

BPA Statutes



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Introduction

This publication contains the Bonneville Power Administration's authorizing statutes — the Bonneville Project Act, the Federal Columbia River Transmission System Act and the Pacific Northwest Electric Power Planning and Conservation Act — and other federal laws that contain provisions that define BPA's mission and/or affect the way it is carried out.

With the exception of a few uncodified enactments, the laws contained by this publication are organized and presented in their United States Code format, rather than the Public Law format as passed. Thus, the Bonneville Project Act's section 2(f) is found at 16 U.S.C. § 832a(f). (The Public Law citations are included, however, and appear at the end of each paragraph.) In addition, later amendments to earlier laws are reflected in their United States Code format. For example, the Pacific Northwest Consumer Power Preference Act's definition of "Pacific Northwest" (16 U.S.C. § 837(b)) reflects the Pacific Northwest Power Planning and Conservation Act's later amendment of the definition of that term.

The laws are presented in the numerical order in which they appear in the United States Code, rather than in the order in which they became law. Therefore, the provision that exempts BPA from the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. Sec. 905(g)(1) (A)) is presented first. Uncodified enactments are presented after codified enactments by year of enactment, earliest first. These are followed by sections of all appropriation acts affecting BPA, and last is a list of the acts authorizing federal hydroelectric dams in the Columbia River Basin.

This publication is intended to be a convenient but unofficial guide to BPA-related laws. It is not an official reporter of these laws. All citations to these laws should be made to the United States Code or some other officially recognized reporter.

Bonneville's Exemption from the Balanced Budget and Emergency Deficit Control Act of 1985

2 United States Code Chapter 20 (2006).
Act of Dec. 12, 1985, Title II, §255, 99 Stat. 1082.
Public Law No. 99-177.

905(g)(1)(A). The following budget accounts and activities shall be exempt from reduction under any order issued under this subchapter:

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended [16 U.S.C. 838k] (89-4045-0-3-271);

Intragovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

[Pub.L. 99-177, Title II, §255, Dec. 12, 1985, 99 Stat. 1082.]

Legislative History for Bonneville Power Administration's Exemption from the Balanced Budget and Emergency Deficit Control Act of 1985

Dates of Consideration and Passage

House: August 1, November 1, 6, December 11, 1985

Senate: October 10, November 1, 4, 6, December 11, 1985

Senate Report (Finance Committee) No. 99-144,
Sept. 26, 1985 [To accompany H.J.Res. 372]

House Conference Report No. 99-351,
Nov. 1, 1985 [To accompany H.J.Res. 372]

House Conference Report No. 99-433,
Dec. 10, 1985 [To accompany H.J.Res. 372]

Cong. Record Vol. 131 (1985)

Bonneville fund
exemption

Government Organization and Employees Act

5 United States Code Chapter 53, Subchapter II (2006).
Act of Sept. 6, 1966, 80 Stat. 463, Public Law No. 89-554.
As amended Act of Sept. 23, 1996, 110 Stat. 2658
Public Law 104-201, Div. A, Title X, § 1073(e)(1)(A); Oct. 11, 1996,
110 Stat. 3400,
Public Law 104-287, § 7(5)

BPA Administrator
level V

5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of Title 2, as adjusted by section 5318 of this title:

Administrator, Bonneville Power Administration,
Department of the Interior.

* * *

[Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 463]

Legislative History for Government Organization and Employees Act

[None set out]

National Forest System Lands, Oregon

16 United States Code Chapter 2, note (2006).
Act of Nov. 23, 1977, 91 Stat. 1425.
Public Law No. 95-200.

482b. Mount Hood National Forest; mining rights

Historical Note

Bull Run Watershed Management Unit. Pub. L. 95-200, Nov. 23, 1977, 91 Stat. 1425 [as amended Pub.L. 104-333, Div. I, Title X, § 1026(a), Nov. 112, 1996, 110 Stat. 4228.], provided that:

“Preamble

“The Congress finds that an area of land in the State of Oregon known variously as the Bull Run National Forest and the Bull Run Forest Reserve is presently the source of the sole domestic water supply for the city of Portland, Oregon (hereinafter called the ‘city’) and other local governmental units and persons in the Portland metropolitan area, reserved for the city by a Presidential proclamation issued in 1892 and furnishing an extremely valuable resource of pure clear raw potable water, the continued production of which should be the principal management objective in the area hereinafter referred to as ‘the unit’; that the said area is now managed under terms of a Federal court decree issued pursuant to turn of the century law which does not appropriately address present and future needs and opportunities for the protection, management, and utilization of the resources contained therein.

“Designation of Unit

“Section 1. There is hereby established, subject to valid existing rights, a special resources management unit within the Mount Hood National Forest, State of Oregon, comprising approximately 95,382 acres as depicted on a map dated April 1977, and entitled ‘Bull Run Watershed Management Unit, Mount Hood National Forest’, which is on file and available for public inspection in the offices of the Chief, and the Regional Forester —Pacific Northwest Region, Forest Service, Department of Agriculture, minor adjustments in the boundaries of which may be made from time to time by the Secretary of Agriculture (hereinafter the ‘Secretary’) after consultation with the city and appropriate public notice and hearings.

“Management

“Section 2.

“(a) The unit and the renewable resources therein, shall be administered as a watershed by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to National Forest System lands except to the extent that any management plan or practice is found by the Secretary to have a significant adverse effect on compliance with the water quality standards referred to in section 2(c) hereof or on the quantity of the water

Bull Run watershed
management

National Forest System Lands (continued)

produced thereon for the use of the city, and other local government units and persons using such water under agreements with the city (and the Secretary shall take into consideration the cumulative effect of individually insignificant degradations), in which case, and notwithstanding any other provision of law, the management plan and all relevant leases, permits, contracts, rights-of-way, or other rights or authorizations issued pursuant thereto shall forthwith be altered by the Secretary to eliminate such adverse effect by application of different techniques or prohibitions of one or more such practices or uses: Provided, however, That use of such water for the production of energy and the transmission of such energy through and over the unit are deemed consistent with the purposes of this Act.

“(b) Timber Cutting. –

“(1) In general. –Subject to paragraph (2), the Secretary of Agriculture shall prohibit the cutting of trees in that part of the unit consisting of the hydrographic boundary of the Bull Run River Drainage, including certain lands within the unit and located below the headworks of the city of Portland, Oregon’s water storage and delivery project, and as depicted in a map dated July 22, 1996, and entitled ‘Bull Run River Drainage’.

“(2) Permitted cutting. –

“(A) In general. –Subject to subparagraph (B), the Secretary of Agriculture shall prohibit the cutting of trees in the area described in subparagraph (1).

“(B) Permitted cutting. –Subject to subparagraph (C), the Secretary may only allow the cutting of trees in the area described in subparagraph (1) –

“(i) for the protection or enhancement of water quality in the area described in subparagraph (1); or

“(ii) for the protection, enhancement, or maintenance of water quantity available from the area described in subparagraph (1); or

“(iii) for the construction, expansion, protection or maintenance of municipal water supply facilities; or

“(iv) for the construction, expansion, protection or maintenance of facilities for the transmission of energy through and over the unit or previously authorized hydroelectric facilities or hydroelectric projects associated with municipal water supply facilities.

“(C) Salvage sales. –The Secretary of Agriculture may not authorize a salvage sale in the area described in subparagraph (1).”

“(c) The policy set forth in subsection (a) shall be attained through the development, maintenance, and periodic revision of land management plans in accordance with procedures set forth in section 5 (6) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477, as amended; 16 U.S.C. 1604), through the maintenance of systems for monitoring and evaluating water quality, and through supporting scientific research as the Secretary may deem necessary after consultation and in coordination with the city. In the development and revision of land management plans for

National Forest System Lands (continued)

the unit, the Secretary, except as otherwise provided in section 2(a) hereof, shall provide for public participation and shall consult and coordinate with appropriate officials and advisors of the city, and shall consider such data and research as the city may collect through its own monitoring systems and scientific efforts, if any. Such plans shall be prepared by an interdisciplinary team; be embodied in appropriate written material, including maps and other descriptive documents; shall contain water quality standards developed by the Secretary after consultation and in cooperation with the city, which standards shall be substantially based on and shall reflect a quality of water not significantly less than the quality reflected by percentile curves developed from data collected from 1967 through 1975 and, if none, from data collected in the first three years of record thereafter; and be available to the public at convenient locations. The initial plan or plans shall be completed as soon as practicable after the enactment of this Act (Nov. 23, 1977), but not later than September 30, 1979. Current data shall be compared to historical data at least annually for the purpose of determining compliance with the standards and the significance of any deviation therefrom. Deviations occurring from operation, maintenance, alteration, or construction of water storage, or electrical generation and transmission facilities, seasonal fluctuations, variations in climate, and other natural phenomena, fire, or acts of God, shall not be considered in determining the historical or current percentile curves.

“(d) The Secretary or his representative shall, upon request, and at least annually, meet with appropriate officials of the city for the purpose of reviewing planned management programs and the impact thereof on the quality and quantity of the water produced on the unit and assuring that their respective management and operational activities within the unit are appropriately coordinated. The Secretary shall negotiate in good faith cooperative agreements with appropriate officials of the city to effectuate activity coordination.

“(e) In the event there is disagreement between the city and the Secretary with respect to the development or revision of the water quality standards provided for herein, or with respect to the effect or the significance of such effect of one or more proposed or existing programs, practices, uses, regulations, or boundary adjustments (except as otherwise specifically provided for herein), on the quantity of the water produced on said unit, or on compliance with the water quality standards referred to in section 2(a) and (b) hereof and, therefore, with respect to the necessity for an alteration or prohibition of any such program, practice, use, regulation, or boundary adjustment as required in section 2(a) hereof, an arbitration board for resolving such disagreements shall be established. The Secretary and the city shall, each, forthwith appoint one member to such board and those two members shall select a third. In the event agreement cannot be reached on the third member within seven days after the appointment of the first two, the third member shall be appointed by the presiding judge of the United States District Court for the District of Oregon within seven days after being notified of such disagreement by either of the first two members. All of said members shall make a scientific determination of the facts. The contentions of the city and the Secretary

National Forest System Lands (continued)

shall be submitted to the board in the form of written contentions of fact together with the evidence and analysis that tends to support the position being presented. The board shall forthwith consider and decide, on a scientific basis, the issues in disagreement by majority vote, taking into consideration the evidence and data presented by the parties and such other tests and data which the board by majority vote may require. The decision of such board shall be in the form of written findings of fact and conclusions based thereon and shall be final and binding on the parties. The Secretary and the city shall compensate their designees and share equally the compensation of the third member, and shall provide such technical and administrative support as required.

“(f) The Secretary is authorized, after consultation with the city, to promulgate regulations for controlling entry into the unit by all persons including but not limited to—

“(1) employees or contractors of the city engaged in the inspection, maintenance, construction, or improvement of the city’s facilities;

“(2)

(i) Federal, State, and local government officers and

(ii) employees thereof acting in an official capacity;

“(3) Federal, State, and local government permittees and contractors conducting authorized activities;

“(4) members of advisory groups formed pursuant to this Act or ordinances of the city in the performance of their official duties:

Provided, That no regulation promulgated pursuant to this subsection shall prohibit ingress or egress to non-Federal lands or to authorized occupancies on, or uses of, Federal lands: Provided further, That the Secretary may independently and directly prohibit or restrict all entry into the unit during fire or other emergencies as he may determine.

“Effect on Other Laws

“Sec. 3.

“(a) Nothing in this Act shall terminate or affect any lease, permit, contract, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act (Nov. 23, 1977) and otherwise valid except for the provisions of section 1862 of title 18 of the United States Code.

“(b) Nothing in this Act shall in any way affect any law governing appropriation or use of, or Federal right to, water on National Forest System lands; or as expanding or diminishing Federal, State, or local jurisdiction, responsibility, interests, or rights in water resources development or control.

“(c) Section 1862 of title 18 of the United States Code is hereby repealed.

“(d) Except as otherwise provided for herein, this Act shall take precedence over and supersede all State and local laws dealing with or affecting the subject matter of this Act.

National Forest System Lands (continued)

“(e) Challenge to actions taken by any governmental unit or official under the provisions of this Act shall not be sustained by any court except upon a showing of arbitrary, unreasonable, capricious, or illegal action or an absence of substantial good faith compliance with the procedural provisions hereof substantially prejudicing the rights of an interested party.”

Legislative History for National Forest System Lands, Oregon

Dates of Consideration and Passage

House: November 2, 1977

Senate: November 4, 1977

House Report (Interior and Insular Affairs Committee)
No. 95-622, Sept. 23, 1977 [To accompany H.R. 7074]

Cong. Record Vol. 123 (1977)

Columbia River Gorge National Scenic Area Act

16 United States Code Chapter 2 (2006).
Act of Nov. 17, 1986, 17, 100 Stat. 4274, 4300.
Public Law No. 99-663.

544o. Savings provisions

544o(a). Effect on existing transmission facilities

Nothing in sections 544 to 544p of this title shall—

544o(a)(6) affect or modify the ability of the Bonneville Power Administration to operate, maintain, and modify existing transmission facilities;

[Pub.L. 99-663, § 17, Nov. 17, 1986, 100 Stat. 4300]

544o(b). Improvement of navigation facilities at Bonneville Dam

Except for the offsite disposal of excavation material, nothing in sections 544 to 544p of this title shall be construed to affect or modify the responsibility of the United States Army Corps of Engineers to improve navigation facilities at Bonneville Dam pursuant to Federal law.

[Pub.L. 99-663, § 17, Nov. 17, 1986, 100 Stat. 4300]

Legislative History for Columbia River Gorge National Scenic Area Act

Dates of Consideration and Passage

House: October 16, 1986

Senate: October 17, 1986

H.R. 5705

S. 2055

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BPA exemptions

Federal Power Act

Act of June 10, 1920, ch. 285, 41 Stat. 1063.

As amended by

Energy Policy Act of 1992

Act of Oct. 24, 1992, Title VII, Sub Title B, 106 Stat. 2921.
Public Law No. 102-486, H.R. 776 (S. 2166).

And as amended by

Energy Policy Act of 2005

Act of Aug. 8, 2005, Title XII, 119 Stat. 594.
Public Law No. 109-58, H.R. 6 (S. 10).

16 United States Code Chapter 12, Subchapters I, II & III (2006).¹

796. Definitions

Definitions

796(19). “Federal power marketing agency” means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

[Federal Power Act, §3(19), as added by, Public Utilities Regulatory Policies Act of 1978, Nov. 9, 1978, §201, P. L. 95-617, 92 Stat. 3117.]

796(22). Electric utility.

796(22)(A). The term “electric utility” means a person or Federal or State agency (including an entity described in section 824 (f) of this title) that sells electric energy.

796(22)(B). The term “electric utility” includes the Tennessee Valley Authority and each Federal power marketing administration.

[Federal Power Act, § 3(22), as added by, Public Utilities Regulatory Policies Act of 1978, Nov. 9, 1978, §201, P. L. 95-617, 92 Stat. 3117, as amended by, Energy Policy Act of 2005, Aug. 8, 2005, §1291(b)(1), P. L. 109-58, 119 Stat. 594.]

796(23). Transmitting utility.

The term “transmitting utility” means an entity (including an entity described in section 824(f) of this title) that owns, operates, or controls facilities used for the transmission of electric energy-

796(23)(A). in interstate commerce;

796(23)(B). for the sale of electric energy at wholesale.

[Federal Power Act, §3(23), as added by, Energy Policy Act of 1992, Oct. 24, 1992, Title VII, Sub Title B, §726(a)(23), P.L. 102-486, 106 Stat. 2921, as amended by, Energy Policy Act of 2005, Aug. 8, 2005, §1291(b)(1), P.L. 109- 58, 119 Stat. 594.]

¹ § 2406 of the Energy Policy Act of 1992 is codified at 16 U.S.C § 839d-1.
§ 503 of the Energy Policy Act of 2005 is codified at 25 U.S.C. § 3505.

Federal Power Act (continued)

796(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.

[Federal Power Act, §3(24), as added by, Energy Policy Act of 1992, Oct. 24, 1992, Title VII, Subtitle B, §726(a)(24), P.L. 102-486, 106 Stat. 2921.]

796(27). RTO.

The term “Regional Transmission Organization” or “RTO” means an entity of sufficient regional scope approved by the Commission—

796(27)(A). to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and

796(27)(B). to ensure nondiscriminatory access to the facilities.

[Federal Power Act, §3(27), as added by, Energy Policy Act of 2005, Aug. 8, 2005, §1291(b)(2), P.L. 109-58, 119 Stat. 594.]

796(28). ISO. The term “Independent System Operator” or “ISO” means an entity approved by the Commission

796(28)(A). to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce; and

796(28)(B). to ensure nondiscriminatory access to the facilities.

[Federal Power Act, §3(24), as added by, Energy Policy Act of 2005, Aug. 8, 2005, Subtitle H, §1291(b)(2), P.L. 109-58.]

824e. Power of Commission to fix rates and charges; determination of Cost of production or transmission

824e(a). Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

FERC power to
fix rates

Federal Power Act (continued)

[Federal Power Act, §206(a), Act of June 10, 1920, as amended by, Regulatory Fairness Act, Oct. 6, 1988, P. L. 100-473, as amended by, Energy Policy Act of 2005, Aug. 8, 2005, §1295(b)(1), P. L. 109-58, 119 Stat. 594.]

824e(b). Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: Provided, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.

[Federal Power Act, §206(b), Act of June 10, 1920, as amended by, Energy Policy Act of 2005, Aug. 8, 2005, §§ 1285 & 1295(b)(2), P. L. 109-58, 119 Stat. 594.]

824e(c). Refund considerations; shifting costs; reduction in revenues; “electric utility companies” and “registered holding company” defined Notwithstanding subsection (b) of this section, in a proceeding commenced under this section involving two or more electric utility companies of a registered holding company, refunds which might otherwise be payable under subsection (b) of this section shall not be ordered to the extent that such refunds would result from any portion of a Commission order that

Federal Power Act (continued)

824e(c)(1). requires a decrease in system production or transmission costs to be paid by one or more of such electric companies; and

824e(c)(2). is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company: Provided, That refunds, in whole or in part, may be ordered by the Commission if it determines that the registered holding company would not experience any reduction in revenues which results from an inability of an electric utility company of the holding company to recover such increase in costs for the period between the refund effective date and the effective date of the Commission's order. For purposes of this subsection, the terms "electric utility companies" and "registered holding company" shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended.

[Federal Power Act, §206(c), Act of June 10, 1920.]

824e(d). Investigation of costs

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

[Federal Power Act, §206(c), Act of June 10, 1920.]

824e(e). Short-term sales

824e(e)(1). In this subsection

824e(e)(1)(A). The term "short-term sale" means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

824e(e)(1)(B). The term "applicable Commission rule" means a Commission rule applicable to sales at wholesale by public utilities that the Commission determines after notice and comment should also be applicable to entities subject to this subsection.

824e(e)(2). If an entity described in section 824 (f) of this title voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract) and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of the sale, the entity shall be subject to the refund authority of the Commission under this section with respect to the violation.

824e(e)(3). This section shall not apply to

Federal Power Act (continued)

824e(e)(3)(A). any entity that sells in total (including affiliates of the entity) less than 8,000,000 megawatt hours of electricity per year; or

824e(e)(3)(B). an electric cooperative.

824e(e)(4)(A). The Commission shall have refund authority under paragraph (2) with respect to a voluntary short term sale of electric energy by the Bonneville Power Administration only if the sale is at an unjust and unreasonable rate.

824e(e)(4)(B). The Commission may order a refund under subparagraph (A) only for short-term sales made by the Bonneville Power Administration at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by the Bonneville Power Administration.

824e(e)(4)(C). In the case of any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or power under paragraph (2) other than the ordering of refunds to achieve a just and reasonable rate.

[Federal Power Act, §206(c), as added by, Energy Policy Act of 2005, Aug. 8, 2005, §1286, P. L. 109-58.]

824i. Interconnection authority

824i(a)(1). Upon application of any electric utility, Federal power marketing agency, geothermal power producer (including a producer which is not an electric utility), qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

824i(a)(1)(A). the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of any electric utility, with the facilities of such applicant.

[Federal Power Act, §210(a)(1)(A), as added by, Act of Nov. 9, 1978, P. L. 95-617, Title II, §202(a)(1)(A), (Amendment), 92 Stat. 3135, as amended by the Act of June 30, 1980, P. L. 96-294, §643(a)(2), 94 Stat. 770.]

824i(a)(1)(B). such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability,

[Federal Power Act, §210(a)(1)(B), as added by Amendment, §202(a)(1)(B), 92 Stat. 3135.]

824i(a)(1)(C). such sale or exchange of electric energy or other coordination as may be necessary to carry out the purposes of any order under subparagraph (A) or (B), or

[Federal Power Act, §210(a)(1)(C), as added by Amendment, §202(a)(1)(C), 92 Stat. 3136.]

FERC interconnection orders

Federal Power Act (continued)

824i(a)(1)(D). such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraph (A) or (B).

[Federal Power Act, §210(a)(1)(D), as added by Amendment, §202(a)(1)(D), 92 Stat. 3136.]

824i(a)(2). Any State regulatory authority may apply to the Commission [F.E.R.C.] for an order for any action referred to in subparagraph (A), (B), (C), or (D) of paragraph (1). No such order may be issued by the Commission with respect to a Federal power marketing agency upon application of a State regulatory authority.

