

ENERGY POLICY ACT OF 1992

[Extracts from] An Act to provide for improved energy efficiency. (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776)

Section 1. [Short title-Table of contents.]-(a) [Short title.]— This Act may be cited as the "Energy Policy Act of 1992". (42 U.S.C. § 13201 note.)

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TITLE I-ENERGY EFFICIENCY

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Subtitle B-Utilities

Sec. 111. [Encouragement of divestments in conservation and energy efficiency by electric utilities.]-(a) **[Amendment to the Public Utility Regulatory Policies Act.]**-The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 92 Stat. 3117; 16 U.S.C. § 2601 and following) is amended by adding the following at the end of section 111(d)(16 U.S.C. § 2621.):

"(7) [Integrated resource planning.]-Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory

authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

"(8) [Investments in conservation and demand management.]—The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated. (106 Stat. 2795)

"(9) [Energy efficiency investments in power generation and supply.]—The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment."

(b) [Protection for small business.]—The Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 92 Stat. 3117; 16 U.S.C. § 2601 and following) is amended by inserting the following new paragraph at the end of subsection 111(c):

"(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall—

"(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

"(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses."

(c) [Effective date.]—Section 112(b) of such Act is amended by inserting "(or after the enactment of the Comprehensive National Energy Policy Act in the

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case of standards under paragraphs (7), (8), and (9) of section 111(d)" after "Act" in both places such word appears in paragraphs (1) and (2). (16 U.S.C. § 2622.)

(d) [Definitions.]—Section 3 of such Act (16 U.S.C. § 2602.) is amended by adding the following paragraphs at the end thereof:

"(19) The term 'integrated resource planning' means, in the case of an electric utility, a planning and selection 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 electric 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.

"(20) The term 'system cost' means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.

"(21) The term 'demand side management' includes load management techniques.". (106 Stat. 2795)

(e) [Report.]—Not later than 2 years after the date of the enactment of this Act, the Secretary shall transmit a report to the President and to the Congress containing—

(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978;

(2) an evaluation by the Secretary of whether and to what extent, integrated resource planning is likely to result in—

(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

(B) enhanced or reduced reliability of electric service; and

(C) increased or decreased dependence on particular energy resources; and

(3) a survey of practices and policies under which electric cooperatives prepare integrated resource plans, submit such plans to the Rural Electrification Administration and the extent to which such integrated resource planning is reflected in rates charged to customers. (16 U.S.C. § 2621 note.)

The report shall include an analysis prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by utilities on small businesses engaged in the design, sale, supply, installation,

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or servicing of similar energy conservation, energy efficiency, or other demand side management measures and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs. (106 Stat. 2795)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617; 92 Stat. 3117; 16 U.S.C. § 2601 referenced) above appear in Volume IV at page 3137. Amendments and annotations of the 1978 Act appear in Supplement II at page S1071.

- Sec. 112. [Energy efficiency grants to state regulatory authorities.]—**
- (a) [Energy efficiency grants.]—**The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory authorities in an amount not to exceed \$250,000 per authority, for purposes of encouraging demand-side management including energy conservation, energy efficiency and load management techniques and for meeting the requirements of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978 and as a means of meeting gas supply needs and to meet the requirements of paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978. Such grants may be utilized by a State regulatory authority to provide financial assistance to nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in order to facilitate participation by such subgrantees in proceedings of such regulatory authority to examine energy conservation, energy efficiency, or other demand-side management programs. (42 U.S.C. § 6807a.)
- (b) [Plan.]—**A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.
- (c) [Secretarial action.]—**(1) In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority to achieve the purposes of this section and to consider implementation of the ratemaking standards established in—
- (A) paragraphs (7), (8) and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978; or
 - (B) paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978.
- (2) Such actions—
- (A) shall include procedures to facilitate the participation of grantees and nonprofit subgrantees of the Department of Energy's Weatherization

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Assistance Program in proceedings of such regulatory authorities examining demand-side management program; and

(B) shall provide for coverage of the cost of such grantee and subgrantees' participation in such proceedings.

(d) [Recordkeeping.]—Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

(e) [Definition.]—For purposes of this section, the term "State regulatory authority" shall have the same meaning as provided by section 3 of the Public Utility Regulatory Policies Act of 1978 in the case of electric utilities, and such term shall have the same as provided by section 302 of the Public Utility Regulatory Policies Act of 1978 in the case of gas utilities, except that in the case of any State without a statewide ratemaking such term shall mean the State energy office.

(f) [Authorization.]—There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1994, 1995 and 1996 to carry out the purposes of this section. (106 Stat. 2797)

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Sec. 114. [Amendment of Hoover Power Plant Act.]—Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. § 7275-7276, Public Law 98-381) is amended to read as follows:

EXPLANATORY NOTE

Reference in the Text. The Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1333; 42 U.S.C. § 7275-7276.) referenced above appears in Volume V at page 3403.

"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. (106 Stat. 2799)

"(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. (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 planning 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.)

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"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. 2799; 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

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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. (106 Stat. 2799)

"(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. 2799; 42 U.S.C. § 7276c.)

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TITLE VII—ELECTRICITY

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Subtitle B—Federal Power Act; Interstate Commerce in Electricity

Sec. 721. [Amendments to section 211 of Federal Power Act.]—Section 211 of the Federal Power Act (16 U.S.C. 824j) is amended as follows:

(1) The first sentence of subsection (a) is amended to read as follows: "Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant."

