

FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM ACT

An act to enable the Secretary of the Interior to provide for the operation, maintenance, and continued construction of the Federal transmission system in the Pacific Northwest by use of the revenues of the Federal Columbia River Power System and the proceeds of revenue bonds, and for other purposes. (Act of October 18, 1974, Public Law 93-454, 88 Stat. 1376)

SHORT TITLE

Section 1. This Act may be cited as the "Federal Columbia River Transmission System Act". (88 Stat. 1376; 16 U.S.C. § 838 note)

FINDINGS

Sec. 2. (a) Congress finds that in order to enable the Secretary of the Interior to carry out the policies of Public Law 88-552 relating to the marketing of electric power from hydroelectric projects in the Pacific Northwest, Public Laws 89-448 and 89-561 relating to use of revenues of the Federal Columbia River Power System to provide financial assistance to reclamation projects in the Pacific Northwest, the treaty between the United States and Canada relating to the cooperative development of the resources of the Columbia River Basin, and other applicable law, it is desirable and appropriate that the revenues of the Federal Columbia River Power System and the proceeds of revenue bonds be used to further the operation, maintenance, and further construction of the Federal transmission system in the Pacific Northwest.

(b) Other than as specifically provided herein, the present authority and duties of the Secretary of Energy relating to the Federal Columbia River Power System shall not be affected by this Act. The authority and duties of the Administrator referred to herein are subject to the supervision and direction of the Secretary. (88 Stat. 1376; Act of August 4, 1977, 91 Stat. 578; 16 U.S.C. § 838)

EXPLANATORY NOTES

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of Energy" for "Secretary of the Interior" in subsection (b) of the text. Extracts from the 1977 Act appear in Volume IV in chronological order.

References in the Text. Public Law 88-552 (78 Stat. 756), referred to in subsection (a) in the text, appears in Volume III at page 1760. Public Laws 89-448 (80 Stat. 200) and 89-561 (80 Stat. 707), also referred to in subsection (a) the text, appear in Volume III at pages 1870 and 1886 respectively.

DEFINITIONS

Sec. 3. As used in this Act—

(a) The term "Administrator" means the Administrator, Bonneville Power Administration.

(b) The term "electric power" means electric peaking capacity or electric energy, or both.

(c) The term "major transmission facilities" means transmission facilities intended to be used to provide services not previously provided by the Bonneville Power Administration with its own facilities. (88 Stat. 1376; 16 U.S.C. § 838a)

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Sec. 4. The Secretary of Energy, acting by and through the Administrator, shall operate and maintain the Federal transmission system within the Pacific Northwest and shall construct improvements, betterments, and additions to and replacements of such system within the Pacific Northwest as he determines are appropriate and required to:

(a) integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;

(b) provide service to the Administrator's customers;

(c) provide interregional transmission facilities; or

(d) maintain the electrical stability and electrical reliability of the Federal system: *Provided, however,* That the Administrator shall not construct any transmission facilities outside the Pacific Northwest, excepting customer service facilities within any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative which has (i) no generating facilities, and (ii) a distribution system from which it serves both within and without said region, nor shall he commence construction of any major transmission facility within the Pacific Northwest, unless the expenditure of the funds for the initiation of such construction is specifically approved by Act of Congress. (88 Stat. 1376; Act of August 4, 1977, 91 Stat. 578; 16 U.S.C. § 838b)

EXPLANATORY NOTE

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of Energy" for "Secretary of the Interior" in the text. Extracts from the 1977 Act appear in Volume IV in chronological order.

