 1651
note.

(6) expeditious Federal and State decisions for west-to-east crude oil delivery systems are of the utmost priority; and

(7) resolution of the west coast crude oil surplus and the need for crude oil in northern tier States and inland States require the assignment and coordination of overall responsibility within the executive branch to permit expedited action on all necessary environmental assessments and decisions on permit applications concerning delivery systems.

SEC. 502. STATEMENT OF PURPOSES.

43 USC 2002.

The purposes of this title are—

(1) to provide a means for—

(A) selecting delivery systems to transport Alaskan and other crude oil to northern tier States and inland States, and

(B) resolving both the west coast crude oil surplus and the crude oil supply problems in the northern tier States;

(2) to provide an expedited procedure for acting on applications for all Federal permits, licenses, and approvals required for the construction and operation of any transportation system approved under this title and the Long Beach-Midland project; and

(3) to assure that Federal decisions with respect to crude oil transportation systems are coordinated with State decisions to the maximum extent practicable.

43 USC 2003.

SEC. 503. DEFINITIONS.

As used in this title—

(1) The term “northern tier States” means the States of Washington, Oregon, Idaho, Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio.

(2) The term “inland States” means those States in the United States other than northern tier States and the States of California, Alaska, and Hawaii.

(3) The term “crude oil transportation system” means a crude oil delivery system (including the location of such system) for transporting Alaskan and other crude oil to northern tier States and inland States, but such term does not include the Long Beach-Midland project.

(4) The term “Long Beach-Midland project” means the crude oil delivery system which was the subject of, and is generally described in, the “Final Environmental Impact Statement, Crude Oil Transportation System: Valdez, Alaska, to Midland, Texas (as proposed by Sohio Transportation Company)”, the availability of which was announced by the Department of the Interior in the Federal Register on June 1, 1977 (42 Fed. Reg. 28008).

(5) The term “Federal agency” means an Executive agency, as defined in section 105 of title 5, United States Code.

43 USC 2004.

SEC. 504. APPLICATIONS FOR APPROVAL OF PROPOSED CRUDE OIL TRANSPORTATION SYSTEMS.

The following applications for construction and operation of a crude oil transportation system submitted to the Secretary of the Interior by an applicant are eligible for consideration under this title:

(1) Applications received by the Secretary before the 30th day after the date of the enactment of this Act.

(2) Applications received by the Secretary during the 60-day period beginning on the 30th day after the date of the enactment of this Act, if the Secretary determines that consideration and review of the proposal contained in such application is in the national interest and that such consideration and review could be completed within the time limits established under this title.

An application under this section may be accepted by the Secretary only if it contains a general description of the route of the proposed system and identification of the applicant and any other person who, at the time of filing, has a financial or other interest in the system or is a party to an agreement under which such person would acquire a financial or other interest in the system.

43 USC 2005.

SEC. 505. REVIEW SCHEDULE.

(a) **ESTABLISHMENT.**—The Secretary of the Interior, after consultation with the heads of appropriate Federal agencies, shall establish an expedited schedule for conducting reviews and making recommendations concerning crude oil transportation systems proposed in

applications filed under section 504 and for obtaining information necessary for environmental impact statements required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to such proposed systems.

(b) **ADDITIONAL INFORMATION.**—(1) On his own initiative or at the request of the head of any Federal agency covered by the review schedule established under subsection (a), the Secretary of the Interior shall require that an applicant provide such additional information as may be necessary to conduct the review of the applicant's proposal. Such information may include—

(A) specific details of the route (and alternative routes) and identification of Federal lands affected by any such route;

(B) information necessary for environmental impact statements; and

(C) information necessary for the President's determination under section 507(a).

(2) If, within a reasonable time, an applicant does not—

(A) provide information required under this subsection, or

(B) comply with any requirement of section 304 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2765; 43 U.S.C. 1734),

the Secretary of the Interior may declare the application ineligible for consideration under this title. After making such a declaration, the Secretary of the Interior shall notify the applicant and the President of such ineligibility.

Notification to
the President.