(2) In the second sentence of subsection (a), strike "the Commission may" and all that follows and insert "the Commission may issue such order if it finds that such order meets the requirements of section 212, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order."

(3) Amend subsection (b) to read as follows:

"(b) [Reliability of electric service.]—No order may be issued under this section or section 210 if, after giving consideration to consistently applied regional or

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national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order."

(4) In subsection (c)–

(A) Strike out paragraph (1).

(B) In paragraph (2) strike "which requires the electric" and insert "which requires the transmitting".

(C) Strike out paragraphs (3) and (4).

(5) In subsection (d)–

(A) In the first sentence of paragraph (1), strike "electric" and insert "transmitting" in each place it appears.

(B) In the second sentence of paragraph (1) before "and each affected electric utility," insert "each affected transmitting utility,".

(C) In paragraph (3), strike "electric" and insert "transmitting".

(D) Strike the period in subparagraph (B) of paragraph (1) and insert ", or" and after subparagraph (B) insert the following new subparagraph:

"(C) the ordered transmission services require enlargement of transmission capacity and the transmitting utility subject to the order has failed, after making a good faith effort, to obtain the necessary approvals or property rights under applicable Federal, State, and local laws." (106 Stat. 2915)

EXPLANATORY NOTE

Reference in the Text. Section 211 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 824j) is referenced on pages 283 and 527 in Volume I. The text of section 211 appears in Supplement I at page S102. Amendments and annotations of the 1935 Act appear in Supplement II at page S841.

Sec. 722. [Transmission services.]—Section 212 of the Federal Power Act is amended as follows:

(1) Strike subsections (a) and (b) and insert the following:

"(a) [Rates, charges, terms, and conditions for wholesale transmission services.]—An order under section 211 shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services

provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.". [(16 U.S.C. § 824k.)] (2) Subsection (e) is amended to read as follows:

"(e) [Savings provisions.]—(1) No provision of section 210, 211, 214, or this section shall be treated as requiring any person to utilize the authority of any such section in lieu of any other authority of law. Except as provided in section 210, 211, 214, or this section, such sections shall not be construed as limiting or impairing any authority of the Commission under any other provision of law.

"(2) Sections 210, 211, 213, 214, and this section, shall not be construed to modify, impair, or supersede the antitrust laws. For purposes of this section, the term 'antitrust laws' has the meaning given in subsection (a) of the first sentence of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition."

(3) Add the following new subsections at the end thereof:

"(g) [Prohibition on orders inconsistent with retail marketing areas.]—No order may be issued under this Act which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

"(h) [Prohibition on mandatory retail wheeling and sham wholesale transactions.]—No order issued under this Act shall be conditioned upon or require the transmission of electric energy:

"(1) directly to an ultimate consumer, or

"(2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:

"(A) such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

"(B) such entity was providing electric service to such ultimate consumer on the date of enactment of this subsection or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer."

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"(i) [Laws applicable to Federal Columbia River Transmission System.]—(1) The Commission shall have authority pursuant to section 210, section 211, this section, and section 213 to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service. In applying such sections to the Federal Columbia River Transmission System, the Commission shall assure that—

"(i) the provisions of otherwise applicable Federal laws shall continue in full force and effect and shall continue to be applicable to the system; and

"(ii) the rates for the transmission of electric power on the system shall be governed only by such otherwise applicable provisions of law and not by any provision of section 210, section 211, this section, or section 213, except that no rate for the transmission of power on the system shall be unjust, unreasonable, or unduly discriminatory or preferential, as determined by the Commission.

"(2) Notwithstanding any other provision of this Act with respect to the procedures for the determination of terms and conditions for transmission service—

"(A) when the Administrator of the Bonneville Power Administration either (i) in response to a written request for specific transmission service terms and conditions does not offer the requested terms and conditions, or (ii) proposes to establish terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System, then the Administrator may provide opportunity for a hearing and, in so doing, shall—

"(I) give notice in the Federal Register and state in such notice the written explanation of the reasons why the specific terms and conditions for transmission services are not being offered or are being proposed;

"(II) adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839(i) (1) through (3)), except that the hearing officer shall, unless the hearing officer becomes unavailable to the agency, make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record; and

"(III) make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer's recommended decision, section 211 and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section; and

"(B) if application is made to the Commission under section 211 for transmission service under terms and conditions different than those offered

by the Administrator, or following the denial of a request for transmission service by the Administrator, and such application is filed within 60 days of the Administrator's final determination and in accordance with Commission procedures, the Commission shall—

"(i) in the event the Administrator has conducted a hearing as herein provided for (I) accord parties to the Administrator's hearing the opportunity to offer for the Commission record materials excluded by the Administrator from the hearing record, (II) accord such parties the opportunity to submit for the Commission record comments on appropriate terms and conditions, (III) afford those parties the opportunity for a hearing if and to the extent that the Commission finds the Administrator's hearing record to be inadequate to support a decision by the Commission, and (IV) establish terms and conditions for or deny transmission service based on the Administrator's hearing record, the Commission record, section 211 and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section, or ,

(ii) in the event the Administrator has not conducted a hearing as herein provided for, determine whether to issue an order for transmission service in accordance with section 211 and this section, including providing the opportunity for a hearing.

