HOOVER POWER PLANT ACT OF 1984

An Act to authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes. (Aug. 17, 1984, Public Law 98-381, 98 Stat. 1333, 43 U.S.C. § 619; as amended by the Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776.)

Section 1. [Short title.]–This Act may be cited as the "Hoover Power Plant Act of 1984". (43 U.S.C. § 619 note.)

TITLE I

Sec. 101. (a) [Uprating program–Visitor facilities.]–The Secretary of the Interior is authorized to increase the capacity of existing generating equipment and appurtenances at Hoover Powerplant (hereinafter in this Act referred to as "uprating program"); and to improve parking, visitor facilities, and roadways and to provide additional elevators, and other facilities that will contribute to the safety and sufficiency of visitor access to Hoover Dam and Powerplant (hereinafter in this Act referred to as "visitor facilities program").

(b) [Bridge crossing.]–The Secretary of the Interior is authorized to construct a Colorado River bridge crossing, including suitable approach spans, immediately downstream from Hoover Dam for the purpose of alleviating traffic congestion and reducing safety hazards. This bridge shall not be a part of the Boulder Canyon project and shall neither be funded nor repaid from the Colorado River Dam Fund or the Lower Colorado River Basin Development Fund. (98 Stat. 1333, 43 U.S.C. § 619.)

Sec. 102. [Amendments to the Colorado River Basin Project Act of 1968.]–(a) Section 403(b) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. § 1543) is amended by inserting "(1)" after "(b)" and adding the following new paragraph at the end thereof:

"(2) Except as provided in subsection 309(b), as amended (43 U.S.C. § 1528), sums advanced by non-Federal entities for the purpose of carrying out the provisions of title III of this Act (43 U.S.C. § 1521) shall be credited to the development fund and shall be available without further appropriation for such purpose.".

(b) Paragraph (1) of section 403(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. § 1543(c)) is revised to read as follows:

"(1) All revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;".

(c) Paragraph (2) of section 403(c) (43 U.S.C. § 1543.) is revised by inserting immediately preceding the existing proviso: "*Provided, however,* That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act (43 U.S.C. § 1521), the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4-1/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2-1/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* That after the repayment period for said Central Arizona project, the equivalent of 2-1/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section:". (98 Stat. 1333)

EXPLANATORY NOTE

Reference in the Text. Subsections 403(b) and 403(c) of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 894, as amended, 43 U.S.C.§ 1543) referenced above provides for the establishment and administration of the Lower Colorado River Basin Development Fund. The Act appears in Volume IV at page 2395. The referenced subsections appear at page 2413. Amendments and annotations of the 1968 Act appear in Supplement II at page S995.

Sec. 103. [Amendments to the Boulder Canyon Project Act of 1928.]– a) The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, is further amended:

(1) In the first sentence of section 2(b), by striking out "except that the aggregate amount of such advances shall not exceed the sum of $165,000,000", and by replacing the comma after the word "Act" with a period.

(2) In section 3, by deleting "$165,000,000." and inserting in lieu thereof "$242,000,000, of which $77,000,000 (October 1983 price levels) shall be adjusted plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs as indicated by engineering cost indices applicable to the type of construction involved herein.

Said $77,000,000 represents the additional amount required for the uprating program and the visitor facilities program.". (43 U.S.C. § 617 note)

(b) Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. § 617 et seq.), as amended and supplemented, shall remain in full force and effect. (98 Stat. 1334)

EXPLANATORY NOTE

Reference in the Text. The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, referenced above, appears in Volume I at page 414. The referenced sections 2 and 3 appear at pages 417 and 419, respectively. Amendments and annotations of the 1928 Act appear in Supplement II at page S839.

Sec. 104. [Amendments to the Boulder Canyon Project Adjustment Act of 1940.]–(a) The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. § 618), as amended and supplemented, is further amended:

(1) In section 1 (43 U.S.C. § 618) by deleting the phrase "during the period beginning June 1, 1937, and ending May 31, 1987" appearing in the introductory paragraph of section 1 and in section 1(a) and inserting in lieu thereof "beginning June 1, 1937".

(2) In section 1(b) by deleting the phrase "and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987" and inserting in lieu thereof "and such advances made on and after June 1, 1937, over fifty-year periods".