(c) **RECOMMENDATIONS OF THE HEADS OF FEDERAL AGENCIES.**—(1) Pursuant to the schedule established under subsection (a), heads of Federal agencies covered by such schedule shall conduct a review of a proposed crude oil transportation system eligible for consideration under this title and shall submit their recommendations concerning such systems (and the basis for such recommendations) to the Secretary of the Interior for submission to the President. After receipt of such recommendations and before their submission to the President, the Secretary of the Interior shall provide an opportunity for comments in accordance with paragraph (2). The Secretary of the Interior shall forward such comments to the President with the recommendations—

Crude oil
transportation
system, review.

(A) in the case of applications filed under section 504(1), on or before December 1, 1978, and

(B) in the case of applications filed under section 504(2), on or before the 60th day after December 1, 1978.

(2) (A) After receipt of recommendations under paragraph (1) the Secretary of the Interior shall provide appropriate means by which the Governor and any other official of any State and any official of any political subdivision of a State, may submit written comments concerning proposed crude oil transportation systems eligible for consideration under this title.

(B) After receipt of recommendations referred to in subparagraph (A), the Secretary of the Interior shall make such comments and recommendations available to the public and provide an opportunity for submission of written comments.

(d) **REVIEW BY THE FEDERAL TRADE COMMISSION; EFFECT ON THE ANTITRUST LAWS.**—(1) Promptly after he receives an application for a proposed crude oil transportation system eligible for consideration under this title, the Secretary of the Interior shall submit to the Federal Trade Commission a copy of such application and such other information as the Commission may reasonably require. The Com-

Report to
President.

mission may prepare and submit to the President a report on the impact of implementation of such application upon competition and restraint of trade and on whether such implementation would be inconsistent with the antitrust laws. Such report shall be made available to the public. Nothing in this subsection shall be construed to prevent the President from making his decision under section 507 (a) in the absence of such report.

(2) Nothing in this title shall bar the Attorney General or any other appropriate officer or agent of the United States from challenging any anticompetitive act or practice related to the ownership, construction, or operation of any crude oil transportation system approved under this title. The approval of any such system under this title shall not be deemed to convey to any person immunity from civil or criminal liability or to create defenses to actions under the antitrust laws and shall not modify or abridge any private right of action under such laws.

(e) FILING AND REVIEW OF PERMITS, RIGHTS-OF-WAY APPLICATIONS, ETC., NOT AFFECTED.—Nothing in this title shall be construed to prevent the acceptance and review by any Federal agency of any application for any Federal permit, right-of-way, or other authorizations under other provisions of law for a crude oil transportation system eligible for consideration under this title; except that any determination with respect to such an application may be made only in accordance with the provisions of section 509 (a).

43 USC 2006.

SEC. 506. ENVIRONMENTAL IMPACT STATEMENTS.

(a) PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS.—Any Federal agency required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) to issue an environmental impact statement concerning a proposed crude oil transportation system eligible for consideration under this title shall, in preparing such statement, utilize, to the maximum extent practicable and consistent with such Act, appropriate data, analyses, conclusions, findings, and decisions regarding environmental impacts developed or made by any other Federal or State agency.

Submittal to
President.

(b) FILING OF ENVIRONMENTAL IMPACT STATEMENTS.—On or before December 1, 1978, all environmental impact statements concerning proposed crude oil transportation systems eligible for consideration under this title and required under section 102 of the National Environmental Policy Act of 1969 shall be completed, made available for public review and comment, revised to the extent appropriate in light of such comment, and submitted to the President and the Council on Environmental Quality; except that in the case of any environmental impact statement concerning any crude oil transportation system which is eligible for consideration and which was filed under section 504(2) of this title, such actions may be taken not later than 60 days after December 1, 1978.

(c) REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY.—Promptly after receiving an environmental impact statement referred to in subsection (b) for a crude oil transportation system, the Council on Environmental Quality shall submit to the President a report on the Council's opinion concerning such statement and concerning other matters related to the environmental impact of such system.

43 USC 2007.

SEC. 507. DECISION OF THE PRESIDENT.