"(3) Notwithstanding those provisions of section 313(b) of this Act (16 U.S.C. § 825.) which designate the court in which review may be obtained, any party to a proceeding concerning transmission service sought to be furnished by the Administrator of the Bonneville Power Administration seeking review of an order issued by the Commission in such proceeding shall obtain a review of such order in the United States Court of Appeals for the Pacific Northwest, as that region is defined by section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839a(14)).

"(4) To the extent the Administrator of the Bonneville Power Administration cannot be required under section 211, as a result of the Administrator's other statutory mandates, either to (A) provide transmission service to an applicant which the Commission would otherwise order, or (B) provide such service under rates, terms, and conditions which the Commission would otherwise require, the applicant shall not be required to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.

"(5) The Commission shall not issue any order under section 210, section 211, this section, or section 213 requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator's ability to provide such transmission service to the Administrator's power and transmission customers in the Pacific Northwest, as that region is defined in section 3(14) of the Pacific Northwest Electric

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Power Planning and Conservation Act (16 U.S.C. § 839a(14)), as is needed to assure adequate and reliable service to loads in that region.

"(j) [Equitability within territory restricted electric systems.]—With respect to an electric utility which is prohibited by Federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, no order issued under section 211 may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such Federal law, unless the order is in furtherance of a sale of electric energy to that electric utility: *Provided, however,* That the foregoing provision shall not apply to any area served at retail by an electric transmission system which was such a distributor on the date of enactment of this subsection and which before October 1, 1991, gave its notice of termination under its power supply contract with such electric utility.

"(k) [ERCOT utilities.]—"(1) [Rates.]—Any order under section 211 requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with subsection (a), on the transmission ratemaking methodology used by the Public Utility Commission of Texas.

"(2) [Definitions.]—For purposes of this subsection—

"(A) the term 'ERCOT' means the Electric Reliability Council of Texas; and

"(B) the term 'ERCOT utility' means a transmitting utility which is a member of ERCOT.". (106 Stat. 2916)

EXPLANATORY NOTE

<p>References in the Text. Section 210, 211, 212 and 213 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 824k) are either referenced on pages 262, 284, and 527 in Volume I or appear in Supplement I at page S101 ff. The text of the original section 213 does not appear herein. New sections 213 and 214 of the Federal Power</p>	<p>Act appear below in sections 723 and 724 of this Act and among amendments and annotations of the 1935 Act in Supplement II at page S841.</p> <p>The Pacific Northwest Electric Power Planning and Conservation Act of December 5, 1980(Public Law 96-501, 94 Stat. 2697; 16 U.S.C. § 839.) cited above appears in Volume IV at page 3225.</p>
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Sec. 723. [Information requirements.]—Part II of the Federal Power Act (16 U.S.C. § 824/) is amended by adding the following new section after section 212:

"Sec. 213. [Information requirements.]—"(a) [Requests for wholesale transmission services.]—Whenever any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale makes a good faith request to a transmitting utility to provide wholesale transmission

services and requests specific rates and charges, and other terms and conditions, unless the transmitting utility agrees to provide such services at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request, or other mutually agreed upon period, provide such person with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

"(b) [Transmission capacity and constraints.]—Not later than 1 year after the enactment of this section, the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints." (106 Stat. 2919)

Sec. 724. [Sales by exempt wholesale generators.]—Part II of the Federal Power Act (16 U.S.C. § 824m.) is amended by adding the following new section after section 213:

"Sec. 214. [Sales by exempt wholesale generators.]—"No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 205 if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms 'associate company' and 'affiliate' shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935." (106 Stat. 2920)

Sec. 725. [Penalties.]—(a) [Existing penalties not applicable to transmission provisions.]—Sections 315 and 316 of the Federal Power Act are each amended by adding the following at the end thereof:

"(c) This subsection shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision." (16 U.S.C. § 825n, 825o.)

EXPLANATORY NOTE

References in the Text. Sections 315 and 316 of the Federal Power Act (Act of August 26, 1935, ch. 687, 49 Stat. 803; 16 U.S.C. 825o) referenced above do not appear herein. Section 212 and the former section 213 are referenced on pages 262, 284, and 527 in Volume I. New sections 213 and 214 of the Federal Power Act appear above in sections 723 and 724 of this Act and among amendments and annotations of the 1935 Act in Supplement II at page S841.

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(b) [Penalties applicable to transmission provisions.]—Title III of the Federal Power Act is amended by inserting the following new section after section 316:

"Sec. 316A. [Enforcement of certain provisions.]—"(a) [Violations.]—It shall be unlawful for any person to violate any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.

"(b) [Civil penalties.]—Any person who violates any provision of section 211, 212, 213, or 214 or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$10,000 for each day that such violation continues. Such penalty shall be assessed by the Commission, after notice and opportunity for public hearing in accordance with the same provisions; as are applicable under section 31(d) in the case of civil penalties assessed under section 31. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner." (106 Stat. 2920) (16 U.S.C. § 825o-1.)