NOTES OF OPINIONS

Authorization by appropriation 1

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1. Authorization by appropriation

Language in an appropriation bill approving the expenditure of funds "for the construction of facilities to integrate new generating facilities at Colstrip, Montana, and the Bonneville Power Administration transmission grid," is sufficiently specific to authorize the Colstrip transmission lines. *County*

of Missoula v. Johnson, CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.*, 716 F.2d 910 (9th. Cir. 1983)

2. Construction outside Pacific Northwest

The Bonneville Power Administration has authority to construct transmission facilities outside of the Pacific Northwest, so long as specific approval of funds is made by Congress. *County of Missoula v. Johnson*, CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.*, 716 F.2d 910 (9th. Cir. 1983)

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3. NEPA compliance

Congress has full authority to fund a Bonneville Power Administration transmission project before an environmental impact

statement has been completed. *County of Missouri v. Johnson*, CV No. 81-35-Bu (D. Mont. Jan. 28, 1982), 13 ELR 20382, *affirmed mem.*, 716 F.2d 910 (9th. Cir. 1983)

CONGRESSIONAL APPROVAL OF EXPENDITURES

Sec. 5. (a) Unless specifically authorized by Act of Congress, the Administrator shall not expend funds made available under this Act, other than funds specifically appropriated by the Congress for such purpose, to acquire any operating transmission facility by condemnation: *Provided*, That this provision shall not restrict the acquisition of the right to cross such a facility by condemnation.

(b) At least sixty days prior to the time a request for approval or authority under section 4 or 5 of this Act is sent to Congress, the Administrator shall give notice of such request to entities in the Pacific Northwest with which the Administrator has power sales or exchange contracts or transmission contracts or which have a transmission interconnection with the Federal transmission system. (88 Stat 1377; 16 U.S.C. § 838c)

TRANSMISSION OF NON-FEDERAL POWER

Sec. 6. The Administrator shall make available to all utilities on a fair and nondiscriminatory basis, any capacity in the Federal transmission system which he determines to be in excess of the capacity required to transmit electric power generated or acquired by the United States. (88 Stat. 1377; 16 U.S.C. § 838d)

ACQUISITION OF PROPERTY

Sec. 7. Subject to the provisions of section 5 of this Act the Administrator may purchase or lease or otherwise acquire and hold such real and personal property in the name of the United States as he deems necessary or appropriate to carry out his duties pursuant to law. (88 Stat. 1377; 16 U.S.C. § 838e)

MARKETING AUTHORITY

Sec. 8. The Administrator is hereby designated as the marketing agent for all electric power generated by Federal generating plants in the Pacific Northwest, constructed by, under construction by, or presently authorized for construction by the Bureau of Reclamation or the United States Corps of Engineers except electric power required for the operation of each Federal project and except electric power from the Green Springs project of the Bureau of Reclamation. (88 Stat. 1377; 16 U.S.C. § 838f)

RATES AND CHARGES

Sec. 9. Schedules of rates and charges for the sale, including dispositions to Federal agencies, of all electric power made available to the Administrator

pursuant to section 8 of this Act or otherwise acquired, and for the transmission of non-Federal electric power over the Federal transmission system, shall become effective upon confirmation and approval thereof by the Federal Energy Regulatory Commission. Such rate schedules may be modified from time to time by the Secretary of Energy, acting by and through the Administrator, subject to confirmation and approval by the Federal Energy Regulatory Commission, and shall be fixed and established (1) with a view to encouraging the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles, (2) having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric power, including the amortization of the capital investment allocated to power over a reasonable period of years and payments provided for in section 11(b)(9), and (3) at levels to produce such additional revenues as may be required, in the aggregate with all other revenues of the Administrator, to pay when due the principal of, premiums, discounts, and expenses in connection with the issuance of and interest on all bonds issued and outstanding pursuant to this Act, and amounts required to establish and maintain reserve and other funds and accounts established in connection therewith. (88 Stat. 1377; Act of August 4, 1977, 91 Stat. 578; § 7(a), Act of December 5, 1980, 94 Stat. 2723; 16 U.S.C. § 838g)

EXPLANATORY NOTE

1977 and 1980 Amendments. Section 302(a) of the Department of Energy Reorganization Act (Act of August 4, 1977, Public Law 95-91, 91 Stat. 578) transferred to the Secretary of Energy the authority of the Secretary of the Interior to develop rates and charges for the Bonneville Power Administration, and section 301(b) of the 1977 Act transferred to the Secretary of Energy the authority of the Federal Power Commission to

confirm and approve such rates. However, section 7(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980, Public Law 96-501, 94 Stat. 2723) provided that the Administrator shall establish such rates and that the Federal Energy Regulatory Commission shall confirm and approve them. The 1977 and 1980 Acts appear herein in chronological order.