(a) DECISION CONCERNING APPROVAL OR DISAPPROVAL OF PROPOSED SYSTEMS.—(1) After reviewing all the information submitted to him concerning the various proposed crude oil transportation systems eligi-

ble for consideration under this title (including environmental impact statements, comments, reports, recommendations, and other information submitted to him at any time before he makes his decision) and after consulting the Secretaries of Energy, the Interior, and Transportation, the President shall decide which, if any, of such systems shall be approved for the purposes of section 508 (relating to procedures for waiver of law), section 509 (relating to expedited procedures for issuance of permits), section 510 (relating to negotiations with the Government of Canada), and section 511 (relating to judicial review). A decision approving a crude oil transportation system may include such modifications and alterations in such system as the President finds appropriate. The President shall issue his decision within 45 days after receiving recommendations and comments submitted to him under section 505(c), except that the President, for such period as he deems necessary, but not to exceed 60 days, may delay his decision and its issuance if he determines that additional time is otherwise necessary to enable him to make a decision. If the President so delays his decision, he shall promptly notify the House of Representatives and the Senate of such delay and shall submit a full explanation of the basis for such delay.

Notification.

(2) Any decision made under this subsection approving a system proposed under this title shall include a determination that construction and operation of such system is in the national interest and shall be based upon the criteria specified in subsection (b).

(b) CRITERIA.—(1) The criteria for making a decision under this subsection shall include findings of—

(A) environmental impacts of the proposed systems and the capability of such systems to minimize environmental risks resulting from transportation of crude oil;

(B) the amount of crude oil available to northern tier States and inland States and the projected demand in those States under each of such systems;

(C) transportation costs and delivered prices of crude oil by region under each of such systems;

(D) construction schedules for each of such systems and possibilities for delay in such schedules;

(E) feasibility of financing for each of such systems;

(F) capital and operating costs of each of such systems, including an analysis of the reliability of cost estimates and the risk of cost overruns;

(G) net national economic costs and benefits of each such system;

(H) the extent to which each system complies with the provisions of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act;

(I) the effect of each such system on international relations, including the status and time schedule for any necessary Canadian approvals and plans;

(J) impact upon competition by each system;

(K) degree of safety and efficiency of design and operation of each system;

(L) potential for interruption of deliveries of crude oil from the west coast under each such system;

(M) capacity and cost of expanding such system to transport additional volumes of crude oil in excess of initial system capacity;

(N) national security considerations under each such system;

43 USC 1651
note.

(O) relationship of each such system to national energy policy;
and

(P) such other factors as the President deems appropriate.

(2) The period of time for which such findings shall be made shall be the useful life of the crude oil transportation system involved.

(c) **PUBLICATION OF FINDINGS AND DECISION.**—The President shall make available to the public at the time of issuance of a decision under this section a written statement setting forth findings with respect to each of the criteria specified in subsection (b) and describing the nature and route of crude oil transportation systems, if any, which are approved in the decision. If the President's decision is to approve a system, each statement shall set forth his reasons for approving such system over other proposed systems (if any) eligible for consideration under this title. Such statement along with notification of such decision shall be published in the Federal Register.

Publication in
Federal Register.
43 USC 2008.

SEC. 508. PROCEDURES FOR WAIVER OF FEDERAL LAW.

(a) **WAIVER OF PROVISIONS OF FEDERAL LAW.**—The President may identify those provisions of Federal law (including any law or laws regarding the location of a crude oil transportation system but not including any provision of the antitrust laws) which, in the national interest, as determined by the President, should be waived in whole or in part to facilitate construction or operation of any such system approved under section 507 or of the Long Beach-Midland project, and he shall submit any such proposed waiver to both Houses of the Congress. The provisions so identified shall be waived with respect to actions to be taken to construct or operate such system or project only upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date of receipt by the House of Representatives and the Senate of such proposal.

(b) **JOINT RESOLUTION.**—The resolving clause of the joint resolution referred to in subsection (a) is as follows: "That the House of Representatives and Senate approve the waiver of the provisions of law () as proposed by the President, submitted to the Congress on , 19 .". The first blank space therein being filled with the citation to the provisions of law proposed to be waived by the President and the second blank space therein being filled with the date on which the President submits his decision to waive such provisions of law to the House of Representatives and the Senate. Rules and procedures for consideration of any such joint resolution shall be governed by section 8 (c) and (d) of the Alaskan Natural Gas Transportation Act, other than paragraph (2) of section 8(d), except that for the purposes of this subsection, the phrase "a waiver of provisions of law" shall be substituted in section 8(d) each place where the phrase "an Alaska natural gas transportation system" appears.