Sec. 726. [Definitions.]—(a) **[Additional definitions.]**—Section 3 of the Federal Power Act is amended by adding the following at the end thereof:

"(23) [Transmitting utility.]—The term 'transmitting utility' means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

"(24) [Wholesale, transmission services.]—The term 'wholesale transmission services' means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

"(25) [Exempt wholesale generator.]—The term 'exempt wholesale generator' shall have the meaning provided by section 32 of the Public Utility Holding Company Act of 1935." (16 U.S.C. § 796)

EXPLANATORY NOTE

Reference in the Text. Section 3 of the Federal Water Power Act (Act of June 20, 1920, ch. 285, 41 Stat. 1063; 16 U.S.C. § 796) appears at page 264 in Volume I and amendments thereto appear at pages S56 and S57 of	Supplement I and at page S813 in Supplement II. The Public Utility Holding Company Act of 1935 is referenced at page 527 of Volume I but does not appear therein.
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(b) [Clarification of terms.]—Section 3(22) of the Federal Power Act is amended by inserting "(including any municipality)" after "State agency". (106 Stat. 2921)

Subtitle C—State and Local Authorities

Sec. 731. [State authorities.]—Nothing in this title or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities. (106 Stat. 2921; 15 U.S.C. § 79 note.)

* * * * *

TITLE XVII—ADDITIONAL FEDERAL POWER ACT PROVISIONS

Sec. 1701. [Additional Federal Water Power Act provisions.]—(a) [Annual charges for costs.]—

(1) Section 10(e)(1) of the Federal Power Act (16 U.S.C. § 803.) is amended by striking the semicolon after "Part" and inserting the following: ", including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this part;"

(2) Section 10(e)(1) of such Act is further amended by inserting after "as conditions may require:" the following proviso: "*Provided*, That, subject to annual appropriations Acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended:"

EXPLANATORY NOTE

Reference in the Text. Section 10(e) of the Federal Water Power Act (Act of June 20, 1920, ch. 285, 41 Stat. 1068; 16 U.S.C. 803) appears on page 272 in Volume I and among the amendments and annotations of the 1920 Act in Supplement II at page S813.

(b) [Clarification of authority regarding fishways.]—The definition of the term "fishway" contained in 18 C.F.R. 4.30(b)(9)(iii), as in effect on the date of enactment of this Act, is vacated without prejudice to any definition or interpretation by rule of the term "fishway" by the Federal Energy Regulatory Commission for purposes of implementing section 18 of the Federal Power Act: *Provided*, That any future definition promulgated by regulatory rulemaking shall have no force or effect unless concurred in by the Secretary of the Interior and the Secretary of Commerce: *Provided further*, That the items which may constitute a "fishway" under section 18 for the safe and timely upstream and downstream

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passage of fish shall be limited to physical structures, facilities, or devices necessary to maintain all life stages of such fish, and project operations and measures related to such structures, facilities, or devices which are necessary to ensure the effectiveness of such structures, facilities, or devices for such fish. (16 U.S.C. § 811 note.)

(c) [Extension of deadlines.]—(1) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 4031 (and after reasonable notice), is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction of such project for up to a maximum of 3 consecutive 2-year periods. This section shall take effect for such project upon the expiration of the extension (issued by the Commission under such section 13) of the period required for commencement of construction of such project.

(2) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 6221 (and after reasonable notice), is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend the time required for commencement of construction of such project until July 29, 1995.

(3) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC project numbered 6641 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until June 29, 1996, the time required for the licensee to acquire the required real property and commence the construction of project numbered 6641, and until June 29, 2000, the time required for completion of construction of such project.

(4) Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee of FERC project numbered 4656 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until March 26, 1999, the time required for the licensee to acquire the required real property and commence the construction of project numbered 4656.

(5) The authorization for issuing extensions under paragraphs (1) through (4) shall terminate 3 years after the date of enactment of this section. To facilitate requests under such subsections, the Commission may consolidate the

requests. The Commission shall provide at the beginning of each Congress a report on the status of all extensions granted by Congress regarding the requirements of section 13 of the Federal Power Act, including information about any delays by the Commission on the licensee and the reasons for such delays.

(d) [Eminent domain.]—Section 21 of the Federal Power Act is amended by striking the period at the end thereof and adding the following: *"Provided further, That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law. In the case of lands or other property that are owned by a State or political subdivision and are part of or included within a public park, recreation area or wildlife refuge established under State or local law on or after the date of enactment of such Act, no licensee may use the right of eminent domain under this section to acquire such lands or property unless there has been a public hearing held in the affected community and a finding by the Commission, after due consideration of expressed public views and the recommendations of the State or political subdivision that owns the lands or property, that the license will not interfere or be inconsistent with the purposes for which such lands or property are owned."* (106 Stat. 3008) (16 U.S.C. § 814.)

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TITLE XXIV—NON-FEDERAL POWER ACT
HYDROPOWER PROVISIONS

Sec. 2401. [Rights-of-way on certain Federal lands.]—Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1761) is amended—

(1) by inserting in subsection (a) after "public lands" the following: "(including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. § 818))";

(2) in paragraph (4) of subsection (a), by striking "Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. § 791)" and inserting in lieu thereof "Federal Energy Regulatory Commission under the Federal Power Act, including Part 1 thereof (41 Stat. 1063, 16 U.S.C. § 791a-825r)."; and

(3) by adding the following new subsection at the end thereof:

"(d) With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, Part I of the Federal Power Act which is

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located on lands subject to a reservation under section 24 of the Federal Power Act and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation." (106 Stat. 3096)

EXPLANATORY NOTE

Reference in the Text. Section 501 of the Federal Land Policy and Management Act of 1976 (Act of October 21, 1976, 90 Stat. 2776; 43 U.S.C. § 1761) appears in Volume IV at page 3002. Amendments and annotations of the 1976 Act appear in Supplement II at page S1058.