[Federal Power Act, §210(a)(2), as added by Amendment, §202(a)(2), 92 Stat. 3136.]

Procedures

824i(b). Upon receipt of an application under subsection (a), the Commission shall—

824i(b)(1). issue notice to each affected State regulatory authority, each affected electric utility, each affected Federal power marketing agency, each affected owner or operator of a cogeneration facility or of a small power production facility, and to the public.

[Federal Power Act, §210(b)(1), as added by Amendment, §202(b)(1), 92 Stat. 3136.]

824i(b)(2). afford an opportunity for an evidentiary hearing, and

[Federal Power Act, §210(b)(2), as added by Amendment, §202(b)(2), 92 Stat. 3136.]

824i(b)(3). make a determination with respect to the matters referred to in subsection (c).

[Federal Power Act, §210(b)(3), as added by Amendment, §202(b)(3), 92 Stat. 3136.]

Standards

824i(c). No order may be issued by the Commission under subsection (a) unless the Commission determines that such order—

824i(c)(1). is in the public interest, and

[Federal Power Act, §210(c)(1), as added by Amendment, §202(c)(1), 92 Stat. 3136.]

824i(c)(2). would—

824i(c)(2)(A). encourage overall conservation of energy or capital,

[Federal Power Act, §210(c)(2)(A), as added by Amendment, §202(c)(2)(A), 92 Stat. 3136.]

824i(c)(2)(B). optimize the efficiency of use of facilities and resources, or,

[Federal Power Act, §210(c)(2)(B), as added by Amendment, §202(c)(2)(B), 92 Stat. 3136.]

824i(c)(2)(C). improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

[Federal Power Act, §210(c)(2)(C), as added by Amendment, §202(c)(2)(C), 92 Stat. 3136.]

824i(c)(3). meets the requirements of section 212 [16 U.S.C. 824k].

[Federal Power Act, §210(c)(3), as added by Amendment, §202(c)(3), 92 Stat. 3136.]

Federal Power Act (continued)

824i(d). The Commission may, on its own motion, after compliance with the requirements of paragraphs (1) and (2) of subsection (b), issue an order requiring any action described in subsection (a)(1) of this section if the Commission determines that such order meets the requirements of subsection (c) of this section. No such order may be issued upon the Commission's own motion with respect to a Federal power marketing agency.

[Federal Power Act, §210(d), as added by Amendment, §202(d), 92 Stat. 3136.]

824i(e)(1). As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.

[Federal Power Act, §210(e)(1), as added by Amendment, §202(e)(1), 92 Stat. 3136.]

824i(e)(2). With respect to an order issued pursuant to an application of a qualifying cogenerator or qualifying small power producer under subsection (a)(1) of this section, the term "facilities of such applicant" means the qualifying cogeneration facilities or qualifying small power production facilities of the applicant, as specified in the application. With respect to an order issued pursuant to an application under subsection (a)(2) of this section, the term "facilities of such applicant" means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the application. With respect to an order issued by the Commission on its own motion under subsection (d) of this section, such term means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the proposed order.

[Federal Power Act, §210(e)(2), as added by Amendment, §202(e)(2), 92 Stat. 3136.]

824j. Wheeling authority

824j(a). 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 the enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order meets the requirements of section 824k of this title, 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 filing of an application for such order.

[Federal Power Act, §211(a), as added by Amendment, §203(a), 92 Stat. 3136-7, as amended by Energy Policy Act, §§721(1) and (2), 106 Stat. 2915.]

824j(b). No order may be issued under this section or section 824I of this title if, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, the Commission finds that such

"Facilities" defined

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Standards

Federal Power Act (continued)

order would unreasonably impair the continued reliability of electric systems affected by the order.

[Federal Power Act, §211(b), as added by Amendment, §203(b), 92 Stat. 3137, as amended by Energy Policy Act, §§721(3), 106 Stat. 2915.]

824j(c). Replacement of electric service

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

824j(c)(1). required to be provided to such applicant pursuant to a contract during such period, or

[Federal Power Act, §211(c)(1), as added by Amendment, §203(c)(2)(A), 92 Stat. 3137, as amended by Energy Policy Act, §721(4)(B), 106 Stat. 2915, as amended by, Energy Policy Act of 2005, §1295(c)(1), Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

824j(c)(2). currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission: Provided, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rate schedule: Provided, That such order shall not become effective until termination of such rate schedule or the modification becomes effective.

[Federal Power Act, §211(c)(2), as added by Amendment, §203(c)(2)(B), 92 Stat. 3137, as amended by Act of Oct. 16, 1986, P. L. 99-495, §15, 100 Stat. 1257-8, as amended by, Energy Policy Act of 2005, §1295(c)(1), Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

Termination

824j(d)(1). Any transmitting utility ordered under subsection (a) or (b) of this section to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b) of this section, if the transmitting utility providing such transmission services has demonstrated, and the Commission has found that—

[Federal Power Act, §211(d), as added by Amendment, §203(d)(1)(A), 92 Stat. 3138., as amended by, Energy Policy Act of 2005, §1295(c)(2), Aug. 8, 2005 P. L. 109-58, 119 Stat. 594.]

824j(d)(1)(A). due to changed circumstances, the requirements applicable, under this section and section 824k of this title, to the issuance of an order under subsection (a) or (b) are no longer met, or

[Federal Power Act, §211(d)(1)(A), as added by Amendment, §203(d)(1)(A), 92 Stat. 3138.]

824j(d)(1)(B). any transmission capacity of the utility providing transmission services under such order which is no longer in excess of the capacity

Federal Power Act (continued)

necessary for such purposes, or

[Federal Power Act, §211(d)(1)(B), as added by Amendment, §203(d)(1)(B), 92 Stat. 3138.]

824j(d)(1)(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.

[Federal Power Act, §211(d)(1)(C), as added by Energy Policy Act, §721(5)(D), 106 Stat. 2916.]

824j(d)(1)[cont.] No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

[Federal Power Act, §211(d)(1)(A), as added by Amendment, §203(d)(1)(A), 92 Stat. 3137-8, as amended by Energy Policy Act, §§721(5)(A) and (B), 106 Stat. 2915.]

824j(d)(2). Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) of this section shall—

824j(d)(2)(A). provide for any appropriate compensation, and

[Federal Power Act, §211(d)(2)(A), as added by Amendment, §203(d)(2)(A), 92 Stat. 3138.]

824j(d)(2)(B). provide the affected electric utilities adequate opportunity and time to—

824j(d)(2)(B)(i). make suitable alternative arrangements for any transmission services terminated or modified, and

[Federal Power Act, §211(d)(2)(B)(i), as added by Amendment, §203(d)(2)(B)(i), 92 Stat. 3138.]

824j(d)(2)(B)(ii). insure that interests of ratepayers of such utilities are adequately protected.

[Federal Power Act, §211(d)(2)(B)(ii), as added by Amendment, §203(d)(2)(B)(ii), 92 Stat. 3138.]

824j(d)(3). No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) of this section if the order under subsection (a) or (b) of this section includes terms and conditions agreed upon by the parties which—

824j(d)(3)(A). fix a period during which transmission services are to be provided under the order under subsection (a) or (b) of this section, or

[Federal Power Act, §211(d)(3)(A), as added by Amendment, §203(d)(3)(A), 92 Stat. 3138.]

824j(d)(3)(B). otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the transmitting utility subject to such order for transmission capacity).

[Federal Power Act, §211(d)(3)(B), as added by Amendment, §203(d)(3)(B), 92 Stat. 3138, as amended by Energy Policy Act, §721(5)(C), 106 Stat. 2916.]

Federal Power Act (continued)

"Facilities" defined

824j(e). As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.

[Federal Power Act, §211(e), as added by Amendment, §203(e), 92 Stat. 3138.]

Open access

824j-1. Open Access by unregulated transmitting utilities

824j-1(a). Definition of unregulated transmitting utility

In this section, the term "unregulated transmitting utility" means an entity that—

824j-1(a)(1). owns or operates facilities used for the transmission of electric energy in interstate commerce; and

824j-1(a)(2). is an entity described in section 824 (f) of this title.

824j-1(b). Transmission operation services

Subject to section 824k (h) of this title, the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

824j-1(b)(1). at rates that are comparable to those that the unregulated transmitting utility charges itself; and

824j-1(b)(2). on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

824j-1(c). Exemption

The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that—

824j-1(c)(1). sells not more than 4,000,000 megawatt hours of electricity per year;

824j-1(c)(2). does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion of the system); or

824j-1(c)(3). meets other criteria the Commission determines to be in the public interest.

824j-1(d). Local distribution facilities

The requirements of subsection (b) of this section shall not apply to facilities used in local distribution.

824j-1(e). Exemption termination

If the Commission, after an evidentiary hearing held on a complaint and after giving consideration to reliability standards established under section 824o

Federal Power Act (continued)

of this title, finds on the basis of a preponderance of the evidence that any exemption granted pursuant to subsection (c) of this section unreasonably impairs the continued reliability of an interconnected transmission system, the Commission shall revoke the exemption granted to the transmitting utility.

824j-1(f). Application to unregulated transmitting utilities

The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 824d of this title are applicable to unregulated transmitting utilities for purposes of this section.

824j-1(g). Remand

In exercising authority under subsection (b)(1) of this section, the Commission may remand transmission rates to an unregulated transmitting utility for review and revision if necessary to meet the requirements of subsection (b) of this section.

824j-1(h). Other requests

The provision of transmission services under subsection (b) of this section does not preclude a request for transmission services under section 824j of this title.

824j-1(i). Limitation

The Commission may not require a State or municipality to take action under this section that would violate a private activity bond rule for purposes of section 141 of title 26.

824j-1(j). Transfer of control of transmitting facilities

Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to a Transmission Organization that is designated to provide nondiscriminatory transmission access.

[Federal Power Act, §211A, as added by Energy Policy Act of 2005, §1231, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

824k. Orders requiring interconnection or wheeling

824k(a). An order under section 824j of this title 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 824I of this title shall ensure that, to the extent practicable, costs incurred in providing

Rates

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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.

[Federal Power Act, §212(a), as added by Energy Policy Act, §722(1), 106 Stat. 2916.]

824k(b). [Repealed]

[Energy Policy Act, §722(1), 106 Stat. 2916.]

Proposed orders

824k(c)(1). Before issuing an order under section 824i of this title or subsection (a) or (b) of section 824j of this title the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

[Federal Power Act, §212(c)(1), as added by Amendment, §204(c)(1), 92 Stat. 3139.]

824k(c)(2)(A). If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such agreement, the terms and conditions shall be included in the final order. In the case of an order under section 824i of this title, if the parties fail to agree within the time set by the Commission or if the Commission does not approve of such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

[Federal Power Act, §212(c)(2)(A), as added by Amendment, §204(c)(2)(A), 92 Stat. 3139.]

824k(c)(2)(B). In the case of any order applied for under section 824j of this title, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

[Federal Power Act, §212(c)(2)(B), as added by Amendment, §204(c)(2)(B), 92 Stat. 3139.]

Denial

824k(d). If the Commission does not issue any order applied for under section 824i or 824j of this title, the Commission shall, by order, deny such application and state the reasons for such denial.

[Federal Power Act, §212(d), as added by Amendment, §204(d), 92 Stat. 3139.]

824k(e)(1). No provision of section 824i, 824j, 824m of this title, 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 824i, 824j, 824m of this title or this section, such sections shall not be construed as limiting or impairing any authority of the Commission under any other provision of law.

[Federal Power Act, §212(e)(1), as added by Energy Policy Act, §722(2)(e)(1), 106 Stat. 2916.]

Federal Power Act (continued)

824k(e)(2). [Is a savings clause for antitrust laws and is not reproduced here.]

824k(f). [Deals with procedures required when the Tennessee Valley Authority is ordered to take action and is not reproduced here.]

824k(g). [Is a savings clause for state laws and is not reproduced here.]

824k(h). No order issued under this chapter shall be conditioned upon or require the transmission of electric energy:

824k(h)(1). directly to an ultimate consumer, or

[Federal Power Act, §212(h)(1), as added by Energy Policy Act, §722(3)(h)(1), 106 Stat. 2917.]

824k(h)(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:

824k(h)(2)(A). such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or and 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 [7 U.S.C. §§901 et seq.]; 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

[Federal Power Act, §212(h)(2)(A), as added by Energy Policy Act, §722(3)(h)(2)(A), 106 Stat. 2917.]

824k(h)(2)(B). such entity was providing electric service to such ultimate consumer on October 24, 1992, or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

[Federal Power Act, §212(h)(2)(B), as added by Energy Policy Act, §722(3)(h)(2)(B), 106 Stat. 2917.]

824k(h)[cont.]. [Is a savings clause for state laws and is not reproduced here.]

824k(i)(1). The Commission shall have authority pursuant to section 210, section 824i of this title, 824j of this title, this section, and section 824l of this title 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—

Retail wheeling

Power to order BPA to provide transmission

Federal Power Act (continued)

824k(i)(1)(B)(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

[Federal Power Act, §212(i)(1)(B)(i), as added by Energy Policy Act, §722(3)(i)(1)(B)(i), 106 Stat. 2917.]

BPA rates

824k(i)(1)(B)(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 824i of this title, section 824j of this title, this section, and section 824l of this title, 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.

[Federal Power Act, §212(i)(1)(B)(ii), as added by Energy Policy Act, §722(3)(i)(1)(B)(ii), 106 Stat. 2917.]

824k(i)(2). Notwithstanding any other provision of this chapter with respect to the procedures for the determination of terms and conditions for transmission service—

BPA terms
and conditions

824k(i)(2)(A). when the Administrator of the Bonneville Power Administration either (i) in response to a written request for specific transmission service 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—

Hearing notice

824k(i)(2)(A)(ii)(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;

[Federal Power Act, §212(i)(2)(A)(ii)(I), as added by Energy Policy Act, §722(3)(i)(2)(A)(ii)(I), 106 Stat. 2917-8.]

824k(i)(2)(A)(ii)(II). adhere to the procedural requirements of paragraphs (1) through (3) of section 839e(i) of this title, 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

[Federal Power Act, §212(i)(2)(A)(ii)(II), as added by Energy Policy Act, §722(3)(i)(2)(A)(ii)(II), 106 Stat. 2918.]

824k(i)(2)(A)(ii)(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, based on the hearing officer's recommended decision, section 824j of this title and this section, as amended by the Energy Policy Act of 1992, and

Federal Power Act (continued)

the provision of law as preserved in this section; and

[Federal Power Act, §212(i)(2)(A)(ii)(III), as added by Energy Policy Act, §722(3)(i)(2)(A)(ii)(III), 106 Stat. 2918.]

824k(i)(2)(B). if application is made to the Commission under section 824j of this title 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—

FERC procedures

824k(i)(2)(B)(i). in the event that 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 824j of this title and this section, as amended by the Energy Policy Act of 1992, and the provision of law as preserved in this section, or

[Federal Power Act, §212(i)(2)(B)(i), as added by Energy Policy Act, §722(3)(i)(2)(B)(i), 106 Stat. 2918.]

824k(i)(2)(B)(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 824j of this title and this section, including providing the opportunity for a hearing.

[Federal Power Act, §212(i)(2)(B)(ii), as added by Energy Policy Act, §722(3)(i)(2)(B)(ii), 106 Stat. 2918.]

824k(i)(3). Notwithstanding those provisions of section 825l(b) of this title 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 839a(14) of this title.

[Federal Power Act, §212(i)(3), as added by Energy Policy Act, §722(3)(i)(3), 106 Stat. 2918.]

Judicial review

824k(i)(4). To the extent the Administrator of the Bonneville Power Administration cannot be required under section 824j of this title, 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

Reciprocity

Federal Power Act (continued)

to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.

[Federal Power Act, §212(i)(4), as added by Energy Policy Act, §722(3)(i)(4), 106 Stat. 2919.]

Shall not impair
service to
PNW customers

824k(i)(5). The Commission shall not issue any order under section 824i of this title, section 824j of this title, this section, or section 824l of this title 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 839a(14) of this title, as is needed to assure adequate and reliable service to loads in that region.

[Federal Power Act, §212(i)(5), as added by Energy Policy Act, §722(3)(i)(5), 106 Stat. 2919.]

824k(j). [Deals with the Tennessee Valley Authority and is not reproduced here.]

824k(k). [Deals with rates applicable to ERCOT utilities ordered to take action and is not reproduced here.]

824l. Information requirements

Response to good
faith request

824l(a). 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 service 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.

[Federal Power Act, §213(a), as added by Energy Policy Act, §723(a), 106 Stat. 2919-20.]

824l(b). 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.

[Federal Power Act, §213(b), as added by Energy Policy Act, §723(b), 106 Stat. 2920.]

Grid reliability

824o. Electric reliability

[Federal Power Act, §215, as added by Energy Policy Act of 2005, Subtitle A, §1211, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

Federal Power Act (continued)

824o(a). Definitions

For purposes of this section:

824o(a)(1). The term “bulk-power system” means—

824o(a)(1)(A). facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

824o(a)(1)(B). electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

824o(a)(2). The terms “Electric Reliability Organization” and “ERO” mean the organization certified by the Commission under subsection (c) of this section the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

NERC

824o(a)(3). The term “reliability standard” means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

824o(a)(4). The term “reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

824o(a)(5). The term “Interconnection” means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

824o(a)(6). The term “transmission organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

824o(a)(7). The term “regional entity” means an entity having enforcement authority pursuant to subsection (e)(4) of this section.

WECC

Federal Power Act (continued)

824o(a)(8). The term “cybersecurity incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communication networks including hardware, software and data that are essential to the reliable operation of the bulk power system.

824o(b). Jurisdiction and applicability

824o(b)(1). The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c) of this section, any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 824 (f) of this title, for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

824o(b)(2). The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after August 8, 2005.

824o(c). Certification

Following the issuance of a Commission rule under subsection (b)(2) of this section, any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

824o(c)(1). has the ability to develop and enforce, subject to subsection (e)(2) of this section, reliability standards that provide for an adequate level of reliability of the bulk-power system; and

824o(c)(2). has established rules that—

824o(c)(2)(A). assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

824o(c)(2)(B). allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

824o(c)(2)(C). provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) of this section (including limitations on activities, functions, or operations, or other appropriate sanctions);

824o(c)(2)(D). provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

Federal Power Act (continued)

824o(c)(2)(E). provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

824o(d). Reliability standards

Reliability standards

824o(d)(1). The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

824o(d)(2). The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

824o(d)(3). The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

824o(d)(4). The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

824o(d)(5). The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

824o(d)(6). The final rule adopted under subsection (b)(2) of this section shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by the Commission until—

824o(d)(6)(A). the Commission finds a conflict exists between a reliability standard and any such provision;

Federal Power Act (continued)

824o(d)(6)(B). the Commission orders a change to such provision pursuant to section 824e of this title; and

824o(d)(6)(C). the ordered change becomes effective under this subchapter. If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

Penalties

824o(e). Enforcement

824o(e)(1). The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) of this section if the ERO, after notice and an opportunity for a hearing—

824o(e)(1)(A). finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d) of this section; and

824o(e)(1)(B). files notice and the record of the proceeding with the Commission.

824o(e)(2). A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

824o(e)(3). On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

Federal Power Act (continued)

824o(e)(4). The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

824o(e)(4)(A). the regional entity is governed by—

824o(e)(4)(A)(i). an independent board;

824o(e)(4)(A)(ii). a balanced stakeholder board; or

824o(e)(4)(A)(iii). a combination independent and balanced stakeholder board.

824o(e)(4)(B). the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2) of this section; and

824o(e)(4)(C). the agreement promotes effective and efficient administration of bulk-power system reliability. The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

824o(e)(5). The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

824o(e)(6). Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

824o(f). Changes in Electric Reliability Organization rules

The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c) of this section.

Regional entity
authority

Federal Power Act (continued)

824o(g). Reliability reports

The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

824o(h). Coordination with Canada and Mexico

The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

824o(i). Savings provisions

824o(i)(1). The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

824o(i)(2). This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

824o(i)(3). Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards.

824o(i)(4). Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

824o(i)(5). The Commission, after consultation with the ERO and the State taking action, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

824o(j). Regional advisory bodies

The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory

Federal Power Act (continued)

or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

824o(k). Alaska and Hawaii

The provisions of this section do not apply to Alaska or Hawaii.

[Federal Power Act, §215, as added by Energy Policy Act of 2005, Subtitle A, §1211, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

824q. Native load service obligation

824q(a). Definitions

In this section:

824q(a)(1). The term “distribution utility” means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through one or more additional State utilities or electric cooperatives, provides electric service to end-users.

824q(a)(2). The term “load-serving entity” means a distribution utility or an electric utility that has a service obligation.

824q(a)(3). The term “service obligation” means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

824q(a)(4). The term “State utility” means a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.

824q(b). Meeting service obligations

824q(b)(1). Paragraph (2) applies to any load-serving entity that, as of August 8, 2005—

824q(b)(1)(A). owns generation facilities, markets the output of Federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation; and

824q(b)(1)(B). by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds

Federal Power Act (continued)

firm transmission rights for delivery of the output of the generation facilities or the purchased energy to meet the service obligation.

824q(b)(2). Any load-serving entity described in paragraph (1) is entitled to use the firm transmission rights, or, equivalent tradable or financial transmission rights, in order to deliver the output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using the rights, to the extent required to meet the service obligation of the load-serving entity.