15 USC 719f.

43 USC 2009.

SEC. 509. EXPEDITED PROCEDURES FOR ISSUANCE OF PERMITS: ENFORCEMENT OF RIGHTS-OF-WAY.

(a) **EXPEDITED PROCEDURES FOR APPROVED SYSTEMS.**—After issuance of a decision by the President approving any crude oil transportation system, all Federal officers and agencies shall expedite, to the maximum extent practicable, consistent with applicable provisions of law, all actions necessary to determine whether to issue, administer, or enforce rights-of-way across Federal lands and to issue Federal permits in connection with, or otherwise to authorize, construction and operation of such system. Any such action shall be

consistent with applicable provisions of law. After taking any such action, such officer or agency shall publish notification of the taking of such action in the Federal Register.

Publication in
Federal Register.

(b) **EXPEDITED PROCEDURES FOR LONG BEACH-MIDLAND PROJECT.**—All decisions regarding issuance of Federal permits, rights-of-way, and leases and other Federal authorizations necessary for construction and operation of the Long Beach-Midland project shall be consistent with applicable provisions of Federal law, except that such decisions shall be made within 30 days after the date this title becomes effective. The President may extend the date by which such decisions, under the preceding sentence, are to be made to a date not later than 90 days after the effective date of this title. Notification of the making of such decisions shall be published in the Federal Register. Nothing in this section affects any decision made before the date of the enactment of this title.

Publication in
Federal Register.

(c) **LAW GOVERNING RIGHTS-OF-WAY.**—Rights-of-way over any Federal land with respect to an approved crude oil transportation system or the Long Beach-Midland project shall be governed by the provisions of section 28 of the Act of February 25, 1920, commonly referred to as the Mineral Leasing Act of 1920 (30 U.S.C. 185), other than subsection (w) (2) of such section.

SEC. 510. NEGOTIATIONS WITH THE GOVERNMENT OF CANADA.

43 USC 2010.

With respect to any crude oil transportation system approved under section 507(a) all or any part of which is to be located in Canada, the President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine what measures can be taken to expedite the granting of approvals by the Government of Canada for construction or operation of such system, and he is authorized and requested to explore the possibility of further exchanges of crude oil supplies between the United States and Canada.

SEC. 511. JUDICIAL REVIEW.

43 USC 2011.

(a) **NOTICE.**—The President or any other Federal officer shall cause notice to be published in the Federal Register and in newspapers of general circulation in the areas affected whenever he makes any decision described in subsection (b).

Publication in
Federal Register.

(b) **REVIEW OF CERTAIN FEDERAL ACTIONS.**—Any action seeking judicial review of an action or decision of the President or any other Federal officer taken or made after the date of the enactment of this Act concerning the approval or disapproval of a crude oil transportation system or the issuance of necessary rights-of-way, permits, leases, and other authorizations for the construction, operation, and maintenance of the Long Beach-Midland project or a crude oil transportation system approved under section 507(a) may only be brought within 60 days after the date on which notification of the action or decision of such officer is published in the Federal Register, or in newspapers of general circulation in the areas affected, whichever is later.

(c) **JURISDICTION OF COURTS.**—An action under subsection (b) shall be barred unless a petition is filed within the time specified. Any such petition shall be filed in the appropriate United States district court. A copy of such petition shall be transmitted by the clerk of such court to the Secretary. Notwithstanding the amount in controversy, such court shall have jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided and to provide appropriate relief. No State or local court shall have jurisdiction of any such claim whether in a proceeding instituted before, on, or after the date this title becomes effective. Any such proceeding shall be assigned for

hearing at the earliest possible date and shall be expedited by such court. No court shall have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization in connection with a crude oil transportation system approved under section 507 (a) or the Long Beach-Midland project, except as part of a final judgment entered in a case involving a claim filed pursuant to this section.

43 USC 2012.

SEC. 512. AUTHORIZATION FOR APPROPRIATION.

There are authorized to be appropriated to the Secretary of the Interior to carry out his responsibilities under this title not to exceed \$500,000 for the fiscal year ending on September 30, 1978, and not to exceed \$1,000,000 for the fiscal year ending on September 30, 1979.