(3) In section 1 by deleting the word "and" at the end of subsection (c); deleting the period at the end of subsection (d) and inserting in lieu thereof "; and", and by adding after subsection (d) the following new subsection (e):

"(e) To provide, by application of the increments to rates specified in section 403(c)(2) of the Colorado River Basin Project Act of 1968, as amended and supplemented (43 U.S.C. § 1543.), revenues, from and after June 1, 1987, for application to the purposes there specified.".

(4) In section 2 (48 U.S.C. § 618a):

(i) by deleting the first sentence and subsection (a) and inserting in lieu thereof: "All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:

(a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations Acts;" and

(ii) by amending subsection (e) to read as follows:

"(e) Transfer to the Lower Colorado River Basin Development Fund established by title IV of the Colorado River Basin Project Act of 1968, as amended and supplemented (43 U.S.C. § 1541), of the revenues referred to in section 1(e) of this Act.". (43 U.S.C. § 618)

(5) By deleting the final period at the end of section 6 (43 U.S.C. § 618e.) and inserting in lieu thereof the following: ": *Provided,* That the respective rates of interest on appropriated funds advanced for the visitor facilities program, as described in section 101(a) of the Hoover Power Plant Act of 1984, shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the program during the month preceding the fiscal year in which the costs of the program are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined.".

(6) In section 12 (43 U.S.C. § 618k), in the paragraph beginning with "Replacements", by deleting "during the period from June 1, 1937, to May 31, 1987, inclusive" and inserting in lieu thereof "beginning June 1, 1937".

(b) Except as amended by this Act, the Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented (43 U.S.C. § 618 note; 43U.S.C. § 618o), shall remain in full force and effect. (98 Stat. 1334)

EXPLANATORY NOTE

Reference in the Text. The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. § 618), as amended and supplemented, referenced above, appears in Volume I at page 697. The referenced sections 1, 2, 6, and 12 appear at pages 697, 698, 701, and 703, respectively. Amendments and annotations of the 1940 Act appear in Supplement II at page S857.

Sec. 105. [Renewal contracts.]–(a)(1) The Secretary of Energy shall offer (43 U.S.C. § 619a.):

(A) To each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the specific amount of capacity and firm energy specified for that contractor in the following table:

SCHEDULE A

LONG TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON PROJECT CONTRACTORS

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. § 617d), contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

SCHEDULE B

CONTINGENT CAPACITY RESULTING FROM THE UPRATING PROGRAM AND ASSOCIATED FIRM ENERGY

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Nevada	188,000	148,000	64,000	212,000
Arizona	127,000	99,850	43,364	143,214
California	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided further,* That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

SCHEDULE C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: *Provided, however,* That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in the amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1)(A) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	Arizona, Nevada, California
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	

(2) The total obligation of the Secretary of Energy to deliver firm energy pursuant to schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B) is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in any year of operation (less deliveries thereof to Arizona required by its first priority under schedule C of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said schedules A and B in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter as the "Criteria" as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.

(4) Each contract offered under subsection (a)(1) of this section shall:

(A) expire September 30, 2017;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided,* That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; and

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act (43 U.S.C. § 617t), as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, 2017.

(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. § 617d).

(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.

(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.

(g) The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for the renewal of contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017.

(h)(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of this Act in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act (43 U.S.C. § 617t) or the Boulder Canyon Project Adjustment Act (43 U.S.C. § 618o) is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

(2) Any contract entered into pursuant to section 105 or section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.

(i) It is the purpose of subsections (c), (g), and (h) of this section to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning June 1, 1987, and ending September 30, 2017, will vest with certainty and finality. (98 Stat. 1335)

Sec. 106. [Repayment requirements.]–Reimbursement of funds advanced by non-Federal purchasers for the uprating program shall be a repayment requirement of the Boulder Canyon project beginning with the first day of the

month following completion of each segment thereof. The cost of the visitor facilities program as defined in section 101(a) of this Act (43 U.S.C. § 619b) shall become a repayment requirement beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

Sec. 107. ["Navajo surplus" power.]—(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 (42 U.S.C. § 7133 note), as amended (hereinafter in this Act (43 U.S.C. § 1571) referred to as "Navajo surplus") shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. § 485h) and as provided in part IV, section A of the Criteria.

(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 (43 U.S.C. § 389), shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (e) of this section: *Provided, however,* That rates shall not

exceed levels that allow for an appropriate saving for the contractor.