824q(b)(3).

824q(b)(3)(A). To the extent that all or a portion of the service obligation covered by the firm transmission rights or equivalent tradable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradable or financial transmission rights associated with the transferred service obligation.

824q(b)(3)(B). Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

824q(b)(4). The Commission shall exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.

824q(c). Allocation of transmission rights

Nothing in subsections (b)(1), (b)(2), and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation or auction is just, reasonable and not unduly discriminatory or preferential, provided, however, that if such a Transmission Organization never allocated financial transmission rights on its system that pertained to a period before January 1, 2005, with respect to any application by such Transmission Organization that would change its methodology the Commission shall exercise its authority in a manner consistent with the [1] chapter and that takes into account the policies expressed in subsections (b)(1), (b)(2), and (b)(3) of this section as applied to firm transmission rights held by a load-serving entity as of January 1, 2005, to the extent the associated generation ownership or power purchase arrangements remain in effect.

Federal Power Act (continued)

824q(d). Certain transmission rights

The Commission may exercise authority under this chapter to make transmission rights not used to meet an obligation covered by subsection (b) of this section available to other entities in a manner determined by the Commission to be just, reasonable, and not unduly discriminatory or preferential.

824q(e). Obligation to build

Nothing in this chapter relieves a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet the service obligations of the load-serving entity.

824q(f). Contracts

Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of August 8, 2005. If an ISO in the Western Interconnection had allocated financial transmission rights prior to August 8, 2005, but had not done so with respect to one or more load-serving entities' firm transmission rights held under contracts to which the preceding sentence applies (or held by reason of ownership or future ownership of transmission facilities), such load-serving entities may not be required, without their consent, to convert such firm transmission rights to tradable or financial rights, except where the load-serving entity has voluntarily joined the ISO as a participating transmission owner (or its successor) in accordance with the ISO tariff.

824q(g). Water pumping facilities

The Commission shall ensure that any entity described in section 824(f) of this title that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

824q(h). ERCOT

This section shall not apply within the area referred to in section 824k (k)(2)(A) of this title.

824q(i). Jurisdiction

This section does not authorize the Commission to take any action not otherwise within the jurisdiction of the Commission.

824q(j). TVA area

824q(j)(1). Subject to paragraphs (2) and (3), for purposes of subsection (b)(1)(B) of this section, a load-serving entity that is located within the service area of the Tennessee Valley Authority and that has a firm wholesale power supply contract with the Tennessee Valley Authority shall be considered to hold firm transmission rights for the transmission of the power provided.

Federal Power Act (continued)

824q(j)(2). Nothing in this subsection affects the requirements of section 824k (j) of this title.

824q(j)(3). The Commission shall not issue an order on the basis of this subsection that is contrary to the purposes of section 824k (j) of this title.

824q(k). Effect of exercising rights

An entity that to the extent required to meet its service obligations exercises rights described in subsection (b) of this section shall not be considered by such action as engaging in undue discrimination or preference under this chapter.

[Federal Power Act, §217, as added by Energy Policy Act of 2005, Title XII, Subtitle C, §1233, Aug. 8, 2005, P. L. 109-58. 119 Stat. 594.]

PNW contracts

824r. Protection of transmission contracts in the Pacific Northwest

824r(a). Definition of electric utility or person

In this section, the term “electric utility or person” means an electric utility or person that—

824r(a)(1). as of August 8, 2005, holds firm transmission rights pursuant to contract or by reason of ownership of transmission facilities; and

824r(a)(2). is located—

824r(a)(2)(A). in the Pacific Northwest, as that region is defined in section 839a of this title; or

824r(a)(2)(B). in that portion of a State included in the geographic area proposed for a regional transmission organization in Commission Docket Number RT01–35 on the date on which that docket was opened.

824r(b). Protection of transmission contracts

Nothing in this chapter confers on the Commission the authority to require an electric utility or person to convert to tradable or financial rights—

824r(b)(1). firm transmission rights described in subsection (a) of this section; or

824r(b)(2). firm transmission rights obtained by exercising contract or tariff rights associated with the firm transmission rights described in subsection (a) of this section.

[Federal Power Act, §218, as added by Energy Policy Act of 2005, Title XII, Subtitle C, §1235, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

Price transparency

824t. Electricity market transparency rules

824t(a). In general

Federal Power Act (continued)

824t(a)(1). The Commission is directed to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

824t(a)(2). The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

824t(a)(3). The Commission may—

824t(a)(3)(A). obtain the information described in paragraph (2) from any market participant; and

824t(a)(3)(B). rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b) of this section.

824t(a)(4). In carrying out this section, the Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible. The Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency. Nothing in this section, however, shall affect any electronic information filing requirements in effect under this chapter as of August 8, 2005.

824t(b). Exemption of information from disclosure

824t(b)(1). Rules described in subsection (a)(2) of this section, if adopted, shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

824t(b)(2). In determining the information to be made available under this section and time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

824t(c). Information sharing

824t(c)(1). Within 180 days of August 8, 2005, the Commission shall conclude a memorandum of understanding with the Commodity Futures

Federal Power Act (continued)

Trading Commission relating to information sharing, which shall include, among other things, provisions ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests, and provisions regarding the treatment of proprietary trading information.

824t(c)(2). Nothing in this section may be construed to limit or affect the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

824t(d). Exemption from reporting requirements

The Commission shall not require entities who have a de minimis market presence to comply with the reporting requirements of this section.

824t(e). Penalties for violations occurring before notice

824t(e)(1). Except as provided in paragraph (2), no person shall be subject to any civil penalty under this section with respect to any violation occurring more than 3 years before the date on which the person is provided notice of the proposed penalty under section 825o-1 of this title.

824t(e)(2). Paragraph (1) shall not apply in any case in which the Commission finds that a seller that has entered into a contract for the sale of electric energy at wholesale or transmission service subject to the jurisdiction of the Commission has engaged in fraudulent market manipulation activities materially affecting the contract in violation of section 824v of this title.

824t(f). ERCOT utilities

This section shall not apply to a transaction for the purchase or sale of wholesale electric energy or transmission services within the area described in section 824k (k)(2)(A) of this title.

[Federal Power Act, §220, as added by Energy Policy Act of 2005, Title XII, Subtitle G, §1281, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

824u. Prohibition on filing false information

No entity (including an entity described in section 824 (f) of this title) shall willfully and knowingly report any information relating to the price of electricity sold at wholesale or the availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to a Federal agency with intent to fraudulently affect the data being compiled by the Federal agency.

[Federal Power Act, §221, as added by Energy Policy Act of 2005, Title XII, Subtitle G, §1282, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

824v. Prohibition of energy market manipulation

824v(a). In general

It shall be unlawful for any entity (including an entity described in section 824 (f) of this title), directly or indirectly, to use or employ, in connection with

Federal Power Act (continued)

the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j (b) of title 15), in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of electric ratepayers.

824v(b). No private right of action

Nothing in this section shall be construed to create a private right of action.

[Federal Power Act, §222, as added by Energy Policy Act of 2005, Title XII, Subtitle G, §1283, Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

825e. Complaints

Any person, electric utility, State, municipality, or State commission complaining of anything done or omitted to be done by any licensee, transmitting utility, or public utility in contravention of the provisions of this chapter may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee, transmitting utility, or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee, transmitting utility, or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

[Federal Power Act, §306, as amended by Energy Policy Act of 2005, Title XII, Subtitle G, §1284(a), Aug. 8, 2005, P. L. 109-58, 119 Stat. 594.]

Federal Power Act (continued)

**Legislative History for
Energy Policy Act of 1992**

Dates of Consideration and Passage

House: May 20, 21, 27, October 5, 1992

Senate: February 5, 6, 7, 18, 19, July 29, 30, October 5, 8, 1992

House Report (Energy and Commerce Committee)

No. 102-474(I), March 30, 1992

[To accompany H.R. 776]

House Report (Science, Space, and Technology Committee)

No. 102-474(II), May 1, 1992

[To accompany H.R. 776]

House Report (Public Works and Transportation Committee)

No. 102-474(III), May 1, 1992

[To accompany H.R. 776]

House Report (Foreign Affairs Committee)

No. 102-474(IV), May 4, 1992

[To accompany H.R. 776]

House report (Government Operations Committee)

No. 102-474(V), May 5, 1992

[To accompany H.R. 776]

House Report (Ways and Means Committee)

No. 102-474(VI), May 5, 1992

[To accompany H.R. 776]

House Report (Judiciary Committee)

No. 102-474(VII), May 5, 1992

[To accompany H.R. 776]

House Report (Interior and Insular Affairs Committee)

No. 102-474(VIII), May 5, 1992

[To accompany H.R. 776]

House Report (Merchant Marine and Fisheries Committee)

No. 102-474(IX), May 5, 1992

[To accompany H.R. 776]

Federal Power Act (continued)

Cong. Record Vol. 138 (1992)

Weekly Compilation of Presidential Documents, Vol. 28 (1992):

Oct. 24, Presidential remarks and statement

Legislative History for Energy Policy Act of 2005

Dates of Consideration and Passage

House: April 20, 21, July 28, 1992

Senate: June 14, 15, 16, 20, 21, 22, 23, 28, July 29, 2005

House Conference Report No. 109-190, July 27, 2005
[To accompany H.R. 6]

Cong. Record Vol. 151 (2005)

Weekly Compilation of Presidential Documents, Vol. 41 (2005):

Aug. 8, Presidential remarks and statement

Flood Control Act of 1944

16 United States Code Chapter 12, Subchapter III (2006).
Act of Dec. 22, 1944, ch. 665 §5, 58 Stat. 890.
Public Law No. 78-534, H.R. 4485

825s. Sale of electric power from reservoir projects; rate schedules; preference in sale; construction of transmission lines; disposition of moneys

Electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of the Army not required in the operation of such projects shall be delivered to the Secretary of Energy who shall transmit and dispose of such power and energy in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, the rate schedules to become effective upon confirmation and approval by the Secretary of Energy. Rate schedules shall be drawn 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 energy, including the amortization of the capital investment allocated to power over a reasonable period of years. Preference in the sale of such power and energy shall be given to public bodies and cooperatives. The Secretary of Energy is authorized, from funds to be appropriated by the Congress, to construct or acquire, by purchase or other agreement, only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale on fair and reasonable terms and conditions to facilities owned by the Federal Government, public bodies, cooperatives, and privately owned companies. All moneys received from such sales shall be deposited in the Treasury of the United States as miscellaneous receipts.

[Act of Dec. 22, 1944, Flood Control Act of 1944, ch. 665, §5, 58 Stat. 890, as amended by Department of Energy Organization Act (DOE Act), §§301(b), 302(a)(1), 91 Stat. 578, Aug. 4, 1977.]

Legislative History for Flood Control Act of 1944

[None set out]

Bonneville Project Act of 1937

16 United States Code Chapter 12B (2006).

Act of Aug. 20, 1937, ch. 720, 50 Stat. 731.

Public Law No. 75-329, H.R. 7642.

832. Completion and maintenance of project; generation of electricity

For the purpose of improving navigation on the Columbia River, and for other purposes incidental thereto, the dam, locks, power plant, and appurtenant works under construction on August 20, 1937, at Bonneville, Oregon and North Bonneville, Washington (called Bonneville project), shall be completed, maintained, and operated under the direction of the Secretary of the Army and the supervision of the Chief of Engineers, subject to the provisions of this chapter relating to the powers and duties of the Bonneville power administrator provided for in §832a(a) of this title (called administrator in this chapter) respecting the transmission and sale of electric energy generated at said project. The Secretary of the Army shall provide, construct, operate, maintain, and improve at Bonneville project such machinery, equipment, and facilities for the generation of electric energy as the administrator may deem necessary to develop such electric energy as rapidly as markets may be found therefor. The electric energy thus generated and not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith shall be delivered to the administrator, for disposition as provided in this chapter.

[Act of Aug. 20, 1937, ch. 720, §1, (Bonneville Project Act), 50 Stat. 731-2.]

832a. General administrative provisions

832a(a). The electric energy generated in the operation of the said Bonneville project shall be disposed of by the said administrator as provided in this chapter. The administrator shall be appointed by the Secretary of Energy; shall be responsible to said Secretary of Energy; and shall maintain his principal office at a place selected by him in the vicinity of the Bonneville project. The Administrator shall, as in this chapter provided, make all arrangements for the sale and disposition of electric energy generated at Bonneville project not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith. He shall act in consultation with the Secretary of Energy. The form of administration established in the chapter for the Bonneville project is intended to be provisional pending the establishment of a permanent administration for Bonneville and other projects in the Columbia River Basin. The Secretary of the Army shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Bonneville project when in the judgment of the administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of the Army shall schedule the operations of the several electrical generating units and appurtenant equipment of the Bonneville project in accordance with the requirements of the administrator. The Secretary of the Army shall provide and maintain for the use of the administrator at said Bonneville project adequate station space and equipment, including such switches,

Purposes

Administrator

Bonneville Project Act of 1937 (continued)

switchboards, instruments, and dispatching facilities as may be required by the administrator for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the administrator for the transmission of such energy from that place at suitable voltage to the markets which the administrator desires to serve.

Office

The office of the Administrator of the Bonneville project is constituted an office in the Department of Energy and shall be under the jurisdiction and control of the Secretary of Energy. All functions vested in the Administrator of the Bonneville project under this chapter may be exercised by the Secretary of Energy and, subject to his supervision and direction, by the Administrator and other personnel of the project.

[Bonneville Project Act, §2(a), 50 Stat. 732, as amended by Act of March 6, 1940, ch. 47, §§1 and 2, 54 Stat. 47; Act of Oct. 23, 1945, ch. 433, §5, 59 Stat. 547; Reorganization Plan No. 3 of 1950, §§1 and 2, 64 Stat. 1262, and DOE Act, §§302(a)(1)(D), (2), 91 Stat. 578, Aug. 4, 1977.]

Construct, operate
transmission lines

832a(b). In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups, the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy, available for sale, from the Bonneville project to existing and potential markets, and, for the purpose of interchange of electric energy, to interconnect the Bonneville project with other Federal project and publicly owned power systems constructed on or after August 20, 1937.

[Bonneville Project Act, §2(b), 50 Stat. 732.]

Acquiring real and
personal property

832a(c). The administrator is authorized, in the name of the United States, to acquire, by purchase, lease, condemnation, or donation, such real and personal property, or any interest therein, including lands, easements, rights-of-way, franchises, electric transmission lines, substations, and facilities and structures appurtenant thereto, as the administrator finds necessary or appropriate to carry out the purposes of this chapter. Title to all property and property rights acquired by the administrator shall be taken in the name of the United States.

[Bonneville Project Act, §2(c), 50 Stat. 732-3.]

832a(d). The administrator shall have power to acquire any property or property rights, including patent rights, which in his opinion are necessary to carry out the purposes of this chapter, by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

[Bonneville Project Act, §2(d), 50 Stat. 733.]

Disposal of
personal property

832a(e). The administrator is authorized, in the name of the United States, to sell, lease, or otherwise dispose of such personal property as in

Bonneville Project Act of 1937 (continued)

his judgment is not required for the purposes of this chapter and such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this chapter: Provided, however, That before the sale, lease, or disposition of real property or transmission lines, as herein provided, the administrator shall secure the approval of the President of the United States.

[Bonneville Project Act, §2(e), 50 Stat. 733.]

832a(f). Subject only to the provisions of this chapter, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary.

[Bonneville Project Act, §2(f), 50 Stat. 733, as amended by Act of Oct. 23, 1945, ch 433, §1, 59 Stat. 546.]

832b. Definitions

As employed in this chapter, the term "public body", or "public bodies", means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.

As employed in this chapter, the term "cooperative", or "cooperatives", means any form of nonprofit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost.

[Bonneville Project Act, §3, 50 Stat. 733.]

832c. Distribution of electricity; preference to public bodies and cooperatives

832c(a). In order to insure that the facilities for the generation of electric energy at the Bonneville project shall be operated for the benefit of the general public, and particularly of domestic and rural consumers, the administrator shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives.

[Bonneville Project Act, §4(a), 50 Stat. 733.]

832c(b). To preserve and protect the preferential rights and priorities of public bodies and cooperatives as provided in subsection (a) of this section and to effectuate the intent and purpose of this chapter that at all times up to January 1, 1942, there shall be available for sale to public bodies and cooperatives not less than 50 per centum of the electric energy produced at the Bonneville project, it shall be the duty of the administrator in making contracts for the sale of such energy to so arrange such contracts as to make such 50 per centum of such energy available to said public bodies and cooperatives until January 1, 1942: Provided, That the electric energy so reserved for but not actually purchased by and delivered to such public bodies

General authority
to contract

Definitions

Preference to
public bodies
and cooperatives

Temporary disposition

Bonneville Project Act of 1937 (continued)

and cooperatives prior to January 1, 1942, may be disposed of temporarily so long as such temporary disposition will not interfere with the purchase by and delivery to such public bodies and cooperatives at any time prior to January 1, 1942: Provided further, That nothing herein contained shall be construed to limit or impair the preferential and priority rights of such public bodies or cooperatives after January 1, 1942; and in the event that after such date there shall be conflicting or competing applications for an allocation of electric energy between any public body or cooperative on the one hand and a private agency of any character on the other, the application of such public body or cooperative shall be granted.

[Bonneville Project Act, §4(b), 50 Stat. 733, as amended by Act of Mar. 6, 1940, ch. 47, §3, 54 Stat. 47.]

832c(c). An application by any public body or cooperative for an allocation of electric energy shall not be denied, or another application competing or in conflict therewith be granted, to any private corporation, company, agency, or person, on the ground that any proposed bond or other security issue of any such public body or cooperative, the sale of which is necessary to enable such prospective purchaser to enter into the public business of selling and distributing the electric energy proposed to be purchased, has not been authorized or marketed, until after a reasonable time, to be determined by the administrator, has been afforded such public body or cooperative to have such bond or other security issue authorized or marketed.

[Bonneville Project Act, §4(c), 50 Stat. 734.]

832c(d). It is declared to be the policy of the Congress, as expressed in this chapter, to preserve the said preferential status of the public bodies and cooperatives herein referred to, and to give to the people of the States within economic transmission distance of the Bonneville project reasonable opportunity and time to hold any election or elections or take any action necessary to create such public bodies and cooperatives as the laws of such States authorize and permit, and to afford such public bodies or cooperatives reasonable time and opportunity to take any action necessary to authorize the issuance of bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and in all other respects legally to become qualified purchasers and distributors of electric energy available under this chapter.

[Bonneville Project Act, §4(d), 50 Stat. 734.]

832d. Contracts for sale of electricity

832d(a). Subject to the provisions of this chapter and to such rate schedules as the Secretary of Energy may approve, as provided in this chapter, the administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons and for the disposition of electric energy to Federal agencies. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain

Give public bodies
reasonable time to
arrange financing

Contracts for sale of
electric energy

Bonneville Project Act of 1937 (continued)

a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision. Contracts entered into under this subsection shall be binding in accordance with the terms thereof and shall be effective for such period or periods, including renewals or extensions, as may be provided therein, not exceeding in the aggregate twenty years from the respective dates of the making of such contracts. Contracts entered into under this subsection shall contain (1) such provisions as the administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years, and (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the administrator may cancel such contract upon five years' notice in writing if in the judgment of the administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirements of the said public bodies or cooperatives referred to in this chapter, and that such cancelation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this chapter shall at all times be preserved. Contracts entered into with any utility engaged in the sale of electric energy to the general public shall contain such terms and conditions, including among other things stipulations concerning resale and resale rates by any such utility, as the administrator may deem necessary, desirable or appropriate to effectuate the purposes of this chapter and to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory. Such contracts shall also require such utility to keep on file in the office of the administrator a schedule of all its rates and charges to the public for electric energy and such alterations and changes therein as may be put into effect by such utility.

[Bonneville Project Act, §5(a), 50 Stat. 734-5, as amended by Act of Oct. 23, 1945, ch. 433, §2, 59 Stat. 546, and DOE Act, §301(b), 91 Stat. 578, Aug. 4, 1977.]

832d(b). The administrator is authorized to enter into contracts with public or private power systems for the mutual exchange of unused excess power upon suitable exchange terms for the purpose of economical operation or of providing emergency or break-down relief.

[Bonneville Project Act, §5(b), 50 Stat. 735.]

832e. Rate schedules

Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this chapter provided shall be prepared by the administrator and become effective upon confirmation and approval thereof by the Secretary of Energy; and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies. Subject to confirmation and approval by the Secretary of Energy, such rate schedules may be modified from time to time by the administrator, and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rates or

Rate adjustment at least every five years

Exchange of power

Rates

Bonneville Project Act of 1937 (continued)

rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Bonneville project.

[Bonneville Project Act, §6, 50 Stat. 735, as amended by Act of Oct. 23, 1945, ch. 433, §3, 59 Stat. 546, and DOE Act, §301(b), 91 Stat. 578, Aug. 4, 1977.]

832f. Elements in determining rates

It is the intent of Congress that rate schedules for the sale of electric energy which is or may be generated at the Bonneville project in excess of the amount required for operating the dam, locks, and appurtenant works at said project shall be determined with due regard to and predicated upon the fact that such electric energy is developed from water power created as an incident to the construction of the dam in the Columbia River at the Bonneville project for the purposes set forth in section 832 of this title. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of Bonneville project) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years. Rate schedules shall be based upon an allocation of costs made by the Secretary of Energy. In computing the cost of electric energy developed from water power created as an incident to and a byproduct of the construction of the Bonneville project, the Secretary of Energy may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes.