TITLE VI—MISCELLANEOUS PROVISIONS16 USC 2621
note.**SEC. 601. STUDY CONCERNING ELECTRIC RATES OF STATE UTILITY AGENCIES.**

(a) **STUDY AND REPORT.**—The Secretary, in consultation with the Commission and appropriate State regulatory authorities and other persons, shall conduct a study concerning the effects of provisions of Federal law on rate established by State utility agencies. The Secretary shall submit a report to Congress containing the results of such study not later than 1 year after the date of the enactment of this Act.

Submittal to
Congress."State utility
agency."

(b) **DEFINITION.**—The term "State utility agency" means an agency of a State (not including any political subdivision or agency thereof or any public power district) which is an electric utility.

16 USC 824a-4.

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.

Ante, p. 3120.Cooperation and
technical
assistance.

The Secretary shall provide to any State such cooperation and technical assistance as the State may request and as 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.

Notice.

(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.

42 USC 7151.

16 USC 824a.

(c) **TIMELY ACQUISITION BY OTHER MEANS.**—The Secretary may not acquire any rights-of-way 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.

Report to Congress.

SEC. 603. UTILITY REGULATORY INSTITUTE.

16 USC 2645.

(a) **MATCHING GRANTS.**—The Secretary may make grants under this section to an institute established by the National Association of Regulatory Utility Commissioners to enable such institute to—

Grants.

- (1) conduct research on electric and gas utility regulatory policy issues,
- (2) develop data processing and retrieval methods for electric and gas utility ratemaking, and

(3) perform other functions directly related to assisting State regulatory authorities in carrying out their functions under State law and this Act.

(b) **FEDERAL SHARE.**—Grants under this section shall not be used to provide more than the following percentages of the cost to the institute of carrying out the activities specified in subsection (a):

- (1) 80 percent for the fiscal year 1979; and
- (2) 60 percent for the fiscal year 1980.

The remaining amounts expended by the institute may not be provided from Federal sources.

(c) **RESTRICTIONS.**—Grants under this section may not be made subject to terms and conditions other than those the Secretary deems necessary for purposes of administering this section and for purposes of assuring that—

(1) all information gathered by the institute is available to the Secretary, the Commission, and the public, and

(2) no portion of any such grant is used to support or oppose any legislative proposal except by means of testimony by representatives of the institute provided by invitation to a committee of Congress or of a State legislature.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated not more than \$2,000,000 for each of the fiscal years 1979 and 1980 for purposes of making grants under this section. No amounts may be appropriated for any fiscal year after the fiscal year 1980 to carry out the purposes of this section without a specific authorization of Congress.

SEC. 604. COAL RESEARCH LABORATORIES.

30 USC 1311.

(a) **DESIGNATION.**—So much of section 801 of the Surface Mining Control and Reclamation Act of 1977 as precedes subsection (b) of paragraph (2) thereof is amended to read as follows:

“ESTABLISHMENT OF UNIVERSITY COAL RESEARCH LABORATORIES

“SEC. 801. (a) The Secretary of Energy, after consultation with the National Academy of Engineering, shall designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Ten such designations shall be made as provided in subsection (e) and the remaining three shall be made in fiscal year 1980.

“(b) In making designations under this section, the Administrator shall consider the following criteria:

“(1) Those ten institutions of higher education designated as provided in subsection (e) shall be located in a State with abundant coal reserves.”

30 USC 1316.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 806 of such Act is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 806. (a) For the ten institutions referred to in the last sentence of section 801(a), there are authorized to be appropriated not to exceed \$30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and startup expenses), and not to exceed \$7,500,000 for the fiscal year 1980 and for each fiscal year thereafter through the fiscal year ending before October 1, 1984, to carry out the provisions of this title.

“(b) For the three remaining institutions referred to in the last sentence of section 801 (a), there are authorized to be appropriated not to exceed \$6,500,000 for the fiscal year 1980 (including the cost of construction, equipment, and startup expenses), and not to exceed \$2,000,000 for each fiscal year after fiscal year 1980 ending before October 1, 1984, to carry out the provisions of this title.”

30 USC 1311.

(c) CONFORMING AMENDMENT.—Title VIII of such Act is amended by striking out the terms “Administrator” and “Administrator, ERDA” in each place they appear and substituting “Secretary of Energy” in each such place.