(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control. (98 Stat. 1339)

EXPLANATORY NOTES

References in the Text. Subsection 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974 (42 U.S.C. § 7133 note.), referenced above, appears in Volume IV at page 2858.

Subsection 9(c) and section 14 of the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187) referenced above appear in Volume I at pages 647 and 660, respectively.

Sec. 108. [Report to certain committees required.]–Recognizing the expiration of Colorado River storage project (CRSP) contracts in 1989, prior to final reallocation of CRSP power pursuant to existing law, and within one year after enactment of this Act, the Secretary of Energy, acting through the Western Area Power Administration, shall report, to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on all Colorado River storage project (CRSP) power resources, including those presently allocated to the Lower Division States, which may be used to financially support the development of authorized projects in the States of the Upper Division (as that term is used in article 11 of the Colorado River Compact) of the Colorado River Basin.

EXPLANATORY NOTES

References in the Text. The Colorado River storage project (CRSP), referenced above, was authorized by the Act of April 11, 1956, ch. 203, 70 Stat. 105. That Act as amended and supplemented, appears in Volume I at page 1243, in Volume IV at pages 2416 and 2871, and in Supplement I at page S247. Amendments and annotations of the 1956 Act appear in Supplement II at page S873.

The Colorado River Compact, referenced above, appears in Volume I at page 442.

Sec. 109. [Fish passage facilities in Yakima River Basin.]–The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto (43 U.S.C. § 371 note)) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697; 16 U.S.C. § 839 note; 16 U.S.C. § 839b note) is authorized to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any

entity, public or private, to design, construct, operate, and maintain such facilities. (98 Stat. 1340)

EXPLANATORY NOTE

References in the Text. The Pacific Northwest Electric Power Planning and Conservation Act, Act of December 5, 1980 (Public Law 95-501, 94 Stat. 2697; 16 U.S.C. § 839 note.; 16 U.S.C. § 839b note.) referenced above, appears in Volume IV at page 3225.

TITLE II–INTEGRATED RESOURCE PLANNING

Sec. 201. Definitions.
Sec. 202. Regulations to require integrated resource planning.
Sec. 203. Technical assistance.
Sec. 204. Integrated resource plans.
Sec. 205. Miscellaneous provisions.

Sec. 201. [Definitions.]–As used in this title:

(1) The term 'Administrator' means the Administrator of the Western Area Power Administration.

(2) The term 'integrated resource planning' means a plan process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term 'least cost option' means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term 'long-term firm power service contract' means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms 'customer' or 'customers' means any entity or entities purchasing firm capacity with or without energy, from the Western Area

Power Administration under a long-term firm power service contract. Such terms include parent type entities and their distribution or user members.

(6) For any customer, the term 'applicable integrated resource plan' means the integrated resource plan approved by the Administrator under this title for that customer. (106 Stat. 2799; 42 U.S.C. § 7275.)

Sec. 202. [Regulations to require integrated resource planning.]–

(a) [Regulations.]–Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1986 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after the enactment of this section, integrated resource planing in accordance with the requirements of this title.

(b) [Certain small customers.]–Notwithstanding subsection (a), for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects. (106 Stat. 2800, 42 U.S.C. § 7276.)

Sec. 203. [Technical assistance.]–The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning. (42 U.S.C. § 7276a.)

Sec. 204. [Integrated resource Plans.]–(a) [Review by Western Area Power Administration.]–Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892),

or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision complied with this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of this title the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with this title. (106 Stat. 2801; 42 U.S.C. 7276b.)

(b) [Criteria for approval of integrated resource plans.]–The Administrator shall approve an integrated resource plan submitted as required under subsection (a) if, in developing the plan, the customer has:

(1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.

(2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.

(3) Designated 'least-cost options' to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

(6) Included load forecasting.

(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

(8) Met such other criteria as the Administrator shall require.

(c) [Use of other integrated resource plans.]–Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource

planning considered and implemented pursuant to section 111(d) of the Public Utility Regulatory Policies Act of 1978, in evaluating that customer's integrated resource plan under this title, the Administrator shall accept such plan as fulfillment of the requirements of this title to the extent such plan substantially complies with the requirements of this title.