NOTES OF OPINIONS

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1. Interim rates

Section 301(b) of the Department of Energy Organization Act, through section 402(a)(2) of the Act, authorizes the Secretary of Energy, in the exercise of the rate approval authority for the Bonneville Power Administration (BPA) formerly in the Federal Power Commission (FPC), to utilize the authority of the FPC under, among others, section 16 of the Natural Gas Act, 15 U.S.C. 717o, which authorizes the FPC to perform all acts nec-

essary to carry out its functions. The Supreme Court has held that this includes the authority to set rates on an interim basis. Therefore, the Secretary of Energy has authority to promulgate interim rates for BPA. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp 672, 678-79 (D. Ore. 1980).

The Federal Power Commission had the power to confirm Bonneville Power Administration rates on an interim basis. The Secretary of Energy inherited these powers through the Department of Energy Organization Act. *Montana Power Company v. Edwards*, 531 F. Supp. 9 (D. Ore. 1981).

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2. Judicial review

Because section 6 of the Bonneville Project Act and section 9 of the Federal Columbia River Transmission System Act grant such broad discretion to the Secretary in the design of rates, there is no judicial review of rate design because there is no law to apply. *Pacific Power & Light Co. v. Duncan*, 499 F.2d 672, 681-82 (D. Ore. 1980)

3. Rate approval authority

In plain and unambiguous language, Congress, in section 301(b) of the Department of Energy Organization Act, granted the rate approval authority of the Federal Power Commission for Bonneville Power Administration to the Secretary of Energy, not to the Federal Energy Regulatory Commission. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 677-78 (D. Ore. 1980).

It is well within the Secretary of Energy's broad discretion under the Department of Energy Organization Act to delegate to the Assistant Secretary the authority to confirm and approve rates on an interim basis and to delegate or assign to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve rates on a final basis. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation

to FERC of rate confirmation authority for the Department of Energy's power marketing agencies.

Pursuant to section 301(b) of the Department of Energy Organization Act, the confirmation and approval authority of the Federal Power Commission for Federal power marketing rates is vested in the Secretary of Energy. Memorandum of General Counsel Coleman, October 14, 1978, in re proposed delegation to the Federal Energy Regulatory Commission of rate confirmation authority for the Department of Energy's power marketing agencies.

4. Ratemaking procedures

Where an increase in the wholesale power rates for the Bonneville Power Administration was placed into effect by the Assistant Secretary of Energy for Resource Applications pursuant to Delegation Order No. 0204-33, and the Bonneville Power Administration (BPA) under its published procedures had held 16 public hearings on its proposed rates and 7 more hearings on its revised proposed rates, the BPA customers have been afforded all the process due them under the law and the Constitution. *Pacific Power & Light Co. v. Duncan*, 499 F. Supp. 672, 679-81 (D. Ore. 1980).

UNIFORM RATES

Sec. 10. The said schedules of rates and charges for transmission, the said schedules of rates and charges for the sale of electric power, or both such schedules, may provide, among other things, for uniform rates or rates uniform throughout prescribed transmission areas. The recovery of the cost of the Federal transmission system shall be equitably allocated between Federal and non-Federal power utilizing such system. (88 Stat. 1378; 16 U.S.C. § 383h)

BONNEVILLE POWER ADMINISTRATION FUND

Sec. 11. (a) There is hereby established in the Treasury of the United States a Bonneville Power Administration fund (hereinafter referred to as the "fund"). The fund shall consist of (1) all receipts, collections, and recoveries of the Administrator in cash from all sources, including trust funds, (2) all proceeds derived from the sale of bonds by the Administrator, (3) any appropriations made by the Congress for the fund, and (4) the following funds which are hereby transferred to the Administrator: (i) all moneys in the special account in the Treasury established pursuant to Executive Order Numbered 8526 dated August 26, 1940, (ii) the unexpended balances in the continuing fund established by the provisions of section 11 of the Bonneville Project Act of August 20, 1937 (16 U.S.C. 831 et seq.), and (iii) the

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unexpended balances of funds appropriated or otherwise made available for the Bonneville Power Administration. All funds transferred hereunder shall be available for expenditure by the Secretary of Energy, acting by and through the Administrator, as authorized in this Act and any other Act relating to the Federal Columbia River transmission system, subject to such limitations as may be prescribed by any applicable appropriation act effective during such period as may elapse between their transfer and the approval by the Congress of the first subsequent annual budget program of the Administrator.