Sec. 2402. [Dams in national park system units.]—After the date of enactment of this Act, the Federal Energy Regulatory Commission may not issue an original license under Part I of the Federal Power Act (nor an exemption from such Part) for any new hydroelectric power project located within the boundaries of any unit of the National Park System that would have a direct adverse effect on Federal lands within any such unit. Nothing in this section shall be construed as repealing any existing provision of law (or affecting any treaty) explicitly authorizing a hydroelectric power project. (106 Stat. 3097; 16 U.S.C. § 797c.)

Sec. 2403. [Third party contracting by FERC.]—(a) [Environmental impact statements.]—Where the Federal Energy Regulatory Commission is required to prepare a draft or final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 and following) in connection with an application for a license under part I of the Federal Power Act, the Commission may permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant and chosen by the Commission from among a list of such individuals or companies determined by the Commission to be qualified to do such work, to prepare such statement for the Commission. The contractor shall execute a disclosure statement prepared by the Commission specifying that it has no financial or other interest in the outcome of the project. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

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EXPLANATORY NOTE

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970, Public Law 91-190, 83 Stat. 852; 42 U.S.C. § 4321) appears in Volume IV at page 2492.

(b) [Environmental assessments.]—Where an environmental assessment is required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 and following) in connection with an application for a license under part I of the Federal Power Act, the Commission may permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission may allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

(c) [Effective date.]—This section shall take effect with respect to license applications filed after the enactment of this Act. (106 Stat. 3097; 16 U.S.C. § 797d.)

Sec. 2404. [Improvement at existing Federal facilities.]—(a) [Studies of opportunities for increased hydroelectric generation.]—The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary, shall perform reconnaissance level studies of cost effective opportunities to increase hydropower production at existing federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within 2 years after the date of enactment of this Act and transmitted to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and to the Committee on Energy and Commerce, the Committee on Interior and Insular Affairs, and the Committee on Public Works and Transportation of the United States House of Representatives. An individual study shall be prepared for each of the Nation's principal river basins. Each such study shall identify and describe with specificity the following matters:

(1) opportunities to improve the efficiency of hydroelectric generation at such facilities through, but not limited to, mechanical, structural, or operational changes;

(2) opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improvement could, in the absence of legal or administrative constraints, make additional water supplies available for hydroelectric generation or reduce project energy use;

(3) opportunities to create additional generating capacity at existing facilities through, but not limited to, the construction of additional generating units, the uprating of generators and turbines, and the construction of pumped storage

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facilities; and

(4) preliminary assessment of the costs and the economic and environmental consequences of such measures.

(b) [Exception for previous studies.]—In those cases where studies of the type required by this section have been prepared by any agency of the United States and published within the ten years prior to the date of enactment of this Act, the Secretary of the Interior, or the Secretary of the Army, may choose not to perform new studies but incorporate the information developed by such studies into the study reports required by this section.

(c) [Authorization.]—There is authorized to be appropriated in each of the fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section. (106 Stat. 3097; 109 Stat. 719; 16 U.S.C. § 797 note.)

EXPLANATORY NOTE

1995 Amendment. Subsection 1052(h) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 707) amended section 2404 (1) in subsection (a), by striking "The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army," and inserting "The Secretary of the Interior and the Secretary

of the Army, in consultation with the Secretary,"; and (2) in subsection (b), by striking "the Secretary" and inserting "the Secretary of the Interior, or the Secretary of the Army,". Extracts from the 1995 Act appear in Volume V at page 4070.

Sec. 2405. [Water conservation and energy production.]—(a) [Studies.]—The Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388), and Acts supplementary thereto and amendatory thereof, is authorized and directed to conduct feasibility investigations of opportunities to increase the amount of hydroelectric energy available for marketing by the Secretary from Federal hydroelectric power generation facilities resulting from a reduction in the consumptive use of such power for Federal reclamation project purposes or as a result of an increase in the amount of water available for such generation because of water conservation efforts on Federal reclamation projects or a combination thereof. The Secretary of the Interior is further authorized and directed to conduct feasibility investigations of opportunities to mitigate damages to or enhance fish and wildlife as a result of increasing the amount of water available for such purposes because of water conservation efforts on Federal reclamation projects. Such feasibility investigations shall include, but not be limited to—

- (1) an analysis of the technical, environmental, and economic feasibility of reducing the amount of water diverted upstream of such Federal hydroelectric power generation facilities by Federal reclamation projects;
- (2) an estimate of the reduction, if any, of project power consumed as a result of the decreased amount of diversion;
- (3) an estimate of the increase in the amount of electrical energy and related

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revenues which would result from the marketing of such power by the Secretary;

(4) an estimate of the fish and wildlife benefits which would result from the decreased or modified diversions;

(5) a finding by the Secretary of the Interior that the activities proposed in the feasibility study can be carried out in accordance with applicable Federal and State law, interstate compacts and the contractual obligations of the Secretary; and

(6) a finding by the affected Federal Power Marketing Administrator that the hydroelectric component of the proposed water conservation feature is cost-effective and that the affected Administrator is able to market the hydroelectric power expected to be generated.

(b) [Consultation.]—In preparing feasibility studies pursuant to this section, the Secretary of the Interior shall consult with, and seek the recommendations of, affected State, local and Indian tribal interests, and shall provide for appropriate public comment.