[Bonneville Project Act, §7, 50 Stat. 735, as amended by DOE Act, §301(b), 91 Stat. 578, Aug. 4, 1977.]

Purchases

832g. Purchase of supplies and services

Notwithstanding any other provision of law, all purchases and contracts made by the administrator or the Secretary of the Army for supplies or for services except for personal services, shall be made after advertising, in such manner and at such times, sufficiently in advance of opening bids, as the administrator or Secretary of the Army, as the case may be, shall determine to be adequate to insure notice and opportunity for competition. Such advertisement shall not be required, however, when (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed \$500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen. In comparing bids and in making awards, the administrator or the Secretary of the Army, as the case may be, may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, and ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

[Bonneville Project Act, §8, 50 Stat. 735-6.]

Bonneville Project Act of 1937 (continued)

832h. Miscellaneous administrative provisions

832h(a). The administrator, subject to the requirements of the Federal Power Act, [16 U.S.C. §791a et seq.], shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Bonneville project, and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Energy Regulation Commission pursuant thereto.

[Bonneville Project Act, §9(a), 50 Stat. 736, as amended by Act of Oct. 23, 1945, ch. 433, §4, 59 Stat. 547 and DOE Act, §402(a)(1)(B), 91 Stat. 583, Aug. 4, 1977.]

Accounts of
operations

832h(b). The administrator may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for attendance at meetings; and for such other facilities and services as he may find necessary for the proper administration of this chapter.

[Bonneville Project Act, §9(b), 50 Stat. 736.]

Expenditures

832h(c). Repealed.

[Bonneville Project Act, §9(c), 50 Stat. 736 repealed by Pub. L. 89-448, §2(a), 80 Stat. 200, renumbered by Pub. L. 89-561 §6(1), Sept. 7, 1966, 80 Stat. 714.]

832i. Employment of personnel

832i(a). The Secretary of Energy shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease and in the event of a vacancy in the office of Administrator until a successor is appointed.

[Act of Oct. 23, 1945, ch. 433, §5, 59 Stat. 547 as amended by DOE Act, §§302(a)(1), (2), 91 Stat. 578, Aug. 4, 1977.]

Secretarial
appointments

832i(b). The Administrator, the Secretary of the Army, and the Secretary of Energy, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this chapter, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called "laborers, mechanics, and workmen"), subject to the civil-service laws. The Administrator is further authorized to

Bonneville Project Act of 1937 (continued)

employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of the Army, and the Secretary of Energy, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this chapter.

[Bonneville Project Act, §10, 50 Stat. 736, as amended by Act of Oct. 23, 1945, ch. 433, §5, 59 Stat. 547, and DOE Act, §301(b), 91 Stat. 578, Aug. 4, 1977.]

Voluntary services

832i(c). The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this chapter; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses.

[Act of Oct. 23, 1945, ch. 433, §5, 59 Stat. 547.]

Receipts

832j. Deposit of receipts; authorization of appropriations

All receipts from transmission and sale of electric energy generated at the Bonneville project shall be covered into the Treasury of the United States to the credit of miscellaneous receipts, save and except that the Treasury shall set up and maintain from such receipts a continuing fund of \$500,000, to the credit of the administrator and subject to check by him, to defray emergency expenses and to insure continuous operation. There is authorized to be appropriated from time to time, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter, including installation of equipment and machinery for the generation of electric energy and facilities for its transmission and sale.

[Bonneville Project Act, §11, 50 Stat. 736.]

832k. Authority of Administrator

832k(a). The Administrator is authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of \$1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages of persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this chapter. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the

Bonneville Project Act of 1937 (continued)

Administrator may repair all or any part of such damage in lieu of making such payments.

[Act of Oct. 23, 1945, ch. 433, §6, 59 Stat. 547-8.]

832k(b). The Administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this chapter; and he shall be represented in the prosecution and defense of all litigation, affecting the status or operation of Bonneville project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator.

[Bonneville Project Act, §12(b), 50 Stat. 736, as amended by Act of Oct. 23, 1945, ch. 433, §6, 59 Stat. 548 and Act of July 26, 1946, ch. 673, 60 Stat. 701.]

832l. Severability of provisions

If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

[Bonneville Project Act, §13, 50 Stat. 736.]

Legislative History for The Bonneville Project Act of 1937

Dates of Consideration and Passage

House: July 2, 21, 23 and 26, 1937

Senate: July 27, August 6, 9, 1937

House and Senate August 12, 1937

Senate Report (Committee on Commerce) No. 75-919

House Reports No. 75-1090 (Committee on Rivers and Harbors)
and No. 75-1507 (Committee of Conference)

Cong. Record Vol. 81 (1937)

Energy and Water Appropriations Act of 1996

(Excess Federal Power Provision)

16 United States Code Chapter 12B (2006)

Act of Nov. 13, 1995, 109 Stat. 419

Public Law No. 104-46, H.R. 1905

832m. [Sale of excess federal power]

Definitions

832m(a). Definitions

In this section:

832m(a)(1). Administrator

The term "Administrator" means the Administrator of the Bonneville Power Administration.

832m(a)(2). Council

The term "Council" means the Northwest Power and Conservation Planning Council.

832m(a)(3). Excess Federal power

The term "excess Federal power" means such electric power that has become surplus to the firm contractual obligations of the Administrator under section 839c(f) of this title due to either—

832m(a)(3)(A). any reduction in the quantity of electric power that the Administrator is contractually required to supply under subsections (b) and (d) of section 839c of this title, due to the election by customers of the Bonneville Power Administration to purchase electric power from other suppliers, as compared to the quantity of electric power that the Administrator was contractually required to supply as of January 1, 1995; or

832m(a)(3)(B). those operations of the Federal Columbia River Power System that are primarily for the benefit of fish and wildlife affected by the development, operation, or management of the System.

[Pub.L. 104-46, § 508(a), November 13, 1995, 109 Stat. 419.]

Authority to sell
excess power

832m(b). Sale of excess Federal power

Notwithstanding section 837a of this title, subsections (a), (b), and (c) of section 837b of this title, and section 837f of this title, and section 839f(c) of this title, the Administrator may, as permitted by otherwise applicable law, sell or otherwise dispose of excess Federal power—

832m(b)(1). outside the Pacific Northwest on a firm basis for a contract term of not to exceed 7 years, if the excess Federal power is first offered for a reasonable period of time and under the same essential rate, terms and conditions to those Pacific Northwest public body, cooperative and investor-owned utilities and those direct service industrial customers identified in subsection (b) or (d)(1)(A) of section 839c of this title; and

Energy and Water Appropriations Act (continued)

832m(b)(2). in any region without the prohibition on resale established by the second sentence of section 832d(a) of this title.

[Pub.L. 104-46, § 508(b), November 13, 1995, 109 Stat. 420.]

832m(c). Study by Council

832m(c)(1). Within 180 days of November 13, 1995, the Council shall review and report to Congress regarding the most appropriate governance structure to allow more effective regional control over efforts to conserve and enhance anadromous and resident fish and wildlife within the Federal Columbia River Power System.²

[Pub.L. 104-46, § 508(c), November 13, 1995, 109 Stat. 420.]

832m(d). Corps of Engineers procurement

The Assistant Secretary of the Army for Civil Works, acting through the North Pacific Division of the Corps of Engineers, is authorized to place orders for goods and services related to facilities for electric power generation and fish and wildlife mitigation associated with the Federal Columbia River Power System with and through the Administrator using the authorities available to the Administrator.

[Pub.L. 104-46, § 508(d), November 13, 1995, 109 Stat. 420.]

832m(e). Residential exchange

Notwithstanding the establishment, confirmation and approval of rates pursuant to section 839e of this title, and notwithstanding the provisions of section 839c(c) of this title, the cost benefits of eligible utilities' total purchase and exchange sales under section 839c(c)(1) of this title shall be \$145,000,000 for fiscal year 1997, and the net benefits paid to each eligible electric utility shall be \$145,000,000 multiplied by the percentage of the total of such net benefits paid by the Administrator to such utility for fiscal year 1995.

[Pub.L. 104-46, § 508(e), November 13, 1995, 109 Stat. 420.]

832m(f). Personnel flexibility

The Administrator may offer employees voluntary separation incentives as deemed necessary which shall not exceed \$25,000. Recipients who accept employment with the United States within five years after separation shall repay the entire amount to the Bonneville Power Administration. This authority shall expire January 1, 2003.

[Pub.L. 104-46, § 508(f), November 13, 1995, 109 Stat. 421; as amended by Pub.L. 104-206, § 511, September 30, 1996, 110 Stat. 3004.]

832m(g). Savings

Unless superseded by an Act of Congress, the authority provided by this section is expressly intended to extend beyond the fiscal year.

[Pub.L. 104-46, § 508(g), November 13, 1995, 109 Stat. 421; as amended Pub. L. 106-377, § 1(a)(2) [Title III], Oct. 27, 2000, 114 Stat. 1441, 1441A.]

² So in original. No par. (2) has been enacted.

VSI authority

Energy and Water Appropriations Act (continued)

**Legislative History for
The Energy and Water Appropriations
Act of 1996**

Dates of Consideration and Passage

House: July 11, 12, 1995

Senate: July 31, August 1, 1995 (amended)

October 31, 1995 House and Senate agreed to conference report

House Report (Committee on Appropriations) Nos. 104-149
and (Committee of Conference) 104-293

Senate Report (Committee on Appropriations) No. 104-120

Cong. Record Vol. 141 (1995)

**Legislative History for
The Energy and Water Appropriations
Act of 1997**

Dates of Consideration and Passage

House: July 24, 25, September 12, 1996

Senate: July 26, 29, 30, September 17, 1996

House Report (Committee on Appropriations) 104-679
and (Committee of Conference) 104-782

Senate Report (Committee on Appropriations) 104-320
[To accompany S.1959]

Cong. Record Vol. 142 (1996)
[To accompany H.R. 4754]

Grand Coulee Dam — Third Powerplant Act

16 United States Code Chapter 12D (2006)
Act of June 14, 1966, 80 Stat. 200
Public Law No. 89-448, S. 1761.

835j. Projects marketing commercial power and energy . . . adjustment of rates to assure return of reimbursable construction costs within prescribed period

The Secretary of the Interior shall prepare, maintain, and present annually to the President and the Congress a consolidated financial statement for all projects heretofore or hereafter authorized, including the third powerplant at Grand Coulee Dam, from or by means of which commercial power and energy is marketed through the facilities of the Federal Columbia River power system and for all other projects associated therewith to the extent that the costs of these projects are required by law to be charged to and returned from net revenues derived from the power and energy, or any power and energy, so marketed, and he shall, if said consolidated statement indicates that the reimbursable construction costs of the projects, or any of the projects, covered thereby which are chargeable to and returnable from the commercial power and energy so marketed are likely not to be returned within the period prescribed by law, take prompt action to adjust the rates charged for such power and energy to the extent necessary to assure such return.

[Grand Coulee Dam — Third Powerplant Act (Third Powerplant Act), §2(a) formerly §2, June 14, 1966, 80 Stat. 200, renumbered by Pub. L. 89-561, §6(1), Sept. 7, 1966, 80 Stat. 714.]

835k. Return of construction costs from marketing revenues in event of inability of irrigation users to repay within repayment period and lack of other sources of revenue

Subject to the provisions of section 835l of this title, that portion of the construction cost of any project hereafter authorized to be constructed, operated, and maintained by the Secretary of the Interior under the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) within the Pacific Northwest which, though allocated to irrigation, is beyond the ability of the irrigation water users to repay within the repayment period prescribed by law for that project and cannot be returned within the same period from other project sources of revenue shall be charged to and returned within that period from net revenues derived from the marketing of commercial power and energy through the Federal Columbia River power system, unless otherwise provided by law. As used in this section, the term "Pacific Northwest" has the meaning ascribed to it in section 837 of this title.

[Third Powerplant Act, §2(a) formerly §2, June 14, 1966, 80 Stat. 200, renumbered by Pub. L. 89-561, §6(1), (2), Sept. 7, 1966, 80 Stat. 714.]

835l. Congressional declaration of financial policy; limitations on assistance; analyses and studies; "net revenues" defined

It is declared to be the policy of the Congress that reclamation projects hereafter authorized in the Pacific Northwest to receive financial assistance

Third Powerplant Act (continued)

from the Federal Columbia River power system shall receive such assistance only from the net revenues of that system as provided in this section, and that their construction shall be so scheduled that such assistance, together with similar assistance for previously authorized reclamation projects (including projects not now receiving such assistance for which the Congress may hereafter authorize financial assistance) will not cause increases in the rates and charges of the Bonneville Power Administration. It is further declared to be the policy of the Congress that the total assistance to all irrigation projects, both existing and future, in the Pacific Northwest shall not average more than \$30,000,000 annually in any period of twenty consecutive years. Any analyses and studies authorized by the Congress for reclamation projects in the Pacific Northwest shall be prepared in accordance with the provisions of sections 835j to 835m of this title. As used in sections 835j to 835m of this title, the term "net revenues" means revenues as determined from time to time which are not required for the repayment of (1) all costs allocated to power at projects in the Pacific Northwest then existing or authorized, including the cost of acquiring power by purchase or exchange, and (2) presently authorized assistance from power to irrigation at projects in the Pacific Northwest existing and authorized prior to the September 7, 1966.

[Third Powerplant Act, §2(b), as added by Pub. L. 89-561, §6(3), Sept. 7, 1966, 80 Stat. 714.]

835m. Recommendations for changes in limitations of financial assistance; time and frequency of submission

On December 20, 1974, and thereafter at intervals coinciding with anniversary dates of Federal Energy Regulatory Commission general review of the rates and charges of the Bonneville Power Administration, the Secretary of the Interior shall recommend to the Congress any changes in the dollar limitations herein placed upon financial assistance to Pacific Northwest reclamation projects that he believes justified by changes in the cost-price levels existing on July 1, 1966, or by other relevant changes of circumstances.

[Third Powerplant Act, §2(c), as added by Pub. L. 89-561, §6(3), Sept. 7, 1966, 80 Stat. 715, and amended by Department of Energy Organization Act, Pub. L. 95-91, title IV, §402(a)(1)(B), Aug. 4, 1977, 91 Stat. 583.]

Historical Note

The functions of the Secretary of the Interior with respect to the Bonneville Power Administration were transferred to the Secretary of Energy by section 7152(a)(1)(D) of Title 42, later amended to section 7152(a)(1)(C). Section 7152(a)(2) of Title 42 provides that the Bonneville Power Administration be preserved as a distinct organization within the Department of Energy and headed by an Administrator.

Third Powerplant Act (continued)

**Legislative History for Grand Coulee Dam—
Third Powerplant Act**

[None set out]

Pacific Northwest Consumer Power Preference; Reciprocal Priority in Other Regions

16 United States Code Chapter 12F (2006).

Act of Aug. 31, 1964, 78 Stat. 756.

Public Law No. 88-552, S. 1007.

Definitions

837. Definitions

As used in this chapter—

837(a). “Secretary” means the Secretary of Energy.

[Pub. L. 88-552, §1(a), Aug. 31, 1964, (Preference Act), 78 Stat. 756, as amended by DOE Act, §302(a), 91 Stat. 578, Aug. 4, 1977.]

837(b). “Pacific Northwest” means (1) the region consisting of the States of Oregon and Washington, the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming within the Columbia drainage basin and of the State of Idaho as the Secretary may determine to be within the marketing area of the Federal Columbia River power system, and (2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on Dec. 5, 1980 which has a distribution system from which it serves both within and without said region.

[Preference Act, §1(b), 78 Stat. 756, as amended by Pacific Northwest Electric Power Planning and Conservation Act, §8(e), 94 Stat. 2729.]

837(c). “Surplus energy” means electric energy generated at Federal hydroelectric plants in the Pacific Northwest which would otherwise be wasted because of the lack of a market therefor in the Pacific Northwest at any established rate.

[Preference Act, §1(c), 78 Stat. 756.]

837(d). “Surplus peaking capacity” means electric peaking capacity at Federal hydroelectric plants in the Pacific Northwest for which there is no demand in the Pacific Northwest at any established rate.

[Preference Act, §1(d), 78 Stat. 756.]

837(e). “Non-Federal utility” means any utility not owned or controlled by the United States, including any entity (1) which such a utility owns or controls, in whole or in part, or is controlled by, (2) which is controlled by those controlling such utility, or (3) of which such utility is a member.

[Preference Act, §1(e), 78 Stat. 756.]

837(f). “Energy requirements of any Pacific Northwest customer” means the full requirements for electric energy of (1) any purchaser from the United States for direct consumption in the Pacific Northwest, and (2) any non-Federal utility in that region in excess of (i) the hydroelectric energy available for its own use from its generating plants in the Pacific Northwest, and (ii) any additional energy available for use in the Pacific Northwest which, under

Pacific NW Power Preference Act (continued)

a then existing contract, the utility (A) can obtain at no higher incremental cost than the rate charged by the United States, or (B) is required to accept.

[Preference Act, §1(f), 78 Stat. 756.]

837(g). Terms not defined herein shall, unless the context requires otherwise, have the meaning given them in the March 1949 Glossary of Important Power and Rate Terms prepared under the supervision of the Federal Power Commission.

[Preference Act, §1(g), 78 Stat. 756.]

837a. Limitation of sale, delivery, and exchange of electric energy and electric peaking capacity for use outside Pacific Northwest to surplus energy and surplus peaking capacity; notice to customers; inspection of contract drafts

Subject to the provisions of this chapter, the sale, delivery, and exchange of electric energy generated at, and peaking capacity of, Federal hydroelectric plants in the Pacific Northwest for use outside the Pacific Northwest shall be limited to surplus energy and surplus peaking capacity. At least 30 days prior to the execution of any contract for the sale, delivery, or exchange of surplus energy or surplus peaking capacity for use outside the Pacific Northwest, the Secretary shall give the then customers of the Bonneville Power Administration written notice that negotiations for such a contract are pending, and thereafter, at any customer's request, make available for its inspection current drafts of the proposed contract.

[Preference Act, §2, 78 Stat. 756.]

837b. Contract terms and conditions for use of electric energy outside Pacific Northwest

837b(a). Any contract for the sale or exchange of surplus energy for use outside the Pacific Northwest, or as replacement, directly or indirectly, within the Pacific Northwest for hydroelectric energy delivered for use outside that region by a non-Federal utility, shall provide that the Secretary, after giving the purchaser notice not in excess of sixty days, will not deliver electric energy under such contract whenever it can reasonably be foreseen that such delivery would impair his ability to meet, either at or after the time of such delivery, the energy requirement of any Pacific Northwest customer. The purchaser shall obligate himself not to take delivery of or use any such energy to supply any load under such conditions that discontinuance of deliveries from the Pacific Northwest in sixty days would cause undue hardship to the purchaser or in his territory, and, further, the purchaser shall acknowledge full responsibility if any such hardship occurs. Deliveries by a non-Federal utility from its generating plants in the Pacific Northwest for use on its own distribution system in an area outside but contiguous to the Pacific Northwest (not including any extension of its outside service area by merger or acquisition after August 31, 1964) shall not be deemed deliveries by such utility for use outside the Pacific Northwest.

[Preference Act, §3(a), 78 Stat. 756-7.]

Sale of energy limited

Deliveries

Pacific NW Power Preference Act (continued)

Future demand

837b(b). Electric energy generated at Federal hydroelectric plants in the Pacific Northwest which can be conserved, for which there is no immediate demand in the Pacific Northwest at any established rate, but for which the Secretary determines there may be a demand in meeting the future requirements of the Pacific Northwest, may be delivered for use outside that region only on a provisional basis under contracts providing that if the Secretary determines at a subsequent time that, by virtue of prior deliveries under such contract, the Secretary is or will be unable to meet the energy requirements of any Pacific Northwest customer, the purchaser will return the full amount of energy delivered to him, or such portion or portions thereof as may be required, at such time or times as may be specified by the Secretary, except that the Secretary shall not require return during the purchaser's daily peak periods. The Secretary shall require the return of the energy provisionally delivered hereunder, to such extent and at such times, as may be necessary to meet demands at any established rate for use within the Pacific Northwest.

[Preference Act, §3(b), 78 Stat. 757.]

Contract for surplus capacity

837b(c). Any contract for the disposition of surplus peaking capacity shall provide that (1) the Secretary may terminate the contract upon notice not in excess of sixty months, and (2) the purchaser shall advance or return the energy necessary to supply the peaking capacity, except that the Secretary shall not require such advance or return during the purchaser's daily peak periods. The Secretary may contract for the sale of such energy to the purchaser, in lieu of its return, under the conditions prescribed in subsection (a) of this section.

[Preference Act, §3(c), 78 Stat. 757.]

837b(d). The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy.

[Preference Act, §3(d), 78 Stat. 757.]

Limitations

837c. Contract limitations and conditions for use of electric energy and peaking capacity of plants in other marketing areas for use within Pacific Northwest

Any contract of the Secretary for the sale or exchange of electric energy generated at, or peaking capacity of, Federal hydroelectric plants in marketing areas outside the Pacific Northwest for use within the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 837a and 837b of this title for any contract for the sale or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest.