30 USC 1311.

SEC. 605. CONSERVED NATURAL GAS.

15 USC 717x.

(a) GENERAL RULE.—(1) For purposes of determining the natural gas entitlement of any local distribution company under any curtailment plan, if the Commission revises any base period established under such plan, the volumes of natural gas which such local distribution company demonstrates—

(A) were sold by the local distribution company, for a priority use immediately before the implementation of conservation measures, and

(B) were conserved by reason of the implementation of such conservation measures,

shall be treated by the Commission following such revision as continuing to be used for the priority use referred to in subparagraph (A).

(2) The Commission shall, by rule, prescribe methods for measurement of volumes of natural gas to which subparagraphs (A) and (B) of paragraph (1) apply.

(b) CONDITIONS, LIMITATIONS, ETC.—Subsection (a) shall not limit or otherwise affect any provision of any curtailment plan, or any other provision of law or regulation, under which natural gas may be diverted or allocated to respond to emergency situations or to protect public health, safety, and welfare.

(c) DEFINITIONS.—For purposes of this section—

(1) The term “conservation measures” means such energy conservation measures, as determined by the Commission, as were implemented after the base period established under the curtailment plan in effect on the date of the enactment of this Act.

(2) The term “local distribution company” means any person engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(3) The term “curtailment plan” means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978) in effect under the Natural Gas Act which provides for recognizing and implementing priorities of service during periods of curtailed deliveries.

Post, p. 3350.
15 USC 717w.

SEC. 606. VOLUNTARY CONVERSION OF NATURAL GAS USERS TO HEAVY FUEL OIL.

15 USC 717y.

(a) IN GENERAL.—(1) In order to facilitate voluntary conversion of facilities from the use of natural gas to the use of heavy petroleum fuel oil, the Commission shall, by rule, provide a procedure for the approval by the Commission of any transfer to any person described in paragraph 2(B) (i), (ii), or (iii) of contractual interests involving the receipt of natural gas described in paragraph 2(A).

(2) (A) The rule required under paragraph (1) shall apply to—

(i) natural gas—

(I) received by the user pursuant to a contract entered into before September 1, 1977, not including any renewal or exten-

sion thereof entered into on or after such date other than any such extension or renewal pursuant to the exercise by such user of an option to extend or renew such contract;

(II) other than natural gas the sale for resale or the transportation of which was subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as of September 1, 1977;

(III) which was used as a fuel in any facility in existence on September 1, 1977.

(ii) natural gas subject to a prohibition order issued under section 607.

(B) The rule required under paragraph (1) shall permit the transfer of contractual interests—

(i) to any interstate pipeline;

(ii) to any local distribution company served by an interstate pipeline; and

(iii) to any person served by an interstate pipeline for a high priority use by such person.

(3) The rule required under paragraph (1) shall provide that any transfer of contractual interests pursuant to such rule shall be under such terms and conditions as the Commission may prescribe. Such rule shall include a requirement for refund of any consideration, received by the person transferring contractual interests pursuant to such rule, to the extent such consideration exceeds the amount by which the costs actually incurred, during the remainder of the period of the contract with respect to which such contractual interests are transferred, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility exceeds the price under such contract for natural gas, subject to such contract, delivered during such period.

(4) In prescribing the rule required under paragraph (1), and in determining whether to approve any transfer of contractual interests, the Commission shall consider whether such transfer of contractual interests is likely to increase demand for imported refined petroleum products.

(b) **COMMISSION APPROVAL.**—(1) No transfer of contractual interests authorized by the rule required under subsection (a) (1) may take effect unless the Commission issues a certificate of public convenience and necessity for such transfer if such natural gas is to be resold by the person to whom such contractual interests are to be transferred. Such certificate shall be issued by the Commission in accordance with the requirements of this subsection and those of section 7 of the Natural Gas Act, and the provisions of such Act applicable to the determination of satisfaction of the public convenience and necessity requirements of such section.

(2) The rule required under subsection (a) (1) shall set forth guidelines for the application on a regional or national basis (as the Commission determines appropriate) of the criteria specified in subsection (e) (2) and (3) to determine the maximum consideration permitted as just compensation under this section.