(c) [Authorization.]—There is hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this section. (106 Stat. 3098; 16 U.S.C. § 797 note.)

Sec. 2406. [Federal projects in the Pacific Northwest—Effective date.]—Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to plan, design, construct, operate and maintain generation additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region as defined in the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Public Law 96-501 (16 U.S.C. § 839a(14)), and to operate and maintain the respective Secretary's power facilities in the Region, that the respective Secretary determines necessary or appropriate and that the Bonneville Power Administrator subsequently determines necessary or appropriate, with any funds that the Administrator determines to make available to the respective Secretary for such purposes. Each Secretary is authorized, without further appropriation, to accept and use such funds for such purposes: *Provided*, That, such funds shall continue to be exempt from sequestration pursuant to section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That this section shall not modify or affect the applicability of any provision of the Northwest Power Act. This provision shall be effective on October 1, 1993. (106 Stat. 3099; 16 U.S.C. § 839d-1.)

EXPLANATORY NOTE

References in the Text. The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Act of December 5, 1980 (Public Law 96-501, 94 Stat. 2697; 16 U.S.C. § 839a(14)) appears in Volume IV at page 3225. The Balanced Budget and Emergency Deficit Control Act of 1985 does not appear herein.

Sec. 2407. [Certain projects in Alaska.]—(a) [Authority to issue exemptions.]—Except as provided in subsection (b) or (c), upon receipt of an application under this section, the Federal Energy Regulatory Commission (hereinafter in this section referred to as the "Commission") may grant, notwithstanding the provisions of section 2402, an exemption in whole or in part from the requirements of part I of the Federal Power Act, including any license requirements contained in part I of the Federal Power Act, to the following facilities located in the State of Alaska:

(1) a project located at Sitka, Alaska, with application numbered UL89-08-000;

(2) a project located at Juneau, Alaska, with preliminary permit numbered 10681-000; and

(3) a project located near Nondalton, Alaska, with application numbered EL88-25-001.

(b) [Capacity limitations.]—No exemption under subsection (a) shall be applicable to any facility the installed capacity of which exceeds 5 megawatts.

(c) [Mandatory terms and conditions.]—In making the determination under subsection (a), the Commission shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State of Alaska, 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, National Marine Fisheries 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 ensure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

(d) [Enforcement.]—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 the Federal Power Act.

(e) [Fees.]—The Commission may establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

(f) [Expedited processing.]—A completed application for an exemption under this section shall be acted on by the Commission in an expedited manner,

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in accordance with this section, within 6 months after the date on which the application for such exemption is applied for, or as promptly as practicable thereafter. (106 Stat. 3099)

EXPLANATORY NOTE

Reference in the Text. The Fish and Wildlife Coordination Act, Act of August 14, 1946 (ch. 965, 60 Stat. 1080) appears in Volume II at page 839. Amendments to the Act appear in Volume III at pages 1823 and 1434. Annotations appear in Supplement I at page S167.

Sec. 2408. [Projects on fresh waters in State of Hawaii.]—The Federal Energy Regulatory Commission, in consultation with the State of Hawaii, shall carry out a study of hydroelectric licensing in the State of Hawaii. For purposes of considering whether such licensing should be transferred to the State, within 18 months after the enactment of this Act, the Commission shall complete the study and submit a report containing the results of the study to the Committee on Energy and Commerce of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate. The study shall examine, and the report shall at a minimum contain an analysis of, each of the following:

(1) The State regulatory programs applicable to hydroelectric power production and the extent to which such programs are suitable as a substitute for regulation of such projects under the Federal Power Act, taking into consideration all aspects of such regulation, including energy, environmental, and safety considerations.

(2) Any unique geographical, hydrological, or other characteristics of waterways in Hawaii or any other aspects of hydroelectric power development and natural resource protection in Hawaii that would justify or not justify the permanent transfer of Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects to that State.

(3) The adequacy of mechanisms and procedures for consideration of fish and wildlife and other environmental values applicable in connection with hydroelectric power development in Hawaii under the State programs referred to in paragraph (1).

(4) Any national policy considerations that would justify or not justify the removal of Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects in Hawaii.

(5) The precedent-setting effect, if any of provisions of law adopted by the Congress removing Federal Energy Regulatory Commission jurisdiction over hydroelectric power projects in Hawaii. (106 Stat. 3100; 16 U.S.C. § 797 note.)

Sec. 2409. [Evaluation of development potential.]—The Act of August 30, 1935 (Public Law No. 409 of the 74th Congress, 49 Stat. 1028), is amended by

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inserting "The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents;" after "Document Numbered 15, Seventy-fourth Congress;". (106 Stat. 3101)

EXPLANATORY NOTE

Reference in the Text. An extract from the Act of August 30, 1935 (Public Law No. 409 of the 74th Congress, 49 Stat. 1028) appears in Volume I at page 538 and in Supplement II at page S851.

* * * * *

TITLE XXVI-INDIAN ENERGY RESOURCES

Sec. 2601. [Definitions.]—For purposes of this title—(1) the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) the term "Indian reservation" includes Indian reservations; public domain Indian allotments; former Indian reservations in Oklahoma; land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.); and dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State. (106 Stat. 3113; 25 U.S.C. § 3501.)