[Preference Act, §4, 78 Stat. 757-8.]

Pacific NW Power Preference Act (continued)

837d. Exchange contracts

Without regard to the limitations specified in sections 837a and 837b of this title, the Secretary may enter into contracts for the exchange with areas other than the Pacific Northwest of (1) surplus energy during the Pacific Northwest storage refill period, (2) any hydroelectric energy during the Pacific Northwest storage refill period which will be returned to the Pacific Northwest in equal amounts during the same Pacific Northwest refill period or the succeeding storage drawdown period, (3) any hydroelectric energy which will be returned to the Pacific Northwest in equal amounts during the same Pacific Northwest storage drawdown period, (4) hydroelectric peaking capacity, or (5) surplus peaking capacity for energy. All benefits from such exchanges, including resulting increases of firm power, shall be shared equitably by the areas involved, having regard to the secondary energy and other contributions made by each.

[Preference Act, §5, 78 Stat. 758.]

837e. Transmission lines for other electric energy; rates

Any capacity in Federal transmission lines connecting, either by themselves or with non-Federal lines, a generating plant in the Pacific Northwest or Canada with the other area or with any other area outside the Pacific Northwest, which is not required for the transmission of Federal energy or the energy described in section 837h of this title, shall be made available as a carrier for transmission of other electric energy between such areas. The transmission of other electric energy shall be at equitable rates determined by the Secretary, but such rates shall be subject to equitable adjustment at appropriate intervals not less frequently than once in every five years as agreed to by the parties. No contract for the transmission of non-Federal energy on a firm basis shall be affected by any increase, subsequent to the execution of such contract, in the requirements for transmission of Federal energy, the energy described in section 837h of this title, or other electric energy.

[Preference Act, §6, 78 Stat. 758.]

837f. Purchaser priority on Pacific Northwest power; amendment of existing contracts and new contracts to include priority provisions

The Secretary shall offer to amend, without imposing any other requirement as a condition to such amendment, all existing contracts for the sale or exchange of electric power generated at Federal hydroelectric plants in the Pacific Northwest to include, and shall include in all new contracts, provisions giving the purchaser priority on electric power generated at such plants in conformity with the provisions of this chapter.

[Preference Act, §7, 78 Stat. 758.]

837g. Transmission lines between Pacific Northwest and the Pacific Southwest; prohibition against construction of lines and facilities recommended by Secretary or authorized by Congress; authority of Secretary to construct other transmission lines unaffected

No electric transmission lines or related facilities shall be constructed by any Federal agency outside the Pacific Northwest for the purpose of transmitting electric energy between the Pacific Northwest and Pacific Southwest, nor shall

Transmission lines

Pacific NW Power Preference Act (continued)

any arrangement for transmission capacity be executed by any Federal agency for the purpose of financing such lines and related facilities to be constructed by non-Federal entities, except those lines and facilities recommended for Federal construction in the Report of the Secretary of the Interior submitted to Congress on June 24, 1964, as supplemented on July 27, 1964, or as hereafter specifically authorized by Congress: Provided, That, except with respect to electric transmission lines and related facilities for the purpose of transmitting electric energy between the two regions above mentioned, nothing herein shall be construed as expanding or diminishing in any way the present authority of the Secretary of Energy to construct transmission lines to market power and energy.

[Preference Act, §8, 78 Stat. 758, as amended by DOE Act, §302(a), 91 Stat. 578, Aug. 4, 1977.]

837g-1. Construction of additional facilities by Secretary of Energy for mutually beneficial power sales between Pacific Northwest and California; contribution of funds by non-Federal entities

Notwithstanding the provisions of section 837g of this title, the Secretary of Energy is authorized to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California and to accept funds contributed by non-Federal entities for that purpose.

[Energy and Water Development Appropriations Act of 1984, Pub. L. 98-360, title III, §300, July 16, 1984, 98 Stat. 360.]

837h. Provisions not applicable to Canyon Ferry project or benefits and exchanges under Treaty between Canada and United States; preference of power users in Montana not modified

The provisions of this chapter shall not be applicable to (1) the Canyon Ferry project and (2), except as provided in section 837e of this title, downstream power benefits to which Canada is entitled under the treaty between Canada and the United States relating to the cooperative development of the water resources of the Columbia River Basin, signed at Washington, July 17, 1961, nor to energy or capacity disposed of to Canada in any exchange pursuant to paragraph 1 or 2 of article VIII thereof. Nothing in this chapter shall be construed to modify the geographical preference of power users in the State of Montana which is established by the Hungry Horse Dam Act (Act of June 4, 1944, 58 Stat. 270), as amended.

[Preference Act, §9, 78 Stat. 758-9.]

Pacific NW Power Preference Act (continued)

**Legislative History for
Pacific Northwest Consumer
Power Preference;
Reciprocal Priority in Other Regions**

Dates of Consideration and Passage

House: August 27, 1963; August 18, 1964

Senate: April 23, 1963; August 20, 1964

Senate Report (Interior and Insular Affairs Committee)
No. 122, Apr. 9, 1963 [To accompany S. 1007]

House Report (Interior and Insular Affairs Committee)
No. 590, July 25, 1963 [To accompany S. 1007]

Conference Report No. 1822, Aug. 17, 1964
[To accompany S. 1007]

Cong. Record Vol. 109 (1963)

Cong. Record Vol. 110 (1964)

Federal Columbia River Transmission System Act

16 United States Code Chapter 12g (2006).
Act Of Oct. 18, 1974, 88 Stat. 1376.
Public Law No. 93-454, S. 3362.

Findings

838. Congressional findings; authority and duties of Secretary of Energy relating to Federal Columbia River Power System unaffected

838(a). Congress finds that in order to enable the Secretary of Energy to carry out the policies of Public Law 88-552 [16 U.S.C. §§837 et seq.] relating to the marketing of electric power from hydroelectric projects in the Pacific Northwest, Public Laws 89-448 and 89-561 [16 U.S.C. §§835j-m] 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.

[Federal Columbia River Transmission System Act, §2(a), (Transmission System Act), Oct. 18, 1974, 88 Stat. 1376, as amended by DOE Act, §302(a)(1)(D), 91 Stat. 578, Aug. 4, 1977.]

838(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 chapter. The authority and duties of the Administrator referred to herein are subject to the supervision and direction of the Secretary.

[Transmission System Act, §2(b), 88 Stat. 1376.]

Definitions

838a. Definitions

As used in this chapter—

838a(a). The term “Administrator” means the Administrator, Bonneville Power Administration.

[Transmission System Act, §3(a), 88 Stat. 1376.]

838a(b). The term “electric power” means electric peaking capacity or electric energy, or both.

[Transmission System Act, §3(b), 88 Stat. 1376.]

838a(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.

[Transmission System Act, §3(c), 88 Stat. 1376.]

838b. Operation and maintenance of Federal transmission system; construction of improvements, betterments, additions and replacements; criteria

Transmission System Act (continued)

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:

838b(a). integrate and transmit the electric power from existing or additional Federal or non-Federal generating units;

[Transmission System Act, §4(a), 88 Stat. 1376.]

838b(b). provide service to the Administrator's customers;

[Transmission System Act, §4(b), 88 Stat. 1376.]

838b(c). provide interregional transmission facilities; or

[Transmission System Act, §4(c), 88 Stat. 1376.]

838b(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.

[Transmission System Act, §4(d), 88 Stat. 1377.]

[Transmission System Act, §4, 88 Stat. 1377, as amended by DOE Act, §, 302(a)(1)(D), 91 Stat. 578, Aug. 4, 1977.]

838c. Acquisition by condemnation of transmission facilities

838c(a). Unless specifically authorized by Act of Congress, the Administrator shall not expend funds made available under this chapter, 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.

[Transmission System Act, §5(a), 88 Stat. 1377.]

838c(b). At least sixty days prior to the time a request for approval or authority under this section or section 838b of this title 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.

[Transmission System Act, §5(b), 88 Stat. 1377.]

Additions to
transmission system

Limitations to
condemnation

Notice

Transmission System Act (continued)

Excess capacity

838d. Transmission of non-Federal power

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.

[Transmission System Act, §6, 88 Stat. 1377.]

838e. Acquisition of property

Subject to the provisions of section 838c of this title 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.

[Transmission System Act, §7, 88 Stat. 1377.]

Designated
marketing agent

838f. Marketing of Federal power; sales agent

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.³

[Transmission System Act, §8, 88 Stat. 1377.]

Rates

838g. Schedules of rates and charges for sale of Federal power and transmission of non-Federal power; confirmation and approval; criteria for modification and establishment

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 838f of this title 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 Secretary of Energy. 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 Secretary of Energy, 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 838i(b)(9) of this title, 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 chapter, and amounts required to establish and maintain reserve and

Cost allocation

³ See 33 U.S.C. §2213, that requires the Administrator to comment on the marketability of the power to be produced by any new hydroelectric power project proposed by the Secretary of Energy, *infra*, page 153.

Transmission System Act (continued)

other funds and accounts established in connection therewith.⁴

[Transmission System Act, §9, 88 Stat. 1377-8, as amended by DOE Act, §§301(b), 302(a)(1)(D), 91 Stat. 578, Aug. 4, 1977.]

838h. Uniform schedules of rates and charges for sale of Federal power and transmission of non-Federal power; allocation of cost recovery

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.

[Transmission System Act, §10, 88 Stat. 1378.]

838i. Bonneville Power Administration fund

838i(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 832j of this title, and (iii) the 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 chapter 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.⁵

[Transmission System Act, §11(a), 88 Stat. 1378, as amended by DOE Act, §302(a)(1)(D), 91 Stat. 578, Aug. 4, 1977.]

838i(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 —

Establishment of
BPA fund

Purposes

⁴ See Energy and Water Development Appropriation Act of 1993 that reaffirms Congress' commitment to cost-based rates, *infra*, page 204.

⁵ The Fund is exempt from the Balanced Budget and Emergency Deficit Control Act of 1985, *infra*, page 3.

Transmission System Act (continued)

838i(b)(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 chapter referred to as "transmission system");

[Transmission System Act, §11(b)(1), 88 Stat. 1378-9.]

838i(b)(2). operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under subsection (1) above, of the transmission system;

[Transmission System Act, §11(b)(2), 88 Stat. 1379.]

838i(b)(3). electrical research, development, experimentation, tests, and investigation related to construction, operation, and maintenance of transmission systems and facilities;

[Transmission System Act, §11(b)(3), 88 Stat. 1379.]

838i(b)(4). marketing of electric power;

[Transmission System Act, §11(b)(4), 88 Stat. 1379.]

838i(b)(5). transmission over facilities of others and rental, lease, or lease-purchase of facilities;

[Transmission System Act, §11(b)(5), 88 Stat. 1379.]

838i(b)(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 839b(h) of this title;

[Transmission System Act, §11(b)(6), 88 Stat. 1379 as amended by Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, §8(a), Dec. 5, 1980, 94 Stat. 2728.]

838i(b)(7). defraying emergency expenses or insuring continuous operation;

[Transmission System Act, §11(b)(7), 88 Stat. 1379.]

838i(b)(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 838k(a) of this title, including provision for and maintenance of reserve and other funds established in connection therewith;

[Transmission System Act, §11(b)(8), 88 Stat. 1379.]

838i(b)(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;

[Transmission System Act, §11(b)(9), 88 Stat. 1379.]

Transmission System Act (continued)

838i(b)(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;

[Transmission System Act, §11(b)(10), 88 Stat. 1379.]

838i(b)(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 chapter; and

[Transmission System Act, §11(b)(11), 88 Stat. 1379, as amended by DOE Act, §302(a)(1)(D), 91 Stat. 578, Aug. 4, 1977.]

838i(b)(12). making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Regional Power Planning and Conservation Act [16 U.S.C. 839 et seq.].

[Pacific Northwest Electric Power Planning and Conservation Act, §8(b), 94 Stat. 2728.]

838i(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 chapter 91 of title 31 shall be applicable to the Administrator in the same manner as they are applied to the wholly owned Government corporations named in section 9101 of title 31, but nothing in section 9105(d) of title 31, shall be construed as affecting the powers granted in subsection (b) (11) of this section and in sections 832a(f), 832i(b), and 832i(a) of this title.

[Transmission System Act, §11(c), 88 Stat. 1379-80.]

Moneys received
in trust

838i(d). Notwithstanding the provisions of sections 9105 and 9106 of title 31, 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 6-1/2 months following the end of the fiscal year covered by the audit.⁶

[Transmission System Act, §11(d), 88 Stat. 1380.]

Audit report
to Congress

**Federal Columbia River Transmission Act continues on page 71 after
16 United States Code 838i note.**

⁶ Codified as a note to this section is the Energy and Water Development Act of 1989 that authorizes Bonneville to incur obligations for authorized purchases in excess of borrowing authority and cash in the Bonneville Power Administration Fund, *infra*, page 197.

Energy and Water Development Appropriations Act of 1989

16 United States Code Chapter 12G note (2006)
Act of July 19, 1988, Title III, §300, 102 Stat. 869.
Public Law No. 100-371.

838i note.

Authority to Incur Obligation in Excess of Borrowing Authority and Cash in Fund

“Without fiscal year limitation, the Bonneville Power Administration continues to be authorized to incur obligations for authorized purposes and may do so in excess of borrowing authority and cash in the Bonneville Power Administration Fund.”

[Pub. L. 100-371, Title III, §300, July 19, 1988, 102 Stat. 869.]

Legislative History for Energy and Water Development Appropriations Act of 1989

Dates of Consideration and Passage

House: May 17, June 30, 1988

Senate: June 15, July 7, 1988

House Report (Appropriations Committee) No. 100-618,
May 11, 1988 [To accompany H.R. 5467]

Senate Report (Appropriations Committee) No. 100-381,
June 9, 1988 [To accompany H.R. 4567]

House Conference Report No. 100-724,
June 22, 1988 [To accompany H.R. 4567]

Cong. Record Vol. 134 (1988)

Transmission System Act (continued)

838j. Investment of excess moneys; deposit of moneys

838j(a). If the Administrator determines that moneys in the fund are 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.

[Transmission System Act, §12(a), 88 Stat. 1380.]

838j(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.

[Transmission System Act, §12(b), 88 Stat. 1380.]

838k. Bonneville Power Administration bonds

838k(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 chapter 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 [16 U.S.C. 839 et seq.] (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 [16 U.S.C. 839d] 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 stream-flows 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

Issuance and
sale of bonds

Interest rate

Transmission System Act (continued)

Limitation on
aggregate principal

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 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 interest 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 therefore in the Fund. The funds from such revolving account shall not be deemed State or local funds.⁷

[Transmission System Act, §13(a), 88 Stat. 1380, as amended by the Pacific Northwest Electric Power Planning and Conservation Act §8(d), 97 Stat. 2729.]

Source of
payment proceeds

838k(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 838i(b)(2) through (b)(7), (b)(11) and (b)(12) of this title, and shall include reserve or other funds created from such receipts.

[Transmission System Act, §13(b), 88 Stat. 1380, as amended by the Pacific Northwest Electric Power Planning and Conservation Act §8(c), 97 Stat. 2728.]

838k(c). The Secretary of the Treasury shall purchase forthwith any bonds issued by the Administrator under this chapter and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this chapter. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this chapter. 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.

[Transmission System Act, §13(c), 88 Stat. 1381.]

⁷ See Continuing Appropriations for 1983, providing \$1.25 million in borrowing authority for conservation and renewable resources, *infra*, page 188. See Energy and Water Development Appropriation Act of 1984, Title III, that increases borrowing authority an additional \$1,250,000,000 *infra*, page 189.

Transmission System Act (continued)

**Legislative History for
Federal Columbia River Transmission
System Act**

Dates of Consideration and Passage

Senate: July 30, 1974

House: October 7, 1974

Senate Report (Interior and Insular Affairs Committee)
No. 93-1030, July 25, 1974 [To accompany S. 3362]

House report (Interior and Insular Affairs Committee)
No. 93-1375, Sept. 25, 1974 [To accompany S. 3362]

Cong. Record Vol. 120 (1974)

Bonneville Power Administration Refinancing Section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996

16 United States Code Chapter 12g (2006)
Act Of April 26, 1996, 110 Stat. 1321, 1350
Public Law No. 104-134, H.R. 3019 (S. 1594)

838I. Bonneville Power Administration refinancing

Definitions

838I(a). Definitions

For the purposes of this section—

838I(a)(1). “Administrator” means the Administrator of the Bonneville Power Administration;

838I(a)(2). “capital investment” means a capitalized cost funded by Federal appropriations that—

838I(a)(2)(A). is for a project, facility, or separable unit or feature of a project or facility;

838I(a)(2)(B). is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;

838I(a)(2)(C). excludes a Federal irrigation investment; and

838I(a)(2)(D). excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the Administrator under section 838k of this title;

838I(a)(3). “new capital investment” means a capital investment for a project, facility, or separable unit or feature of a project or facility, placed in service after September 30, 1996;

838I(a)(4). “old capital investment” means a capital investment the capitalized cost of which—

838I(a)(4)(A). was incurred, but not repaid, before October 1, 1996, and

838I(a)(4)(B). was for a project, facility, or separable unit or feature of a project or facility, placed in service before October 1, 1996;

838I(a)(5). “repayment date” means the end of the period within which the Administrator’s rates are to assure the repayment of the principal amount of a capital investment; and

BPA Refinancing Act (continued)

838I(a)(6). “Treasury rate” means—

838I(a)(6)(A). for an old capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1996, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1996, and the repayment date for the old capital investment; and

838I(a)(6)(B). for a new capital investment, a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the new capital investment.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(b). New principal amounts

838I(b)(1). Principal amount

Effective October 1, 1996, an old capital investment has a new principal amount that is the sum of—

838I(b)(1)(A). the present value of the old payment amounts for the old capital investment, calculated using a discount rate equal to the Treasury rate for the old capital investment; and

838I(b)(1)(B). an amount equal to \$100,000,000 multiplied by a fraction whose numerator is the principal amount of the old payment amounts for the old capital investment and whose denominator is the sum of the principal amounts of the old payment amounts for all old capital investments.

838I(b)(2). Determination

With the approval of the Secretary of the Treasury based solely on consistency with this section, the Administrator shall determine the new principal amounts under subsection (b) and the assignment of interest rates to the new principal amounts under subsection (c).

838I(b)(3). Old payment amounts

For the purposes of this subsection, “old payment amounts” means, for an old capital investment, the annual interest and principal that the Administrator would have paid to the United States Treasury from October 1, 1996, if this section had not been enacted, assuming that—

838I(b)(3)(A). the principal were repaid—

838I(b)(3)(A)(i). on the repayment date the Administrator assigned before October 1, 1994, to the old capital investment, or

New principal amount

BPA Refinancing Act (continued)

838I(b)(3)(A)(ii). with respect to an old capital investment for which the Administrator has not assigned a repayment date before October 1, 1994, on a repayment date the Administrator shall assign to the old capital investment in accordance with paragraph 10(d)(1) of the version of Department of Energy Order RA 6120.2 in effect on October 1, 1994; and

838I(b)(3)(B). interest were paid—

838I(b)(3)(B)(i). at the interest rate the Administrator assigned before October 1, 1994, to the old capital investment, or

838I(b)(3)(B)(ii). with respect to an old capital investment for which the Administrator has not assigned an interest rate before October 1, 1994, at a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year in which the related project, facility, or separable unit or feature is placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year and the repayment date for the old capital investment.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

Interest rate

838I(c). Interest rate for new principal amounts

As of October 1, 1996, the unpaid balance on the new principal amount established for an old capital investment under subsection (b) bears interest annually at the Treasury rate for the old capital investment until the earlier of the date that the new principal amount is repaid or the repayment date for the new principal amount.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(d). Repayment dates

As of October 1, 1996, the repayment date for the new principal amount established for an old capital investment under subsection (b) is no earlier than the repayment date for the old capital investment assumed in subsection (b)(3)(A).

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(e). Prepayment limitations

During the period October 1, 1996, through September 30, 2001, the total new principal amounts of old capital investments, as established under subsection (b), that the Administrator may pay before their respective repayment dates shall not exceed \$100,000,000.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(f). Interest rates for new capital investments during construction

New capital investment

838I(f)(1). New capital investment

The principal amount of a new capital investment includes interest in each

BPA Refinancing Act (continued)

fiscal year of construction of the related project, facility, or separable unit or feature at a rate equal to the one-year rate for the fiscal year on the sum of—

838I(f)(1)(A). construction expenditures that were made from the date construction commenced through the end of the fiscal year, and

838I(f)(1)(B). accrued interest during construction.

838I(f)(2). Payment

The Administrator is not required to pay, during construction of the project, facility, or separable unit or feature, the interest calculated, accrued, and capitalized under subsection (f)(1).

838I(f)(3). One-year rate

For the purposes of this section, “one-year rate” for a fiscal year means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding the beginning of the fiscal year, on outstanding interest-bearing obligations of the United States with periods to maturity of approximately one year.