(c) **RESTRICTIONS ON TRANSFERS UNENFORCEABLE.**—Any provision of any contract, which provision prohibits any transfer of any contractual interests thereunder, or any commingling or transportation of natural gas subject to such contract with natural gas the sale for resale or transportation of which is subject to the jurisdiction of the Commission under the Natural Gas Act, or terminates such contract on the basis of any such transfer, commingling, or transportation, shall be unenforceable in any court of the United States and in any court

15 USC 717w.

15 USC 717f.

of any State if applied with respect to any transfer approved under the rule required under subsection (a) (1).

(d) **CONTRACTUAL OBLIGATIONS UNAFFECTED.**—The person acquiring contractual interests transferred pursuant to the rule required under subsection (a) (1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This section shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) **DEFINITIONS.**—For purposes of this section—

(1) The term “natural gas” has the same meaning as provided by section 2(5) of the Natural Gas Act.

15 USC 717a.

(2) The term “just compensation”, when used with respect to any contractual interests pursuant to the rule required under subsection (a) (1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (not including capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a) (1), in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility, exceeds

(B) the price under such contract for natural gas, subject to such contract, delivered during such period.

For purposes of subparagraph (A), the reasonable costs directly associated with the use of heavy petroleum fuel oil as a fuel shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such facility, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such heavy petroleum fuel oil.

(3) The term “just compensation”, when used with respect to any intrastate pipeline which would have transported or distributed natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a) (1), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a) (1), to the extent such loss—

(A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to the rule required under subsection (a) (1); and

(B) is not offset by—

(i) a reduction in expenses associated with such discontinuation; and

(ii) revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(4) The term “contractual interests” means the right to receive natural gas under contract as affected by an applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(5) The term “interstate pipeline” means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

15 USC 717w.

(6) The term "high-priority use" means any use of natural gas (other than its use for the generation of steam for industrial purposes or electricity) identified by the Commission as a high priority use for which the Commission determines a substitute fuel is not reasonably available.

(7) The term "heavy petroleum fuel oil" means number 4, 5, or 6 fuel oil which is domestically refined.

(8) The term "local distribution company" means any person, other than any intrastate pipeline or any interstate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(9) The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act.

(10) The term "facility" means any electric powerplant, or major fuel burning installation, as such terms are defined in the Powerplant and Industrial Fuel Use Act of 1978.

(11) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978), in effect under the Natural Gas Act or State law, which provides for recognizing and implementing priorities of service during periods of curtailed deliveries by any local distribution company, intrastate pipeline, or interstate pipeline.

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.

Post, p. 3289.

15 USC 717w.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration in any transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section shall be deemed just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act if such consideration does not exceed just compensation.

15 USC 717c,
717d.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act as a natural gas-company (within the meaning of such Act) or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

15 USC 717w.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale, or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests pursuant to the rule required under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the sale in interstate commerce for resale or the transportation in interstate commerce of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred pursuant to the rule required under subsection (a)(1), shall be

required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

- (1) the volume determined by reference to the maximum delivery obligations specified in such contract;
- (2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests pursuant to the rule required under subsection (a) (1), if no such transfer had occurred; and
- (3) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests.

SEC. 637. EMERGENCY CONVERSION OF UTILITIES AND OTHER FACILITIES. 15 USC 717z.

(a) **PRESIDENTIAL DECLARATION.**—The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

- (1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and
- (2) the exercise of authorities under this section is reasonably necessary, having exhausted other alternatives (not including section 303 of the Natural Gas Policy Act of 1978) to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

Post, p. 3383.

(b) **LIMITATION.**—(1) Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

- (A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or
- (B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof) previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1) (B).

(c) **PROHIBITIONS.**—During a natural gas emergency declared under this section, the President may, by order, prohibit the burning of natural gas by any electric powerplant or major fuel-burning installation if the President determines that—

- (1) such powerplant or installation had on September 1, 1977 (or at any time thereafter) the capability to burn petroleum products without damage to its facilities or equipment and without interference with operational requirements;
- (2) significant quantities of natural gas which would otherwise be burned by such powerplant or installation could be made available before the termination of such emergency to any person served by an interstate pipeline for use by such person in a high-priority use; and
- (3) petroleum products will be available for use by such powerplant or installation throughout the period the order is in effect.