(b) The Administrator may make expenditures from the fund, which shall have been included in his annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law, including but not limited to—

(1) construction, acquisition, and replacement of (i) the transmission system, including facilities and structures appurtenant thereto, and (ii) additions, improvements, and betterments thereto (hereinafter in this Act referred to as "transmission system");

(2) operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under subsection (1) above, of the transmission system;

(3) electrical research, development, experimentation, test, and investigation related to construction, operation, and maintenance of transmission systems and facilities;

(4) marketing of electric power;

(5) transmission over facilities of others and rental, lease, or lease-purchase of facilities;

(6) purchase of electric power (including the entitlement of electric plant capability) (i) on a short-term basis to meet temporary deficiencies in electric power which the Administrator is obligated by contract to supply, or (ii) if such purchase has been heretofore authorized or is made with funds expressly appropriated for such purchase by the Congress, (iii) if to be paid for with funds provided by other entities for such purpose under a trust or agency arrangement, or (iv) on a short term basis to meet the Administrator's obligations under section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act;

(7) defraying emergency expenses or insuring continuous operation;

(8) paying the interest on, premiums, discounts, and expenses, if any, in connection with the issuance of, and principal of all bonds issued under section 13(a) of this Act, including provision for and maintenance of reserve and other funds established in connection therewith;

(9) making such payments to the credit of the reclamation fund or other funds as are required by or pursuant to law to be made into such funds in connection with reclamation projects in the Pacific Northwest: *Provided*, That this clause shall not be construed as permitting the use of revenues for repayment of costs allocated to irrigation at any project except as otherwise expressly authorized by law;

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(10) making payments to the credit of miscellaneous receipts of the Treasury for all unpaid costs required by or pursuant to law to be charged to and returned to the general fund of the Treasury for the repayment of the Federal investment in the Federal Columbia River Power System from electric power marketed by the Administrator;

(11) acquiring such goods and services, and paying dues and membership fees in such professional, utility, industry, and other societies, associations, and institutes, together with expenses related to such memberships, including but not limited to the acquisitions and payments set forth in the general provisions of the annual appropriations Act for the Department of Energy, as the Administrator determines to be necessary or appropriate in carrying out the purposes of this Act; and

(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.

(c) Moneys heretofore or hereafter appropriated shall be used only for the purposes for which appropriated, and moneys received by the Administrator in trust shall be used only for carrying out such trust. The provisions of the Government Corporation Control Act (31 U.S.C. 841 et seq.) shall be applicable to the Administrator in the same manner as they are applied to the wholly owned Government corporations named in section 101 of such Act (31 U.S.C. 846), but nothing in the proviso of section 850 of title 31, United States Code, shall be construed as affecting the powers granted in subsection (b)(11) of this section and in sections 2(f), 10(b), and 12(a) of the Bonneville Project Act (16 U.S.C. 832 et seq.).

(d) Notwithstanding the provisions of sections 105 and 106 of the Government Corporation Control Act, the financial transactions of the Administrator shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each such audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit. (88 Stat. 1378; § 11, Act of August 4, 1977, 91 Stat. 578 § 8, Act of December 5, 1980, 94 Stat. 2728; 16 U.S.C. § 838i)

EXPLANATORY NOTES

1980 Amendment. Subsections 8(a) and (b) of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980, Public Law 96-501, 94 Stat. 2728) amended subsection 11(b) by adding clause (iv) to paragraph (6) and adding paragraph (12). The 1980 Act appears in Volume IV in chronological order.

1977 Amendment. Section 302(a)(1)(D) of the Act of August 4, 1977 (Public Law 95-91, 91 Stat. 578) substituted "Secretary of En-

ergy" for "Secretary of Interior" in subsection (a) of the text and "Department of Energy" for "Department of the Interior" in subsection (b)(11). Extracts from the 1977 Act appear in Volume IV in chronological order.