838I(g). Interest rates for new capital investments

The unpaid balance on the principal amount of a new capital investment bears interest at the Treasury rate for the new capital investment from the date the related project, facility, or separable unit or feature is placed in service until the earlier of the date the new capital investment is repaid or the repayment date for the new capital investment.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(h). Omitted

838I(i). Contract provisions

In each contract of the Administrator that provides for the Administrator to sell electric power, transmission, or related services, and that is in effect after September 30, 1996, the Administrator shall offer to include, or as the case may be, shall offer to amend to include, provisions specifying that after September 30, 1996—

838I(i)(1). the Administrator shall establish rates and charges on the basis that—

838I(i)(1)(A). the principal amount of an old capital investment shall be no greater than the new principal amount established under subsection (b);

838I(i)(1)(B). the interest rate applicable to the unpaid balance of the new principal amount of an old capital investment shall be no greater than the interest rate established under subsection (c);

Contract provisions

BPA Refinancing Act (continued)

838I(i)(1)(C). any payment of principal of an old capital investment shall reduce the outstanding principal balance of the old capital investment in the amount of the payment at the time the payment is tendered; and

838I(i)(1)(D). any payment of interest on the unpaid balance of the new principal amount of an old capital investment shall be a credit against the appropriate interest account in the amount of the payment at the time the payment is tendered;

838I(i)(2). apart from charges necessary to repay the new principal amount of an old capital investment as established under subsection (b) and to pay the interest on the principal amount under subsection (c), no amount may be charged for return to the United States Treasury as repayment for or return on an old capital investment, whether by way of rate, rent, lease payment, assessment, user charge, or any other fee;

838I(i)(3). amounts provided under section 1304 of title 31, United States Code, shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a breach of the contract provisions required by this Part; and

838I(i)(4). the contract provisions specified in this Part do not—

838I(i)(4)(A). preclude the Administrator from recovering, through rates or other means, any tax that is generally imposed on electric utilities in the United States, or

838I(i)(4)(B). affect the Administrator's authority under applicable law, including section 7(g) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(g)), to—

838I(i)(4)(B)(i). allocate costs and benefits, including but not limited to fish and wildlife costs, to rates or resources, or

838I(i)(4)(B)(ii). design rates.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

838I(j). Savings provisions

838I(j)(1). Repayment

This subchapter does not affect the obligation of the Administrator to repay the principal associated with each capital investment, and to pay interest on the principal, only from the "Administrator's net proceeds," as defined in section 838k(b) of this title.

838I(j)(2). Payment of capital investment

Except as provided in subsection (e), this section does not affect the authority of the Administrator to pay all or a portion of the principal amount associated

Repayment

BPA Refinancing Act (continued)

with a capital investment before the repayment date for the principal amount.

[Pub.L. 104-134, Title III, § 3201, 110 Stat. 1321-350.]

Legislative History for Omnibus Consolidated Rescissions and Appropriations Act of 1996

Dates of Consideration and Passage

House: March 7, 1996

Senate: March 11-15, 18, 19 1996

House and Senate (Conference Report) April 25, 1996

House Report (Committee of Conference) No. 104-537

Senate Report (Committee on Appropriations) No. 104-236
[To accompany S. 1594]

Cong. Record Vol. 142 (1996)

Pacific Northwest Electric Power Planning and Conservation Act

16 United States Code Chapter 12H (2006).

Act of Dec. 5, 1980, 94 Stat. 2697.

Public Law No. 96-501, S. 885.

Purposes

839. Congressional declaration of purpose

The purposes of this chapter, together with the provisions of other laws applicable to the Federal Columbia River Power System, are all intended to be construed in a consistent manner. Such purposes are also intended to be construed in a manner consistent with applicable environmental laws. Such purposes are:

839(1). to encourage, through the unique opportunity provided by the Federal Columbia River Power System—

839(1)(A). Conservation and efficiency in the use of electric power, and
[Pacific Northwest Electric Power Planning and Conservation Act, (Northwest Power Act), §2(1)(A), Dec. 5, 1980, 94 Stat. 2697.]

839(1)(B). the development of renewable resources within the Pacific Northwest;

[Northwest Power Act, §2(1)(B), 94 Stat. 2697.]

839(2). to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply;

[Northwest Power Act, §2(2), 94 Stat. 2697.]

839(3). to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in—

839(3)(A). the development of regional plans and programs related to energy conservation, renewable resources, other resources, and protecting, mitigating, and enhancing fish and wildlife resources.

[Northwest Power Act, §2(3)(A), 94 Stat. 2697.]

839(3)(B). facilitating the orderly planning of the region's power system, and

[Northwest Power Act, §2(3)(B), 94 Stat. 2698.]

839(3)(C). providing environmental quality;

[Northwest Power Act, §2(3)(C), 94 Stat. 2698.]

839(4). to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements,

Pacific NW Power Act (continued)

including the amortization on a current basis of the Federal investment in the Federal Columbia River Power System;

[Northwest Power Act, §2(4), 94 Stat. 2698.]

839(5). to insure, subject to the provisions of this chapter—

839(5)(A). that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

[Northwest Power Act, §2(5)(A), 94 Stat. 2698.]

839(5)(B). that Congress intends that this chapter not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this chapter; and

[Northwest Power Act, §2(5)(B), 94 Stat. 2698.]

839(6). to protect, mitigate and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of Federal Columbia River Power System and other power generating facilities on the Columbia River and its tributaries.

[Northwest Power Act, §2(6), 94 Stat. 2698.]

839a. Definitions

As used in this chapter, the term—

839a(1). “Acquire” and “acquisition” shall not be construed as authorizing the Administrator to construct, or have ownership of, under this chapter or any other law, any electric generating facility.

[Northwest Power Act, §3(1), 94 Stat. 2698.]

839a(2). “Administrator” means the Administrator of the Bonneville Power Administration.

[Northwest Power Act, §3(2), 94 Stat. 2698.]

839a(3). “Conservation” means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

[Northwest Power Act, §3(3), 94 Stat. 2698.]

Pacific NW Power Act (continued)

Cost-effective

839a(4)(A). “Cost-effective”, when applied to any measure or resource referred to in this chapter, means that such measure or resource must be forecast—

Reliable

839a(4)(A)(i). to be reliable and available within the time it is needed, and

[Northwest Power Act, §3(4)(A)(i), 94 Stat. 2698.]

Meet or
reduce electric
power demand

839a(4)(A)(ii). to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

[Northwest Power Act, §3(4)(A)(ii), 94 Stat. 2698.]

System cost

839a(4)(B). For purposes of this paragraph, the term “system cost” means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

[Northwest Power Act, §3(4)(B), 94 Stat. 2698-9.]

839a(4)(C). In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

[Northwest Power Act, §3(4)(C), 94 Stat. 2699.]

Conservation favored

839a(4)(D). For purposes of this paragraph, the “estimated incremental system cost” of any conservation measure or resource shall not be treated as greater than that of any non-conservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

[Northwest Power Act, §3(4)(D), 94 Stat. 2699.]

839a(5). “Consumer” means any end user of electric power.

[Northwest Power Act, §3(5), 94 Stat. 2699.]

839a(6). “Council” means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established pursuant to section 839b of this title.

[Northwest Power Act, §3(6), 94 Stat. 2699.]

Pacific NW Power Act (continued)

839a(7). “Customer” means anyone who contracts for the purchase of power from the Administrator pursuant to this chapter.

[Northwest Power Act, §3(7), 94 Stat. 2699.]

839a(8). “Direct service industrial customer” means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

[Northwest Power Act, §3(8), 94 Stat. 2699.]

839a(9). “Electric power” means electric peaking capacity, or electric energy, or both.

[Northwest Power Act, §3(9), 94 Stat. 2699.]

839a(10). “Federal base system resources” means—

839a(10)(A). the Federal Columbia River Power System hydroelectric projects;

[Northwest Power Act, §3(10)(A), 94 Stat. 2699.]

839a(10)(B). resources acquired by the Administrator under long-term contracts in force on December 5, 1980; and

[Northwest Power Act, §3(10)(B), 94 Stat. 2699.]

839a(10)(C). resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B) of this paragraph.

[Northwest Power Act, §3(10)(C), 94 Stat. 2699.]

839a(11). “Indian tribe” means any Indian tribe or band which is located in whole or in part in the region and which has a governing body which is recognized by the Secretary of the Interior.

[Northwest Power Act, §3(11), 94 Stat. 2699.]

839a(12). “Major resource” means any resource that—

839a(12)(A). has a planned capability greater than fifty average megawatts, and

[Northwest Power Act, §3(12)(A), 94 Stat. 2699.]

839a(12)(B). if acquired by the Administrator, is acquired for a period of more than five years.

[Northwest Power Act, §3(12)(B), 94 Stat. 2699.]

839a(12) [cont.]. Such term does not include any resource acquired pursuant to section 838i(b)(6) of this title.

[Northwest Power Act, §3(12), 94 Stat. 2699.]

839a(13). “New large single load” means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

Major resource

Pacific NW Power Act (continued)

Region

839a(13)(A). which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer prior to September 1, 1979, and
[Northwest Power Act, §3(13)(A), 94 Stat. 2699-2700.]

839a(13)(B). which will result in an increase in power requirements of such customer of ten average megawatts or more in any consecutive twelve-month period.
[Northwest Power Act, §3(13)(B), 94 Stat. 2700.]

839a(14). "Pacific Northwest", "region", or "regional" means—

839a(14)(A). the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and
[Northwest Power Act, §3(14)(A), 94 Stat. 2700.]

839a(14)(B). any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on December 5, 1980, which has a distribution system from which it serves both within and without such region.
[Northwest Power Act, §3(14)(B), 94 Stat. 2700.]

839a(15). "Plan" means the Regional Electric Power and Conservation plan (including any amendments thereto) adopted pursuant to this chapter and such plan shall apply to actions of the Administrator as specified in this chapter.
[Northwest Power Act, §3(15), 94 Stat. 2700.]

839a(16). "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.
[Northwest Power Act, §3(16), 94 Stat. 2700.]

839a(17). "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator (A) from resources or (B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.
[Northwest Power Act, §3(17), 94 Stat. 2700.]

839a(18). "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electrical loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.
[Northwest Power Act, §3(18), 94 Stat. 2700.]

Pacific NW Power Act (continued)

839a(19). “Resource” means—

839a(19)(A). electric power, including the actual or planned electric power capability of generating facilities, or

[Northwest Power Act, §3(19)(A), 94 Stat. 2700.]

839a(19)(B). actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

[Northwest Power Act, §3(19)(B), 94 Stat. 2700.]

839a(20). “Secretary” means the Secretary of Energy.

[Northwest Power Act, §3(20), 94 Stat. 2700.]

839b. Regional planning and participation

839b(a). Pacific Northwest Electric Power and Conservation Planning Council; establishment and operation as regional agency

839b(a)(1). The purposes of this section are to provide for the prompt establishment and effective operation of the Pacific Northwest Electric Power and Conservation Planning Council, to further the purposes of this chapter by the Council promptly preparing and adopting (A) a regional conservation and electric power plan and (B) a program to protect, mitigate, and enhance fish and wildlife, and to otherwise expeditiously and effectively carry out the Council’s responsibilities and functions under this chapter.

[Northwest Power Act, §4(a)(1), 94 Stat. 2700.]

839b(a)(2). To achieve such purposes and facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and with the Bonneville Power Administration, the consent of Congress is given for an agreement described in this paragraph and not in conflict with this chapter, pursuant to which—

839b(a)(2)(A). there shall be established a regional agency known as the “Pacific Northwest Electric Power and Conservation Planning Council” which (i) shall have its offices in the Pacific Northwest, (ii) shall carry out its functions and responsibilities in accordance with the provisions of this chapter, (iii) shall continue in force and effect in accordance with the provisions of this chapter, and (iv) except as otherwise provided in this chapter, shall not be considered an agency or instrumentality of the United States for the purpose of any Federal law; and

[Northwest Power Act, §4(a)(2)(A), 94 Stat. 2701.]

839b(a)(2)(B). two persons from each State may be appointed, subject to the applicable laws of each such State, to undertake the functions and duties of members of the Council.

[Northwest Power Act, §4(a)(2)(B), 94 Stat. 2701.]

Establishment of
Pacific Northwest
Electric Power and
Conservation Planning
Council

Pacific NW Power Act (continued)

Member appointment

839b(a)(2). The State may fill any vacancy occurring prior to the expiration of the term of any member. The appointment of six initial members, subject to applicable State law, by June 30, 1981, by at least three of such States shall constitute an agreement by the States establishing the Council and such agreement is hereby consented to by the Congress. Upon request of the Governors of two of the States, the Secretary shall extend the June 30, 1981, date for six additional months to provide more time for the States to make such appointments.

[Northwest Power Act, §4(a)(2), 94 Stat. 2701.]

Term

839b(a)(3). Except as otherwise provided by State law, each member appointed to the Council shall serve for a term of three years, except that, with respect to members initially appointed, each Governor shall designate one member to serve a term of two years and one member to serve a term of three years. The members of the Council shall select from among themselves a chairman. The members and officers and employees of the Council shall not be deemed to be officers or employees of the United States for any purpose. The Council shall appoint, fix compensation, and assign and delegate duties to such executive and additional personnel as the Council deems necessary to fulfill its functions under this chapter, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this chapter. The compensation of the members shall be fixed by State law. The compensation of the members and officers shall not exceed the rate prescribed for Federal officers and positions at step 1 of level GS-18 of the General Schedule.

[Northwest Power Act, §4(a)(3), 94 Stat. 2701.]

Compensation

839b(a)(4). For the purpose of providing a uniform system of laws, in addition to this chapter, applicable to the Council relating to the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, advisory committees, disclosure of information, judicial review of Council functions and actions under this chapter, and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate, except that with respect to open meetings, the Federal laws applicable to open meetings in the case of the Federal Energy Regulatory Commission shall apply to the Council to the extent appropriate. In applying the Federal laws applicable to financial disclosure under the preceding sentence, such laws shall be applied to members of the Council without regard to the duration of their service on the Council or the amount of compensation received for such service. No contract, obligation, or other action of the Council shall be construed as an obligation of the United States or an obligation secured by the full faith and credit of the United States. For the purpose of judicial review of any action of the Council or challenging any provision of this chapter relating to functions and responsibilities of the Council, notwithstanding any other provision of law, the courts of the United States shall have exclusive jurisdiction of any such review.

[Northwest Power Act, §4(a)(4), 94 Stat. 2701-2.]

Pacific NW Power Act (continued)

839b(b). Alternative establishment of Council as Federal agency

839b(b)(1). If the Council is not established and its members are not timely appointed in accordance with subsection (a) of this section, or if, at any time after such Council is established and its members are appointed in accordance with subsection (a)—

839b(b)(1)(A). any provision of this chapter relating to the establishment of the Council or to any substantial function or responsibility of the Council (including any function or responsibility under subsection (d) or (h) of this section or under section 839d(c) of this title) is held to be unlawful by a final determination of any Federal court, or

[Northwest Power Act, §4(b)(1)(A), 94 Stat. 2702.]

839b(b)(1)(B). the plan or any program adopted by such Council under this section is held by a final determination of such a court to be ineffective by reason of subsection (a)(2)(B) of this section,

[Northwest Power Act, §4(b)(1)(B), 94 Stat. 2702.]

839b(b)(1) [cont.]. the Secretary shall establish the Council pursuant to this subsection as a Federal agency. The Secretary shall promptly publish a notice thereof in the Federal Register and notify the Governors of each of the States referred to in subsection (a) of this section.

[Northwest Power Act, §4(b)(1), 94 Stat. 2702.]

839b(b)(2). As soon as practicable, but not more than thirty days after the publication of the notice referred to in paragraph (1) of this subsection, and thereafter within forty-five days after a vacancy occurs, the Governors of the States of Washington, Oregon, Idaho, and Montana may each (under applicable State laws, if any) provide to the Secretary a list of nominations from such State for each of the State's positions to be selected for such Council. The Secretary may extend this time an additional thirty days. The list shall include at least two persons for each such position. The list shall include such information about such nominees as the Secretary may request. The Secretary shall appoint the Council members from each Governor's list of nominations for each State's positions, except that the Secretary may decline to appoint for any reason any of a Governor's nominees for a position and shall so notify the Governor. The Governor may thereafter make successive nominations within forty-five days of receipt of such notice until nominees acceptable to the Secretary are appointed for each position. In the event the Governor of any such State fails to make the required nominations for any State position on such Council within the time specified for such nominations, the Secretary shall select from such State and appoint the Council member or members for such position. The members of the Council shall select from among themselves one member of the Council as Chairman.

[Northwest Power Act, §4(b)(2), 94 Stat. 2702.]

839b(b)(3). The members of the Council established by this subsection who are not employed by the United States or a State shall receive compensation

Pacific NW Power Act (continued)

at a rate equal to the rate prescribed for offices and positions at level GS-18 of the General Schedule for each day such members are engaged in the actual performance of duties as members of such Council, except that no such member may be paid more in any calendar year than an officer or employee at step 1 of level GS-18 is paid during such year. Members of such Council shall be considered officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.) and shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5. Such Council may appoint, and assign duties to, an executive director who shall serve at the pleasure of such Council and who shall be compensated at the rate established for GS-18 of the General Schedule. The executive director shall exercise the powers and duties delegated to such director by such Council, including the power to appoint and fix compensation of additional personnel in accordance with applicable Federal law to carry out the functions and responsibilities of such Council.

[Northwest Power Act, §4(b)(3), 94 Stat. 2702-3.]

839b(b)(4). When a Council is established under this subsection after a Council was established pursuant to subsection (a) of this section, the Secretary shall provide, to the greatest extent feasible, for the transfer to the Council established by this subsection of all funds, books, papers, documents, equipment, and other matters in order to facilitate the Council's capability to achieve the requirements of subsections (d) and (h) of this section. In order to carry out its functions and responsibilities under this chapter expeditiously, the Council shall take into consideration any actions of the Council under subsection (a) and may review, modify, or confirm such actions without further proceedings.

[Northwest Power Act, §4(b)(4), 94 Stat. 2703.]

839b(b)(5)(A). At any time beginning one year after the plan referred to in such subsection (d) of this section and the program referred to in such subsection (h) of this section are both finally adopted in accordance with this chapter, the Council established pursuant to this subsection shall be terminated by the Secretary 90 days after the Governors of three of the States referred to in this subsection jointly provide for any reason to the Secretary a written request for such termination. Except as provided in subparagraph (B), upon such termination all functions and responsibilities of the Council under this chapter shall also terminate.

[Northwest Power Act, §4(b)(5)(A), 94 Stat. 2703.]

839b(b)(5)(B). Upon such termination of the Council, the functions and responsibilities of the Council set forth in subsection (h) of this section shall be transferred to, and continue to be funded and carried out, jointly, by the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service, in the same manner and to the same extent as required by such subsection and in cooperation with the Federal and the region's State fish and wildlife agencies and Indian tribes referred

Pacific NW Power Act (continued)

to in subsection (h) of this section and the Secretary shall provide for the transfer to them of all records, books, documents, funds, and personnel of such Council that relate to subsection (h) matters. In order to carry out such functions and responsibilities expeditiously, the Administrator, the Secretary of the Interior, and the Administrator of the National Marine Fisheries Service shall take into consideration any actions of the Council under this subsection, and may review, modify, or confirm such actions without further proceedings. In the event the Council is terminated pursuant to this paragraph, whenever any action of the Administrator requires any approval or other action by the Council, the Administrator may take such action without such approval or action, except that the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits involving a major generating resource until the expenditure of funds for that purpose is specifically authorized by Act of Congress enacted after such termination.

[Northwest Power Act, §4(b)(5)(B), 94 Stat. 2703.]

839b(c). Organization and operation of Council

839b(c)(1). The provisions of this subsection shall, except as specifically provided in this subsection, apply to the Council established pursuant to either subsection (a) or (b) of this section.

[Northwest Power Act, §4(c)(1), 94 Stat. 2703.]

839b(c)(2). A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this chapter, all actions and decisions of the Council shall be by majority vote of the members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of—

839b(c)(2)(A). a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or

[Northwest Power Act, §4(c)(2)(A), 94 Stat. 2704.]

839b(c)(2)(B). at least six members of the Council.

[Northwest Power Act, §4(c)(2)(B), 94 Stat. 2704.]

839b(c)(3). The Council shall meet at the call of the Chairman or upon the request of any three members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

[Northwest Power Act, §4(c)(3), 94 Stat. 2704.]

839b(c)(4). The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions and responsibilities under this chapter. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the

Quorum

Pacific NW Power Act (continued)

public its annual work program budget at the time the President submits his annual budget to Congress.

[Northwest Power Act, §4(c)(4), 94 Stat. 2704.]

839b(c)(5). Upon request of the Council established pursuant to subsection (b) of this section, the head of any Federal agency is authorized to detail or assign to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this chapter.

[Northwest Power Act, §4(c)(5), 94 Stat. 2704.]

839b(c)(6). At the Council's request, the Administrator of the General Services Administration shall furnish the Council established pursuant to subsection (b) of this section with such offices, equipment, supplies, and services in the same manner and to the same extent as such Administrator is authorized to furnish to any other Federal agency or instrumentality such offices, supplies, equipment, and services.

[Northwest Power Act, §4(c)(6), 94 Stat. 2704.]

Report to Congress

839b(c)(7). Upon the request of the Congress or any committee thereof, the Council shall promptly provide to the Congress, or to such committee, any record, report, document, material, and other information which is in the possession of the Council.

[Northwest Power Act, §4(c)(7), 94 Stat. 2704.]

839b(c)(8). To obtain such information and advice as the Council determines to be necessary or appropriate to carry out its functions and responsibilities pursuant to this chapter, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

[Northwest Power Act, §4(c)(8), 94 Stat. 2704.]