(d) **[Compliance with integrated resource plans.]**–Within 1 year after the enactment of this section, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out of compliance, the Administrator shall impose a surcharge under this section on an electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

(e) **[Enforcement.]**–(1) **[No approved plan.]**–If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

(2) **[Failure to comply with approved plan.]**–After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with

the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) **[Reduction in power allocation.]**—In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) **[Integrated resource planning cooperatives.]**—With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) **[Customers with more than 1 contract.]**—If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under this title.

(h) **[Program review.]**—Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in section 204(b) to reflect changes, if any, in technology, needs, or other developments.

Sec. 205. [Miscellaneous provisions.]—(a) **[Environmental impact statement.]**—The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Administrator implementing this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) **[Annual reports.]**—The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

(c) **[State regulated investor-owned utilities.]**—Any State regulated electric utility (as defined in section 3(18) of the Public Utility Regulatory Policies Act of 1978) shall be exempt from the provisions of this title.

(d) [Rural electrification administration requirements.]–Nothing in this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration. (106 Stat. 2803; 42 U.S.C. § 7276c.)

EXPLANATORY NOTES

1992 Amendment. Section 114 of the Energy Policy Act of 1992 (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776) amended Title II of this Act to read as it appears above. Section 114 of the 1992 Act appears in Volume V at page 3771.

Prior to amendment, Title II read as follows:

Sec. 201. [Energy conservation program required.]–Each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act (42 U.S.C. § 7275.) by the Secretary of Energy acting by and through the Western Area Power Administration (hereinafter "Western"), shall contain an article requiring the development and implementation by the purchaser thereunder of an energy conservation program. A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than one year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one program will be required for that purchaser. Each such contract article shall –

(1) contain time schedules for meeting program goals and delineate actions to be taken in the event such schedules are not met, which may include a reduction of the allocation of capacity or energy to such purchaser as would otherwise be provided under such contract; and

(2) provide for review and modification of the energy conservation program at not to exceed five year intervals.

(b) For purposes of this title, an energy conservation program shall–

(1) apply to all uses of energy and capacity which are provided from any Federal project;

(2) contain definite goals;

(3) encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner. (98 Stat. 1340)

Sec. 202. [Amendment of regulations required.]–(a) Within one year after the date of enactment of this Act (42 U.S.C. § 7276.), Western shall amend its existing regulations (46 Fed. Reg. 56140) to reflect–

(1) the elements to be considered in the energy conservation programs required by this title, and

(2) Western's criteria for evaluating and approving such programs.

Such amended regulations shall be promulgated only after public notice and opportunity to comment in accordance with the Administrative Procedure Act (5 U.S.C. § 551-706; 5 U.S.C. note prec. § 551.).

(b) The following elements shall be considered by Western in evaluating energy conservation programs:

(1) energy consumption efficiency improvements;

(2) use of renewable energy resources in addition to hydroelectric power;

(3) load management techniques;

(4) cogeneration;

(5) rate design improvements, including–

(i) cost of service pricing;

(ii) elimination of declining block rates;

(iii) time of day rates;

(iv) seasonal rates; and

(v) interruptible rates; and

(6) production efficiency improvements.

(c) Where a purchaser is implementing one or

more of the foregoing elements under a program responding to Federal, State, or other initiatives that apply to conservation and renewable energy development, in evaluating that purchaser's energy conservation program submitted pursuant to this title, Western shall make due allowance for the incorporation of such elements within the energy conservation program required by this title. (98 Stat. 1341)

References in the Text. The National Environmental Policy Act of 1969 appears in Volume IV at page 2492.

Extracts from the Public Utility Regulatory Policies Act of 1978 appear in Volume IV at page 3137.

The Administrative Procedure Act, Act of June 11, 1946 (60 Stat. 237, 5 U.S.C. § 551-706; 5 U.S.C. note prec. § 551.) appears in Volume I at page 1927, and as amended, in Supplement I at page S446.

Legislative History. S. 268 (H.R. 4275), Public Law in the 98th Congress. Reported in the Senate from Energy and Natural Resources; S. Rept. No. 98-137. Passed the Senate on August 4, 1983. Reported in the House from Interior and Insular Affairs; H. R. Rept. No. 98-648 accompanying H.R. 4275. H.R. 4275 passed the House May 3, 1984; S. 268, amended, passed in lieu. Senate considered and concurred in House amendments July 26, 27, 30, 31, 1984.