EXPLANATORY NOTE

Reference in the Text. The Alaska Native Claims Settlement Act (106 Stat. 3113; 25 U.S.C. § 3501, 43 U.S.C. § 1601 et seq.) does not appear herein.

Sec. 2602. [Tribal consultation.]—In implementing the provisions of this Act, the Secretary of Energy shall involve and consult with Indian tribes to the maximum extent possible and where appropriate and shall do so in a manner that is consistent with the Federal trust and the Government-to-Government relationships between Indian tribes and the Federal Government. (25 U.S.C. § 3502.)

Sec. 2603. [Promoting energy resource development and energy vertical integration on Indian reservations.]—(a) [Demonstration programs.]—The Secretary of Energy, in consultation with the Secretary of the Interior, shall establish and implement a demonstration program to assist Indian tribes in pursuing energy self-sufficiency and to promote the development of a vertically integrated energy industry on Indian reservations, in order to increase development of the substantial energy resources located on such Indian reservations. Such program shall include, but not be limited to, the following components:

(1) The Secretary shall provide development grants to Indian tribes or to joint ventures which are 51 percent or more controlled by an Indian tribe to assist Indian tribes in obtaining the managerial and technical capability needed to develop the energy resources on Indian reservations. Such grants shall include provisions for management training for tribal or village members, improving the technical capacity of the Indian tribe, and the reduction of tribal unemployment. Each grant shall be for a period of 3 years.

(2) The Secretary shall provide grants, not to exceed 50 percent of the project costs, for vertical integration projects. For purposes of this paragraph, the term "vertical integration project" means a project that promotes the vertical integration of the energy resources on an Indian reservation, so that the energy resources are used or processed on such Indian reservation. Such term includes, but is not limited to, projects involving solar and wind energy, oil refineries, the generation and transmission of electricity, hydroelectricity, cogeneration, natural gas distribution, and clean, innovative uses of coal.

(3) The Secretary shall provide technical assistance (and such other assistance as is appropriate) to Indian tribes for energy resource development and to promote the vertical integration of energy resources on Indian reservations.

(b) [Low interest loans.]—(1) [In general.]—The Secretary shall establish a program for making low interest loans to Indian tribes. Such loans shall be used exclusively by Indian tribes in the promotion of energy resource development and vertical integration on Indian reservations.

(2) [Terms.]—The Secretary shall establish reasonable terms for loans made under this section which are to be used to carry out the purposes of this section.

(c) [Authorization of appropriations.]—There are authorized to be appropriated—

(1) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(1);

(2) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (a)(2); and (3) \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of subsection (b).

Sec. 2604. [Indian energy resource regulation.]—(a) [Grants.]—The Secretary of the Interior is authorized to make annual grants to Indian tribes for the purpose of assisting Indian tribes in the development, administration, implementation, and enforcement of tribal laws and regulations governing the development of energy resources on Indian reservations.

(b) [Purpose.]—The purposes for which funds provided under a grant awarded under subsection (a) may be used include, but are not limited to—

- (1) the training and education of employees responsible for enforcing or monitoring compliance with Federal and tribal laws and regulations;
- (2) the development of tribal inventories of energy resources;
- (3) the development of tribal laws and regulations;
- (4) the development of tribal legal and governmental infrastructure to regulate environmental quality pursuant to Federal and tribal laws; and
- (5) the enforcement and monitoring of Federal and tribal laws and regulations.

(c) [Other assistance.]—The Secretary of the Interior and the Secretary of Energy shall cooperate with and provide assistance to Indian tribes for the purpose of assisting Indian tribes in the development, administration, and enforcement of tribal programs. Such cooperation and assistance shall include the following:

- (1) Technical assistance and training, including the provision of necessary circulars and training materials.
- (2) Assistance in the preparation and maintenance of a continuing inventory of information on tribal energy resources and tribal operations. In providing assistance under this paragraph, Federal departments and agencies shall make available to Indian tribes all relevant data concerning tribal energy resource development consistent with applicable laws regarding disclosure of proprietary and confidential information.

(d) [Authorization of appropriations.]—There are authorized to be appropriated \$10,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997 to carry out the purposes of this section. (106 Stat. 3114; 25 U.S.C. § 3504.)

Sec. 2605. [Indian Energy Resource Commission.]—(a) [Establishment.]—There is hereby established the Indian Energy Resource Commission (hereafter in this section referred to as the "Commission").

(b) [Membership.]—The Commission shall consist of—(1) 8 members appointed by the Secretary of the Interior from recommendations submitted by Indian tribes with developable energy resources, at least 4 of whom shall be elected tribal leaders;

(2) 3 members appointed by the Secretary of the Interior from recommendations submitted by the Governors of States that have Indian reservations with developable energy resources;

(3) 2 members appointed by the Secretary of the Interior from among individuals in the private sector with expertise in tribal and State taxation of energy resources;

(4) 2 members appointed by the Secretary of the Interior from individuals with expertise in oil and gas royalty management administration, including auditing and accounting;

(5) 2 members appointed by the Secretary of the Interior from individuals in the private sector with expertise in energy development;

(6) 1 member appointed by the Secretary of the Interior from recommendations submitted by National environmental organizations;

(7) the Secretary of the Interior, or his designee; and

(8) the Secretary of Energy, or his designee.

(c) [Appointments.]—Members of the Commission shall be appointed not later than 60 days after the date of the enactment of this title.