839b(c)(9). The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

[Northwest Power Act, §4(c)(9), 94 Stat. 2704.]

839b(c)(10)(A). At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this chapter, including the reimbursement of those States with members on the Council for services and personnel to assist in preparing a plan pursuant to subsection (d) of this section and a program pursuant to subsection (h) of this section, as the Council determines are necessary or appropriate for the performance of its functions and responsibilities. Such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia

Pacific NW Power Act (continued)

River Transmission System Act [16 U.S.C. 838 et seq.] and shall be subject to the requirements of that Act, including the audit requirements of section 11(d) of such Act [16 U.S.C. 838i(d)]. The records, reports, and other documents of the Council shall be available to the Comptroller General for review in connection with such audit or other review and examination by the Comptroller General pursuant to other provisions of law applicable to the Comptroller General. Funds provided by the Administrator for such payments shall not exceed annually an amount equal to 0.02 mill. multiplied by the kilowatthours of firm power forecast to be sold by the Administrator during the year to be funded. In order to assist the Council's initial organization, the Administrator after Dec. 5 1980, shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

[Northwest Power Act, §4(c)(10)(A), 94 Stat. 2704-5.]

839b(c)(10)(B). Notwithstanding the limitation contained in the fourth sentence of subparagraph (A) of this paragraph, upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions and responsibilities under this chapter the Administrator may raise such limit up to any amount not in excess of 0.10 mill. multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded.

[Northwest Power Act, §4(c)(10)(B), 94 Stat. 2705.]

839b(c)(11). The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

[Northwest Power Act, §4(c)(11), 94 Stat. 2705.]

839b(c)(12). The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this chapter.

[Northwest Power Act, §4(c)(12), 94 Stat. 2705.]

839b(c)(13). The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.

[Northwest Power Act, §4(c)(13), 94 Stat. 2705.]

839b(d). Regional conservation and electric power plan

839b(d)(1). Within two years after the Council is established and the members are appointed pursuant to subsection (a) or (b) of this section, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed

Electric power plan
to administrator

Pacific NW Power Act (continued)

by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, and such procedure as the Council shall adopt.

[Northwest Power Act, §4(d)(1), 94 Stat. 2705.]

839b(d)(2). Following adoption of the plan and any amendment thereto, all actions of the Administrator pursuant to section 839d of this title shall be consistent with the plan and any amendment thereto, except as otherwise specifically provided in this chapter.

[Northwest Power Act, §4(d)(2), 94 Stat. 2705.]

839b(e). Plan priorities and requisite features; studies

Plan priority

839b(e)(1). The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost-effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

[Northwest Power Act, §4(e)(1), 94 Stat. 2705.]

Conservation
measures

839b(e)(2). The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 839d of this title to reduce or meet the Administrator's obligations with due consideration by the Council for (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat, including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

[Northwest Power Act, §4(e)(2), 94 Stat. 2706.]

839b(e)(3). To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

839b(e)(3)(A). an energy conservation program to be implemented under this chapter, including, but not limited to, model conservation standards;

[Northwest Power Act, §4(e)(3)(A), 94 Stat. 2706.]

839b(e)(3)(B). recommendation for research and development;

[Northwest Power Act, §4(e)(3)(B), 94 Stat. 2706.]

Pacific NW Power Act (continued)

839b(e)(3)(C). a methodology for determining quantifiable environmental costs and benefits under section 839a(4) of this title;

[Northwest Power Act, §4(e)(3)(C), 94 Stat. 2706.]

839b(e)(3)(D). a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) of this subsection which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect, if any, of the requirements of subsection (h) of this section on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and may include, to the extent practicable, an estimate of the types of resources from which such power should be acquired;

[Northwest Power Act, §4(e)(3)(D), 94 Stat. 2706.]

839b(e)(3)(E). an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

[Northwest Power Act, §4(e)(3)(E), 94 Stat. 2706.]

839b(e)(3)(F). the program adopted pursuant to subsection (h); of this section and

[Northwest Power Act, §4(e)(3)(F), 94 Stat. 2706.]

839b(e)(3)(G). if the Council recommends surcharges pursuant to subsection (f) of this section, a methodology for calculating such surcharges.

[Northwest Power Act, §4(e)(3)(G), 94 Stat. 2706.]

839b(e)(4). The Council, taking into consideration the requirement that it devote its principal efforts to carrying out its responsibilities under subsections (d) and (h) of this section, shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall consult with such customers and consumers in the conduct of such studies.

[Northwest Power Act, §4(e)(4), 94 Stat. 2706.]

839b(f). Model conservation standards; surcharges

839b(f)(1). Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation

Twenty-year
demand forecast

Model conservation
standards

Pacific NW Power Act (continued)

programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers, taking into account financial assistance made available to consumers under section 839d(a) of this title. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

[Northwest Power Act, §4(f)(1), 94 Stat. 2706-7.]

839b(f)(2). The Council by a majority vote of the members of the Council is authorized to recommend the Administrator a surcharge and the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

[Northwest Power Act, §4(f)(2), 94 Stat. 2707.]

839b(g). Public information; consultation; contracts and technical assistance

839b(g)(1). To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall maintain comprehensive programs to—

839b(g)(1)(A). inform the Pacific Northwest public of major regional power issues,

[Northwest Power Act, §4(g)(1)(A), 94 Stat. 2707.]

839b(g)(1)(B). obtain public views concerning major regional power issues, and

[Northwest Power Act, §4(g)(1)(B), 94 Stat. 2707.]

839b(g)(1)(C). secure advice and consultation from the Administrator's customers and others.

[Northwest Power Act, §4(g)(1)(C), 94 Stat. 2707.]

839b(g)(2). In carrying out the provisions of this section, the Council and the Administrator shall—

Pacific NW Power Act (continued)

839b(g)(2)(A). consult with the Administrator’s customers;

[Northwest Power Act, §4(g)(2)(A), 94 Stat. 2707.]

839b(g)(2)(B). include the comments of such customers in the record of the Council’s proceedings; and

[Northwest Power Act, §4(g)(2)(B), 94 Stat. 2707.]

839b(g)(2)(C). recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

[Northwest Power Act, §4(g)(2)(C), 94 Stat. 2707.]

839b(g)(3). In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (A) investigate possible measures to be included in the plan, (B) provide public involvement and information regarding a proposed plan or amendment thereto, and (C) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council, may be incorporated as part of the plan.

[Northwest Power Act, §4(g)(3), 94 Stat. 2707-8.]

839b(h). Fish and wildlife

839b(h)(1)(A). The Council shall promptly develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the greatest extent possible, shall be designed to deal with that river and its tributaries as a system.

[Northwest Power Act, §4(h)(1)(A), 94 Stat. 2708.]

839b(h)(1)(B). This subsection shall be applicable solely to fish and wildlife, including related spawning grounds and habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify, or

Plan preparation

Fish and
wildlife program

Pacific NW Power Act (continued)

affect in any way the laws applicable to rivers or river systems, including electric power facilities related thereto, other than the Columbia River and its tributaries, or affect the rights and obligations of any agency, entity, or person under such laws.

[Northwest Power Act, §4(h)(1)(B), 94 Stat. 2708.]

839b(h)(2). The Council shall request, in writing, promptly after the Council is established under either subsection (a) or (b) of this section and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for—

839b(h)(2)(A). measures which can be expected to be implemented by the Administrator, using authorities under this chapter and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries;

[Northwest Power Act, §4(h)(2)(A), 94 Stat. 2708.]

839b(h)(2)(B). establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and

[Northwest Power Act, §4(h)(2)(B), 94 Stat. 2708.]

839b(h)(2)(C). fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.

[Northwest Power Act, §4(h)(2)(C), 94 Stat. 2708.]

839b(h)(3). Such agencies and tribes shall have 90 days to respond to such request, unless the Council extends the time for making such recommendations. The Federal and the region's water management agencies, and the region's electric power producing agencies, customers, and public may submit recommendations of the type referred to in paragraph (2) of this subsection. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

[Northwest Power Act, §4(h)(3), 94 Stat. 2708.]

Notice

839b(h)(4)(A). The Council shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Administrator, to the Federal and the region's, State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Notice shall also be given to the public. Copies of such recommendations and supporting documents shall be

Pacific NW Power Act (continued)

made available for review at the offices of the Council and shall be available for reproduction at reasonable cost.

[Northwest Power Act, §4(h)(4)(A), 94 Stat. 2708.]

839b(h)(4)(B). The Council shall provide for public participation and comment regarding the recommendations and supporting documents, including an opportunity for written and oral comments, within such reasonable time as the Council deems appropriate.

[Northwest Power Act, §4(h)(4)(B), 94 Stat. 2709.]

839b(h)(5). The Council shall develop a program on the basis of such recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers referred to in subparagraph (A) of paragraph (4). The program shall consist of measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and management of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent such measures are designed to achieve improved protection and mitigation.

[Northwest Power Act, §4(h)(5), 94 Stat. 2709.]

839b(h)(6). The Council shall include in the program measures which it determines, on the basis set forth in paragraph (5), will—

839b(h)(6)(A). complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

[Northwest Power Act, §4(h)(6)(A), 94 Stat. 2709.]

839b(h)(6)(B). be based on, and supported by, the best available scientific knowledge;

[Northwest Power Act, §4(h)(6)(B), 94 Stat. 2709.]

839b(h)(6)(C). utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost;

[Northwest Power Act, §4(h)(6)(C), 94 Stat. 2709.]

839b(h)(6)(D). be consistent with the legal rights of appropriate Indian tribes in the region; and

[Northwest Power Act, §4(h)(6)(D), 94 Stat. 2709.]

839b(h)(6)(E). in the case of anadromous fish—

839b(h)(6)(E)(i). provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

[Northwest Power Act, §4(h)(6)(E)(i), 94 Stat. 2709.]

Comments

Protect and enhance

Measures

Pacific NW Power Act (continued)

839b(h)(6)(E)(ii). provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives.

[Northwest Power Act, §4(h)(6)(E)(ii), 94 Stat. 2709.]

Recommendations

839b(h)(7). The Council shall determine whether each recommendation received is consistent with the purposes of this chapter. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation of the fish and wildlife agencies and Indian tribes as part of the program or any other recommendation, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

839b(h)(7)(A). inconsistent with paragraph (5) of this subsection;

[Northwest Power Act, §4(h)(7)(A), 94 Stat. 2709.]

839b(h)(7)(B). inconsistent with paragraph (6) of this subsection; or

[Northwest Power Act, §4(h)(7)(B), 94 Stat. 2709.]

839b(h)(7)(C). less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

[Northwest Power Act, §4(h)(7)(C), 94 Stat. 2709.]

Principles

839b(h)(8). The Council shall consider, in developing and adopting a program pursuant to this subsection, the following principles:

839b(h)(8)(A). Enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries as a system.

[Northwest Power Act, §4(h)(8)(A), 94 Stat. 2709.]

839b(h)(8)(B). Consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only.

[Northwest Power Act, §4(h)(8)(B), 94 Stat. 2710.]

839b(h)(8)(C). To the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among

Pacific NW Power Act (continued)

the appropriate parties providing for the administration and funding of such additional measures.

[Northwest Power Act, §4(h)(8)(C), 94 Stat. 2710.]

839b(h)(8)(D). Monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system wide objectives of this subsection.

[Northwest Power Act, §4(h)(8)(D), 94 Stat. 2710.]

839b(h)(9). The Council shall adopt such program or amendments thereto within one year after the time provided for receipt of the recommendations. Such program shall also be included in the plan adopted by the Council under subsection (d) of this section.

[Northwest Power Act, §4(h)(9), 94 Stat. 2710.]

839b(h)(10)(A). The Administrator shall use the Bonneville Power Administration fund and the authorities available to the Administrator under this chapter and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this chapter. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

[Northwest Power Act, §4(h)(10)(A), 94 Stat. 2710.]

839b(h)(10)(B). The Administrator may make expenditures from such fund which shall be included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.]. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than 15 years and an estimated cost of at least \$1,000,000 shall be funded in the same manner and in accordance with the same procedures as major transmission facilities under the Federal Columbia River Transmission System Act.

[Northwest Power Act, §4(h)(10)(B), 94 Stat. 2710.]

839b(h)(10)(C). The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

[Northwest Power Act, §4(h)(10)(C), 94 Stat. 2710.]

Expenditures

Pacific NW Power Act (continued)

Scientific Review Panel

839b(h)(10)(D)(i). The Northwest Power Planning Council (Council) shall appoint an Independent Scientific Review Panel (Panel), which shall be comprised of eleven members, to review projects proposed to be funded through that portion of Bonneville Power Administration's (BPA) annual fish and wildlife budget that implements the Council's fish and wildlife program. Members shall be appointed from a list of no fewer than 20 scientists submitted by the National Academy of Sciences (Academy), provided that Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fish and wildlife and ocean experts shall be among those represented on the Panel. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(i), September 30, 1996, 110 Stat. 3005.]

Peer Review Groups

839b(h)(10)(D)(ii). The Council shall establish Scientific Peer Review Groups (Peer review Groups), which shall be comprised of the appropriate number of scientists, from a list submitted by the Academy to assist the Panel in making its recommendations to the Council for projects to be funded through BPA's annual fish and wildlife budget, provided that the Pacific Northwest scientists with expertise in Columbia River anadromous and non-anadromous fish and wildlife and ocean experts shall be among those represented on the Peer Review Groups. The Academy shall provide such nominations within 90 days of the date of this enactment, and in any case not later than December 31, 1996. If appointments are required in subsequent years, the Council shall request nominations from the Academy and the Academy shall provide nominations not later than 90 days after the date of this request. If the Academy does not provide nominations within these time requirements, the Council may appoint such members as the Council deems appropriate.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(ii), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(iii). Panel and Peer Review Group members may be compensated and shall be considered subject to the conflict of interest standards that apply to scientists performing comparable work for the National Academy of Sciences; provided that a Panel or Peer Review Group member with a direct or indirect financial interest in a project, or projects, shall recuse himself or herself from review of, or recommendations associated with, such project or projects. All expenses of the Panel and the Peer Review Groups shall be paid by BPA as provided for under paragraph (vii). Neither the Panel nor the Peer Review Groups shall be deemed advisory committees within the meaning of the Federal Advisory Committee Act.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(iii), September 30, 1996, 110 Stat. 3005.]

Pacific NW Power Act (continued)

839b(h)(10)(D)(iv). The Peer Review Groups, in conjunction with the Panel, shall review projects proposed to be funded through BPA's annual fish and wildlife budget and make recommendations on matters related to such projects to the Council no later than June 15 of each year. If the recommendations are not received by the Council by this date, the Council may proceed to make final recommendations on funding to BPA, relying on the best information available. The Panel and Peer Review Groups shall review a sufficient number of projects to adequately ensure that the list of prioritized projects recommended is consistent with the Council's program. Project recommendations shall be based on a determination that projects: are based on sound scientific principles; benefit fish and wildlife; and have a clearly defined objective and outcome with provisions for monitoring and evaluation of results. The Panel, with assistance from the Peer Review Groups, shall review, on an annual basis, the results of prior year expenditures based upon these criteria and submit its findings to the Council for review.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(iv), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(v). Upon completion of the review of projects to be funded through BPA's annual fish and wildlife budget, the Peer Review Groups shall submit its findings to the Panel. The Panel shall analyze the information submitted by the Peer Review Groups and submit recommendations on project priorities to the Council. The Council shall make the Panel's findings available to the public and subject to public comment.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, §512(4)(h)(10)(D)(v), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(vi). The Council shall fully consider the recommendations of the Panel when making its final recommendations of projects to be funded through BPA's annual fish and wildlife budget, and if the Council does not incorporate a recommendation of the Panel, the Council shall explain in writing its reasons for not accepting Panel recommendations. In making its recommendations to BPA, the Council shall consider the impact of ocean conditions on fish and wildlife populations and shall determine whether the projects employ cost-effective measures to achieve program objectives. The Council, after consideration of the recommendations of the Panel and other appropriate entities, shall be responsible for making the final recommendations of projects to be funded through BPA's annual fish and wildlife budget.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(vi), September 30, 1996, 110 Stat. 3005.]

839b(h)(10)(D)(vii). Cost limitation. The annual cost of this provision shall not exceed \$500,000 in 1997 dollars.

[Northwest Power Act, 94 Stat. 2710, as amended by Pub.L. 104-206, § 512(4)(h)(10)(D)(vii), September 30, 1996, 110 Stat. 3005; Pub.L. 106-60, § 610, Sept. 29, 1999, 113 Stat. 502.]

839b(h)(11)(A). The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—

Council consideration
of Panel
recommendations

Managing, operating
and regulating
facilities

Pacific NW Power Act (continued)

839b(h)(11)(A)(i). exercise such responsibilities consistent with the purposes of this chapter and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated;

[Northwest Power Act, §4(h)(11)(A)(i), 94 Stat. 2710.]

839b(h)(11)(A)(ii). exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under this subsection. If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate, and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with this subsection.

[Northwest Power Act, §4(h)(11)(A)(ii), 94 Stat. 2711.]

Consultation between
agencies

839b(h)(11)(B). The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators in carrying out the provisions of this paragraph and shall, to the greatest extent practicable, coordinate their actions.

[Northwest Power Act, §4(h)(11)(A), 94 Stat. 2711.]

Report to
congressional
committee

839b(h)(12)(A). Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this chapter, including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan when adopted. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof.

[Northwest Power Act, §4(h)(12)(A), 94 Stat. 2711, H. Res. 549, March 25, 1980.]

839b(h)(12)(B). The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this chapter, including this subsection.

[Northwest Power Act, §4(h)(12)(B), 94 Stat. 2711.]

Pacific NW Power Act (continued)

839b(i). Review

The Council may from time to time review the actions of the Administrator pursuant to this section and section 839d of this title to determine whether such actions are consistent with the plan and programs, the extent to which the plan and programs is being implemented, and to assist the Council in preparing amendments to the plan and programs.

[Northwest Power Act, §4(i), 94 Stat. 2711.]

Council review

839b(j). Requests by Council for action

839b(j)(1). The Council may request the Administrator to take an action under section 839d of this title to carry out the Administrator's responsibilities under the plan.

[Northwest Power Act, §4(j)(1), 94 Stat. 2711.]

Council requests

839b(j)(2). To the greatest extent practicable within ninety days after the Council's request, the Administrator shall respond to the Council in writing specifying—

839b(j)(2)(A). the means by which the Administrator will undertake the action or any modification thereof requested by the Council, or

[Northwest Power Act, §4(j)(2)(A), 94 Stat. 2711.]

839b(j)(2)(B). the reasons why such action would not be consistent with the plan, or with the Administrator's legal obligations under this chapter, or other provisions of law, which the Administrator shall specifically identify.

[Northwest Power Act, §4(j)(2)(B), 94 Stat. 2711.]

839b(j)(3). If the Administrator determines not to undertake the requested action, the Council, within sixty days after notice of the Administrator's determination, may request the Administrator to hold an informal hearing and make a final decision.

[Northwest Power Act, §4(j)(3), 94 Stat. 2711.]

839b(k). Review and analysis of five-year period of Council activities

839b(k)(1). Not later than October 1, 1987, or six years after the Council is established under this chapter, whichever is later, the Council shall complete a thorough analysis of conservation measures and conservation resources implemented pursuant to this chapter during the five-year period beginning on the date the Council is established under this chapter to determine if such measures or resources:

839b(k)(1)(A). have resulted or are likely to result in costs to consumers in the region greater than the costs of additional generating resources or additional fuel which the Council determines would be necessary in the absence of such measures or resources;

[Northwest Power Act, §4(k)(1)(A), 94 Stat. 2711-2.]

Pacific NW Power Act (continued)

839b(k)(1)(B). have not been or are likely not to be generally equitable to all consumers in the region; or

[Northwest Power Act, §4(k)(1)(B), 94 Stat. 2712.]

839b(k)(1)(C). have impaired or are likely to impair the ability of the Administrator to carry out his obligations under this chapter and other laws, consistent with sound business practices.

[Northwest Power Act, §4(k)(1)(C), 94 Stat. 2712.]

839b(k)(2). The Administrator may determine that section 839a(4)(D) of this title shall not apply to any proposed conservation measure or resource if the Administrator finds after receipt of such analysis from the Council that such measure or resource would have any result or effect described in subparagraph (A), (B) or (C) of paragraph (1).

[Northwest Power Act, §4(k)(2), 94 Stat. 2712. as amended Pub.L. 106-60, § 610, Sept. 29, 1999, 113 Stat. 502.]

Sale of power

839c. Sale of power

Preferences
and priorities

839c(a). Preferences and priorities

All power sales under this chapter shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof [16 U.S.C. 832c and 832d]. Such sales shall be at rates established pursuant to section 839e of this title.

[Northwest Power Act, §5(a), 94 Stat. 2712.]

Sales to preference
customers and
investor-owned
utilities

839c(b). Sales to public bodies, cooperatives, and Federal agency customers

839c(b)(1). Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region to the extent that such firm power load exceeds—

839c(b)(1)(A). the capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

[Northwest Power Act, §5(b)(1)(A), 94 Stat. 2712.]

839c(b)(1)(B). such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

[Northwest Power Act, §5(b)(1)(B), 94 Stat. 2712.]