(d) **LIMITATIONS.**—The President may specify in any order issued under this section the periods of time during which such order will be in effect and the quantity (or rate of use) of natural gas that may be burned by an electric powerplant or major fuel-burning installation during such period, including the burning of natural gas by an electric powerplant to meet peak load requirements. No such order may continue in effect after the termination or expiration of such natural gas supply emergency.

(e) **EXEMPTION FOR SECONDARY USES.**—The President shall exempt from any order issued under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by an electric powerplant or major fuel-burning installation.

(f) **EXEMPTION FOR AIR-QUALITY EMERGENCIES.**—The President shall exempt any electric powerplant or major fuel-burning installation in whole or in part, from any order issued under this section for such period and to such extent as the President determines necessary to alleviate any imminent and substantial endangerment to the health of persons within the meaning of section 303 of the Clean Air Act.

(g) **LIMITATION ON INJUNCTIVE RELIEF.**—(1) Except as provided in paragraph (2), no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued under this section unless such relief is in connection with a final judgment entered with respect to such order.

(2) (A) On the petition of any person aggrieved by an order issued under this section, the United States District Court for the District of Columbia may, after an opportunity for a hearing before such court and on an appropriate showing, issue a preliminary injunction temporarily enjoining, in whole or in part, the implementation of such order.

(B) For purposes of this paragraph, subpoenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States, except that no writ of subpoena under the authority of this section shall issue for witnesses outside of the District of Columbia at a greater distance than 100 miles from the place of holding court unless the permission of the District Court for the District of Columbia has been granted after proper application and cause shown.

(h) **DEFINITIONS.**—For purposes of this section—

(1) The terms “electric powerplant”, “powerplant”, “major fuel-burning installation”, and “installation” shall have the same meanings as such terms have under section 103 of the Powerplant and Industrial Fuel Use Act of 1978.

(2) The term “petroleum products” means crude oil, or any product derived from crude oil other than propane.

(3) The term “high priority use” means any—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(C) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(4) The term “Mcf”, when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

42 USC
1857h-1.

Post, p. 3292.

(i) **USE OF CERTAIN TERMS.**—In applying the provisions of this section in the case of natural gas subject to a prohibition order issued under this section, the term “petroleum products” (as defined in subsection (h) (2) of this section) shall be substituted for the term “heavy petroleum fuel oil” (as defined in section 606(e) (7)) if the person subject to any order under this section demonstrates to the Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible.

SEC. 608. NATURAL GAS TRANSPORTATION POLICIES.

(a) **IN GENERAL.**—Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding at the end thereof the following:

“(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

“(A) natural gas sold by the producer to such person; and
“(B) natural gas produced by such person.”

(b) **CONFORMING AMENDMENT.**—(1) Subsection (c) of section 7 of the Natural Gas Act (15 U.S.C. 717f(c)) is amended—

(A) by striking out “(c)” and inserting in lieu thereof “(c) (1) (A)”, and

(B) by inserting “(B)” immediately before “In all other cases” where such term appears in the second undesignated paragraph of such subsection.

(2) Subsection (e) of section 7 of the Natural Gas Act (15 U.S.C. 717f(d)) is amended by striking out “subsection (c)” and inserting in lieu thereof “subsection (c) (1)”.

Approved November 9, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-429 (Comm. on Ways and Means), No. 95-543, Vols. I and II, accompanying H.R. 8444 (ad hoc Comm. on Energy), and No. 95-1750 (Comm. of Conference).

SENATE REPORTS: No. 95-442 accompanying S. 2114 (Comm. on Energy and Natural Resources) and No. 95-1292 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 123 (1977): July 18, H.R. 4018 considered and passed House.

Aug. 1-5, H.R. 8444 considered and passed House.

Oct. 5, S. 2114 considered in Senate.

Oct. 6, H.R. 4018 considered and passed Senate, amended, in lieu of S. 2114 and pt. 5 of title I of H.R. 8444.

Oct. 13, House concurred in Senate amendment with an amendment.

Vol. 124 (1978): Oct. 9, Senate agreed to conference report.

Oct. 15, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 45 (1978): Nov. 9, Presidential statement.