Reference in the Text. The Government Corporation Control Act, referred to in subsections (a) and (b) of the text, has been recodified at 31 U.S.C. §§ 9101-09. It does not appear herein.

INVESTMENT OF EXCESS FUNDS

Sec. 12. (a) If the Administrator determines that moneys in the fund are

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in excess of current needs he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States of America.

(b) With the approval of the Secretary of the Treasury, the Administrator may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States of America, or in such other banks and financial institutions and under such terms and conditions as the Administrator and the Secretary of the Treasury may mutually agree. (88 Stat. 1378; 16 U.S.C. § 838)

REVENUE BONDS

Sec. 13. (a) The Administrator is authorized to issue and sell to the Secretary of the Treasury from time to time in the name and for and on behalf of the Bonneville Power Administration bonds, notes, and other evidences of indebtedness (in this Act collectively referred to as "bonds") to assist in financing the construction, acquisition, and replacement of the transmission system, to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from a generating facility having a planned capability greater than 50 average megawatts), and to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds are issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds issued by Government corporations. Beginning in fiscal year 1982, if the Administrator fails to repay by the end of any fiscal year all of the amounts projected immediately prior to such year to be repaid to the Treasury by the end of such year under the repayment criteria of the Secretary of Energy and if such failure is due to reasons other than (A) a decrease in power sale revenues due to fluctuating streamflows or (B) other reasons beyond the control of the Administrator, the Secretary of the Treasury may increase the interest rate applicable to the outstanding bonds issued by the Administrator during such fiscal year. Such increase shall be effective commencing with the fiscal year immediately following the fiscal year during which such failure occurred and shall not exceed 1 per centum for each such fiscal year during which such repayments are not in accord with such criteria. The Secretary

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of the Treasury shall take into account amounts that the Administrator has repaid in advance of any repayment criteria in determining whether to increase such rate. Before such rate is increased, the Secretary of the Treasury, in consultation with the Administrator and the Federal Energy Regulatory Commission, must be satisfied that the Administrator will have the ability to pay such increased rate, taking into account the Administrator's obligations. Such increase shall terminate with the fiscal year in which repayments (including repayments of the increased rate) are in accordance with the repayment criteria of the Secretary of Energy. The aggregate principal amount of any such bonds outstanding at any one time shall not exceed \$1,250,000,000 prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional \$1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds.

(b) The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. "Net proceeds" shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 11(b)(2) through 11(b)(7), 11(b)(11), and 11(b)(12), and shall include reserve or other funds created from such receipts.

(c) The Secretary of the Treasury shall purchase forthwith any bonds issued by the Administrator under this Act and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this Act. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this Act. All redemptions, purchases, and sales by the Secretary of the Treasury of such bonds shall be treated as public debt transactions of the United States. (88 Stat. 1380; § 8, Act of December 5, 1980, 94 Stat. 2728; 26 U.S.C. § 838k)

EXPLANATORY NOTES

1980 Amendment. Section 8 of the Pacific Northwest Electric Power Planning and Conservation Act (Act of December 5, 1980 Public Law 96-501, 94 Stat. 2728) amended subsection 13(a) by inserting in the first sentence the reference to implementing the 1980 Act; by adding the words "issued by Government corporations" to the end of the fourth sentence; by adding the fifth through ninth sentences authorizing the Secretary of the

Treasury to impose a penalty interest charge for failure to make projected repayment on appropriated debt; and by adding the language after "\$1,250,000,000" in the last sentence which increased the borrowing authority. The 1980 Act also added the reference to "11(b)(12)" in subsection 13(b). The 1980 Act appears in Volume IV in chronological order.

Legislative History. S. 3362, Public Law

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93-454 in the 93d Congress. Reported in Senate from Interior and Insular Affairs July 25, 1974; S. Rept. No. 93-1030. Passed Senate July 30, 1974. Reported in House from In-

terior and Insular Affairs September 25, 1974; H.R. Rept. No. 93-1375. Passed House October 7, 1974.