(d) [Vacancies.]—A vacancy in the Commission shall be filled in the same manner as the original appointment was made, A vacancy in the Commission shall not affect the powers of the Commission.

(e) [Chairperson.]—The members of the Commission shall elect a Chairperson from among the members of the Commission.

(f) [Quorum.]—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) [Organizational meeting.]—The Commission shall hold an organizational meeting to establish the rules and procedures of the Commission not later than 30 days after the members are first appointed to the Commission.

(h) [Compensation.]—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission, not to exceed the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation.

(i) [Travel.]—While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees under sections 5702 and 5703 of title 5, United States Code.

(j) [Commission staff.]—**(1) [Executive Director.]**—The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) [Additional personnel.]—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional

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personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such appointments shall be made in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, but at rates not to exceed the rate of basic pay payable for level 15 of the General Schedule.

(3) [Experts and consultants.]—Subject to such rules as may be issued by the Commission, the Chairperson may procure temporary and intermittent services of experts and consultants to the same extent as is authorized by section 3109 of title 6, United States Code, but at rates not to exceed \$200 a day for individuals.

(4) [Personnel detail authorized.]—Upon the request of the Chairperson, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title. Such detail shall be without interruption or loss of civil service status or privilege.

(k) [Duties of the Commission.]—The Commission shall—(1) develop proposals to address the dual taxation by Indian tribes and States of the extraction of mineral resources on Indian reservations;

(2) make recommendations to improve the management, administration, accounting and auditing of royalties associated with the production of oil and gas on Indian reservations;

(3) develop alternatives for the collection and distribution of royalties associated with production of oil and gas on Indian reservations;

(4) develop proposals on incentives to foster the development of energy resources on Indian reservations;

(5) identify barriers or obstacles to the development of energy resources on Indian reservations, and make recommendations designed to foster the development of energy resources on Indian reservations and promote economic development;

(6) develop proposals for the promotion of vertical integration of the development of energy resources on Indian reservations; and

(7) develop proposals on taxation incentives to foster the development of energy resources on Indian reservations including, but not limited to, investment tax credits and enterprise zone credits.

(l) [Powers of the Commission.]—The powers of the Commission shall include the following:

(1) For the purpose of carrying out its duties under this section, the Commission may hold hearings, take testimony, and receive evidence at such times and places as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out its duties under this section.

(m) [Commission report.]—(1) [In general.]—The Commission shall, within 12 months after funds are made available to carry out this section, prepare and transmit to the President, the Committee on Interior and Insular Affairs of the House of Representatives, the Select Committee on Indian Affairs of the Senate, and the Committee on Energy and Natural Resources of the Senate, a report containing the recommendations and proposals specified in subsection (k).

(2) [Review and comment.]—Prior to submission of the report required under this section, the Chairman shall circulate a draft of the report to Indian tribes and States that have Indian reservations with developable energy resources and other interested tribes and States for review and comment.

(n) [Authorization of appropriations.]—There are authorized to be appropriated to the Commission \$1,000,000 to carry out this section. Such sum shall remain available, without fiscal year limitation, until expended.

(o) [Termination .]—The Commission shall terminate 30 days after submitting the final report required by subsection (m). (106 Stat. 3115; 25 U.S.C. § 3505.)

Sec. 2606. [Tribal Government Energy Assistance Program.]—(a) [Financial assistance.]—The Secretary may grant financial assistance to Indian tribal governments, or private sector persons working in cooperation with Indian tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on Indian reservations. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial, or management issues identified by the applicants for such grants.

(b) [Conditions.]—Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions.

(c) [Considerations.]—In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

- (1) the extent of involvement of local educational institutions and local energy institutions;
- (2) the ease and costs of operation and maintenance of any project contemplated as a part of the project;
- (3) whether the measure will contribute significantly to the development, or the quality of the environment, of the affected Indian reservations; and

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(4) any other factors which the Secretary may determine to be relevant to a particular project.

(d) [Cost-share.]—With the exception of grants awarded for the purpose of feasibility studies, the Secretary shall require at least 20 percent of the costs of any project under this section to be provided from non-Federal sources, unless the grant recipient is a for-profit private sector institution, in which case the Secretary shall require at least 50 percent of the costs of any project to be provided from non-Federal sources.

(e) [Authorization of appropriations.]—There are authorized to be appropriated such sums as are necessary for the development and implementation of the program established by this section. (106 Stat. 3118; 25 U.S.C. § 3506.)

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EXPLANATORY NOTE

Legislative History. H.R. 776 (S. 2166), Public Law 102-486 in the 102nd Congress. Reported in the House from Energy and Commerce, Pt. 1; Science, Space, and Technology, Pt. 2; Public Works and Transportation, Pt. 3; Foreign Affairs, Pt. 4; Government Operations, Pt. 5; Ways and Means, Pt. 6; Judiciary, Pt. 7; Interior and Insular Affairs, Pt. 8; and Merchant Marine and Fisheries, Pt. 9; H.R. Repts. Nos. 102-474 and 102-1018 (Conference). S. 2166 considered and passed Senate February 5-7, 18, 19, 1992. H.R. 776 considered and passed House May 20, 21, 27, 1992. Considered and passed Senate, amended July 29, 30, 1992. House agreed to conference report and Senate considered conference report October 5, 1992. Senate agreed to conference report October 8, 1992. (106 Stat.3133)