User of firm
load resources

839c(b)(1)[cont.]. In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing

Pacific NW Power Act (continued)

to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

[Northwest Power Act, §5(b)(1), 94 Stat. 2712.]

839c(b)(2). Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937 [16 U.S.C. 832d(a)].

[Northwest Power Act, §5(b)(2), 94 Stat. 2712.]

839c(b)(3). In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

[Northwest Power Act, §5(b)(3), 94 Stat. 2712.]

839c(b)(4). Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on December 5, 1980, or as subsequently revised.

[Northwest Power Act, §5(b)(4), 94 Stat. 2712.]

839c(b)(5). The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obligations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this chapter, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

[Northwest Power Act, §5(b)(5), 94 Stat. 2712-3.]

839c(b)(6). Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall—

839c(b)(6)(A). provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

[Northwest Power Act, §5(b)(6)(A), 94 Stat. 2713.]

839c(b)(6)(B). not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

[Northwest Power Act, §5(b)(6)(B), 94 Stat. 2713.]

839c(b)(6)(C). contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such

Sales to
federal agencies

Restrictions

Contract requirements

Pacific NW Power Act (continued)

a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of December 5, 1980, to be used to serve its own firm loads.

[Northwest Power Act, §5(b)(6)(C), 94 Stat. 2713.]

839c(b)(6)[cont.]. The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) of this subsection to be used to serve its firm load.

[Northwest Power Act, §5(b)(6), 94 Stat. 2713.]

839c(b)(7). Required sale—

839c(b)(7) (A). Definition of a Joint Operating Entity—In this section, the term 'joint operating entity' means an entity that is lawfully organized under State law as a public body or cooperative prior to the date of enactment of this paragraph, and is formed by and whose members or participants are two or more public bodies or cooperatives, each of which was a customer of the Bonneville Power Administration on or before January 1, 1999.

839c(b)(7) (B). Sale—Pursuant to paragraph (1), the Administrator shall sell, at wholesale to a joint operating entity, electric power solely for the purpose of meeting the regional firm power consumer loads of regional public bodies and cooperatives that are members of or participants in the joint operating entity.

839c(b)(7) (C). No Resale—A public body or cooperative to which a joint operating entity sells electric power under subparagraph (B) shall not resell that power except to retail customers of the public body or cooperative or to another regional member or participant of the same joint operating entity, or except as otherwise permitted by law.

[As amended Pub. L. 106-273 (2000), § 1, Sept. 22, 2000, 114 Stat. 802.]

839c(c). Purchase and exchange sales

839c(c)(1). Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

[Northwest Power Act, §5(c)(1), 94 Stat. 2713.]

839c(c)(2). The purchase and exchange sale referred to in paragraph (1) of this subsection with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's Regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal

Purchase and
exchange sales

Pacific NW Power Act (continued)

annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

[Northwest Power Act, §5(c)(2), 94 Stat. 2713.]

839c(c)(3). The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) of this subsection which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

[Northwest Power Act, §5(c)(3), 94 Stat. 2713.]

839c(c)(4). An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 839e(b)(3) of this title is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

[Northwest Power Act, §5(c)(4), 94 Stat. 2713.]

839c(c)(5). Subject to the provisions of sections 839b and 839d of this title, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1) of this subsection, the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

[Northwest Power Act, §5(c)(5), 94 Stat. 2714.]

839c(c)(6). Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

[Northwest Power Act, §5(c)(6), 94 Stat. 2714.]

839c(c)(7). The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

839c(c)(7)(A). the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

[Northwest Power Act, §5(c)(7)(A), 94 Stat. 2714.]

Termination

In lieu acquisition

Average system cost

Pacific NW Power Act (continued)

839c(c)(7)(B). the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after December 5, 1980; and

[Northwest Power Act, §5(c)(7)(B), 94 Stat. 2714.]

839c(c)(7)(C). any costs of any generating facility which is terminated prior to initial commercial operation.

[Northwest Power Act, §5(c)(7)(C), 94 Stat. 2714.]

839c(d). Sales to existing direct service industrial customers

DSIs, reserves

839c(d)(1)(A). The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

[Northwest Power Act, §5(d)(1)(A), 94 Stat. 2714.]

839c(d)(1)(B). After December 5, 1980, the Administrator shall offer in accordance with subsection (g) of this section to each existing direct service industrial customer an initial long term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power."

[Northwest Power Act, §5(d)(1)(B), 94 Stat. 2714.]

839c(d)(2). The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

[Northwest Power Act, §5(d)(2), 94 Stat. 2714.]

839c(d)(3). The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines, after a plan has been adopted pursuant to section 839b of this title, that such proposed sale is consistent with the plan and that—

839c(d)(3)(A). additional power system reserves are required for the region's firm loads,

[Northwest Power Act, §5(d)(3)(A), 94 Stat. 2714.]

839c(d)(3)(B). the proposed sale would provide a cost-effective method of supplying such reserves,

[Northwest Power Act, §5(d)(3)(B), 94 Stat. 2714.]

839c(d)(3)(C). such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

[Northwest Power Act, §5(d)(3)(C), 94 Stat. 2714.]

Pacific NW Power Act (continued)

839c(d)(3)(D). the Administrator has or can acquire sufficient electric power to serve such loads, and

[Northwest Power Act, §5(d)(3)(D), 94 Stat. 2714.]

839c(d)(3) [cont.] unless the Council has determined such sale is consistent with the plan. After such determination by the Administrator and by the Council, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) of this subsection as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

[Northwest Power Act, §5(d)(3), 94 Stat. 2714-5.]

839c(d)(4)(A). As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on December 5, 1980.

[Northwest Power Act, §5(d)(4)(A), 94 Stat. 2715.]

839c(d)(4)(B). The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

[Northwest Power Act, §5(d)(4)(B), 94 Stat. 2715.]

839c(d)(4)(C)(i). Where a new contract is offered in accordance with subsection (g) of this section to any existing direct service industrial customer which has not received electric power prior to December 5, 1980, from the Administrator pursuant to a contract with the Administrator existing on December 5, 1980, electric power delivered under such new contract shall be conditioned on the Administrator reasonably acquiring, in accordance with this chapter and within such estimated period of time (as specified in the contract) as he deems reasonable, sufficient resources to meet, on a planning basis, the load requirement of such customer. Such contract shall also provide that the obligation of the Administrator to acquire such resources to meet such load requirement shall, except as provided in clause (ii) of this subparagraph, apply only to such customer and shall not be sold or exchanged by such customer to any other person.

[Northwest Power Act, §5(d)(4)(C)(i), 94 Stat. 2715.]

839c(d)(4)(C)(ii). Rights under a contract described in clause (i) of this subparagraph may be transferred by an existing direct service industrial customer referred to in clause (i) to a successor in interest in connection with a reorganization or other transfer of all major assets of such customer. Following such a transfer, such successor in interest (or any other subsequent successor in interest) may also transfer rights under such a contract only in connection with a reorganization or other transfer of all assets of such successor in interest.

[Northwest Power Act, §5(d)(4)(C)(ii), 94 Stat. 2715.]

New contracts

Contract rights

Pacific NW Power Act (continued)

839c(d)(4)(C)(iii). The limitations of clause (i) of this subparagraph shall not apply to any customer referred to in clause (i) whenever the Administrator determines that such customer is receiving electric power pursuant to a contract referred to in such clause (ii).

[Northwest Power Act, §5(d)(4)(C)(iii), 94 Stat. 2715.]

839c(e). Contractual entitlements to firm power

Firm power
entitlement

839c(e)(1). The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 839d of this title may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

839c(e)(1)(A). public bodies and cooperatives;

[Northwest Power Act, §5(e)(1)(A), 94 Stat. 2715.]

839c(e)(1)(B). Federal agencies;

[Northwest Power Act, §5(e)(1)(B), 94 Stat. 2715.]

839c(e)(1)(C). direct service industrial; and

[Northwest Power Act, §5(e)(1)(C), 94 Stat. 2715.]

839c(e)(1)(D). investor owned utilities.

[Northwest Power Act, §5(e)(1)(D), 94 Stat. 2715.]

839c(e)(2). Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 839d of this title shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 839d of this title shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

[Northwest Power Act, §5(e)(2), 94 Stat. 2715-6.]

839c(e)(3). The Administrator shall, consistent with the provisions of this chapter, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) of this section are distributed equitably throughout the region.

[Northwest Power Act, §5(e)(3), 94 Stat. 2716.]

Pacific NW Power Act (continued)

839c(f). Surplus power

The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsections (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

[Northwest Power Act, §5(f), 94 Stat. 2716.]

Surplus power

839c(g). Long-term contracts

839c(g)(1). As soon as practicable within 9 months after December 5, 1980, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act [16 U.S.C. 832(a)]) simultaneously to—

Administrator shall offer contracts

839c(g)(1)(A). existing public body and cooperative customers and investor-owned utility customers under subsection (b) of this section;

[Northwest Power Act, §5(g)(1)(A), 94 Stat. 2716.]

839c(g)(1)(B). Federal agency customers under subsection (b) of this section;

[Northwest Power Act, §5(g)(1)(B), 94 Stat. 2716.]

839c(g)(1)(C). electric utility customers under subsection (c) of this section; and

[Northwest Power Act, §5(g)(1)(C), 94 Stat. 2716.]

839c(g)(1)(D). direct service industrial customers under subsection (d)(1) of this section.

[Northwest Power Act, §5(g)(1)(D), 94 Stat. 2716.]

839c(g)(2). Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

One year to accept

[Northwest Power Act, §5(g)(2), 94 Stat. 2716.]

839c(g)(3). An initial contract with a public body, cooperative or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) of this section shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

Effective date of contracts

[Northwest Power Act, §5(g)(3), 94 Stat. 2716.]

839c(g)(4). An initial contract with an electric utility customer pursuant to subsection (c) of this section shall be effective on the date executed by

Pacific NW Power Act (continued)

such customer, but no earlier than the first day of the tenth month after December 5, 1980.

[Northwest Power Act, §5(g)(4), 94 Stat. 2716.]

839c(g)(5). An initial contract with a direct service industrial customer pursuant to subsection (d)(1) of this section, shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after December 5, 1980. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

[Northwest Power Act, §5(g)(5), 94 Stat. 2716.]

Periods of
insufficiency

839c(g)(6). Initial contracts offered public body, cooperative and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) of this section each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

[Northwest Power Act, §5(g)(6), 94 Stat. 2716.]

Sufficient resources

839c(g)(7). The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1)(A) through (D).

[Northwest Power Act, §5(g)(7), 94 Stat. 2716.]

839d. Conservation and resource acquisition

839d(a). Conservation measures; resources

Conservation

839d(a)(1). The Administrator shall acquire such resources through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commercial consumer to reduce load, as the Administrator determines are consistent with the plan, or if no plan is in effect with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title and, in the case of major resources, in accordance with subsection (c) of this section. Such conservation measures and such resources may include, but are not limited to—

839d(a)(1)(A). loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

[Northwest Power Act, §6(a)(1)(A), 94 Stat. 2717.]

839d(a)(1)(B). technical and financial assistance to, and other cooperation with, the Administrator's customer and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of

Pacific NW Power Act (continued)

any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

[Northwest Power Act, §6(a)(1)(B), 94 Stat. 2717.]

839d(a)(1)(C). aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 839b(f) of this title, and

[Northwest Power Act, §6(a)(1)(C), 94 Stat. 2717.]

839d(a)(1)(D). conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

[Northwest Power Act, §6(a)(1)(D), 94 Stat. 2717.]

839d(a)(2). In addition to acquiring electric power pursuant to section 839c(c) of this title, or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act [16 U.S.C. 838i(b)(6)(i)], the Administrator shall acquire, in accordance with this section, sufficient resources—

839d(a)(2)(A). to meet his contractual obligations that remain after taking into account planned savings from measures provided for in paragraph (1) of this subsection, and

[Northwest Power Act, §6(a)(2)(A), 94 Stat. 2717.]

839d(a)(2)(B). to assist in meeting the requirements of section 839b(h) of this title.

[Northwest Power Act, §6(a)(2)(B), 94 Stat. 2717.]

839d(a)(2) [cont.]. The Administrator shall acquire such resources without considering restrictions which may apply pursuant to section 839c(b) of this title.

[Northwest Power Act, §6(a)(2), 94 Stat. 2717.]

839d(b). Acquisition of resources

839d(b)(1). Except as specifically provided in this section, acquisition of resources under this chapter shall be consistent with the plan, as determined by the Administrator.

[Northwest Power Act, §6(b)(1), 94 Stat. 2717.]

839d(b)(2). The Administrator may acquire resources (other than major resources) under this chapter which are not consistent with the plan, but which are determined by the Administrator to be consistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.

[Northwest Power Act, §6(b)(2), 94 Stat. 2717.]

Acquisition of
resources

Pacific NW Power Act (continued)

839d(b)(3). If no plan is in effect, the Administrator may acquire resources under this chapter which are determined by the Administrator to be consistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.

[Northwest Power Act, §6(b)(3), 94 Stat. 2717.]

839d(b)(4). The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions which will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the considerations specified in section 839b(e)(2) of this title.

[Northwest Power Act, §6(b)(4), 94 Stat. 2717.]

839d(b)(5). Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to achieve conservation and to acquire renewable resources installed by a residential or small commercial consumer to reduce load, pursuant to subsection (a)(1) of this section.

[Northwest Power Act, §6(b)(5), 94 Stat. 2717-8.]

Procedure for
acquiring major
resources

839d(c). Procedure for acquiring major resources, implementing conservation measures, paying or reimbursing investigation and preconstruction expenses, or granting billing credits

Proposals

839d(c)(1). For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

Notice

839d(c)(1)(A). publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

[Northwest Power Act, §6(c)(1)(A), 94 Stat. 2718.]

Hearing

839d(c)(1)(B). not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

[Northwest Power Act, §6(c)(1)(B), 94 Stat. 2718.]

Record

839d(c)(1)(C). develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and

Pacific NW Power Act (continued)

such other materials and information as may have been submitted to, or developed by, the Administrator; and

[Northwest Power Act, §6(c)(1)(C), 94 Stat. 2718.]

839d(c)(1)(D). following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

839d(c)(1)(D)(i). if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator’s obligations under this chapter, or

[Northwest Power Act, §6(c)(1)(D)(i), 94 Stat. 2718.]

839d(c)(1)(D)(ii). if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator’s obligations under this chapter.

[Northwest Power Act, §6(c)(1)(D)(ii), 94 Stat. 2718.]

839d(c)(1)(D)[cont.]. In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator’s evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

[Northwest Power Act, §6(c)(1)(D), 94 Stat. 2718.]

839d(c)(2). Within sixty days of the receipt of the Administrator’s decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

839d(c)(2)(A). that the proposal is either consistent or inconsistent with the plan, or

[Northwest Power Act, §6(c)(2)(B), 94 Stat. 2718.]

839d(c)(2)(B). if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.

[Northwest Power Act, §6(c)(2)(B), 94 Stat. 2718.]

839d(c)(3). The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title—

Written decision

Pacific NW Power Act (continued)

839d(c)(3)(A). unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this chapter, and

[Northwest Power Act, §6(c)(3)(A), 94 Stat. 2718-9.]

839d(c)(3)(B). until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after December 5, 1980,

[Northwest Power Act, §6(c)(3)(B), 94 Stat. 2719.]

839d(c)(4). Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

839d(c)(4)(A). submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.],

[Northwest Power Act, §6(c)(4)(A), 94 Stat. 2719.]

839d(c)(4)(B). publish notice of the decision in the Federal Register, and

[Northwest Power Act, §6(c)(4)(B), 94 Stat. 2719.]

839d(c)(4)(C). note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

[Northwest Power Act, §6(c)(4)(C), 94 Stat. 2719.]

839d(c)(4) [cont.] The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the Federal Register, whichever is later.

[Northwest Power Act, §6(c)(4), 94 Stat. 2719.]

839d(c)(5). The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

[Northwest Power Act, §6(c)(5), 94 Stat. 2719.]

839d(d). Acquisition of resources other than major resources

The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.].

Implementation
of proposals

Acquisition of other
than major resources

Pacific NW Power Act (continued)

[Northwest Power Act, §6(d), 94 Stat. 2719.]

839d(e). Effectuation of priorities; use of customers and local entities

839d(e)(1). In order to effectuate the priority given to conservation measures and renewable resources under this chapter, the Administrator shall, to the maximum extent practicable, make use of his authorities under this chapter to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f) of this section).

[Northwest Power Act, §6(e)(1), 94 Stat. 2719.]

839d(e)(2). To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

[Northwest Power Act, §6(e)(2), 94 Stat. 2719.]

839d(f). Agreements; investigation and initial development of renewable resources other than major resources; reimbursement of investigation and preconstruction expenses

839d(f)(1). For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

839d(f)(1)(A). a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

[Northwest Power Act, §6(f)(1)(A), 94 Stat. 2719.]

839d(f)(1)(B). any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

[Northwest Power Act, §6(f)(1)(B), 94 Stat. 2720.]

839d(f)(1) [cont.]. In the case of any resource referred to in subparagraph (B) of this paragraph, such reimbursement is authorized only if—

839d(f)(1)(B)(i). such resource is subsequently denied State citing approval or other necessary Federal or State permits, or approvals,

[Northwest Power Act, §6(f)(1)(B)(i), 94 Stat. 2720.]

839d(f)(1)(B)(ii). such investigation subsequently demonstrates, as

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of expenses

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determined by the Administrator, that such resource does not meet the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title or is not acceptable because of environmental impacts, or

[Northwest Power Act, §6(f)(1)(B)(ii), 94 Stat. 2720.]

839d(f)(1)(B)(iii). after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

[Northwest Power Act, §6(f)(1)(B)(iii), 94 Stat. 2720.]

839d(f)(2). The Administrator may exercise the authority of this subsection only after he determines that the failure to do so would result in inequitable hardship to the consumers of such sponsors. The Administrator may provide reimbursement under this subsection only for expenses incurred after December 5, 1980.

[Northwest Power Act, §6(f)(2), 94 Stat. 2720.]

839d(f)(3). Any agreement under paragraph (1) of this subsection shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

[Northwest Power Act, §6(f)(3), 94 Stat. 2720.]

839d(f)(4). The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State citing approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.

[Northwest Power Act, §6(f)(4), 94 Stat. 2720.]

839d(g). Environmental impact statements

At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

[Northwest Power Act, §6(g), 94 Stat. 2720.]

Billing credits

Pacific NW Power Act (continued)

839d(h). Billing credits

839d(h)(1). If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

839d(h)(1)(A). conservation activities independently undertaken or continued after December 5, 1980, by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this chapter, or

[Northwest Power Act, §6(h)(1)(A), 94 Stat. 2720.]

839d(h)(1)(B). resources constructed, completed, or acquired after December 5, 1980, by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this chapter. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title.

[Northwest Power Act, §6(h)(1)(B), 94 Stat. 2720-1.]

839d(h)(2). The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

[Northwest Power Act, §6(h)(2), 94 Stat. 2721.]

839d(h)(3). The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

[Northwest Power Act, §6(h)(3), 94 Stat. 2721.]

839d(h)(4). For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

[Northwest Power Act, §6(h)(4), 94 Stat. 2721.]

Pacific NW Power Act (continued)

839d(h)(5). Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

[Northwest Power Act, §6(h)(5), 94 Stat. 2721.]

839d(h)(6). Prior to granting any credit or providing services pursuant to this subsection, the Administrator shall—

839d(h)(6)(A). comply with the notice provisions of subsection (c) of this section, and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

[Northwest Power Act, §6(h)(6)(A), 94 Stat. 2721.]

839d(h)(6)(B). include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j))[16 U.S.C. 838 et seq.];

[Northwest Power Act, §6(h)(6)(B), 94 Stat. 2721.]

Excess resources

839d(h)(6)(C). require that resources in excess of customer's reasonable load growth shall have been offered to others for ownership participation or other sponsorship pursuant to subsection (m) of this section, except in the case of conservation, multi-purpose projects uniquely suitable for development by the customer, or renewable resources; and

[Northwest Power Act, §6(h)(6)(C), 94 Stat. 2721.]

839d(h)(6)(D). require that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

[Northwest Power Act, §6(h)(6)(D), 94 Stat. 2721.]

Contracts

839d(i). Contracts

Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

839d(i)(1). insure timely construction, scheduling, completion, and operation of resources.

[Northwest Power Act, §6(i)(1), 94 Stat. 2721.]

839d(i)(2). insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices, and (B) the protection, mitigation, and enhancement of fish and

Pacific NW Power Act (continued)

wildlife, including related spawning grounds and habitat affected by the development of such resources, and

[Northwest Power Act, §6(i)(2), 94 Stat. 2722.]

839d(i)(3). insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation.

[Northwest Power Act, §6(i)(3), 94 Stat. 2722.]

839d(i) [cont.]. Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of, and proposals for, major modifications in construction, scheduling or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

[Northwest Power Act, §6(i), 94 Stat. 2722.]

839d(j). Obligations not to be considered general obligations of United States or secured by full faith and credit of United States

839d(j)(1). All contractual and other obligations required to be carried out by the Administrator pursuant to this chapter and shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

[Northwest Power Act, §6(j)(1), 94 Stat. 2722.]

839d(j)(2). All contracts entered into by the Administrator for the acquisition of resources pursuant to this chapter shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1) of this subsection. The Administrator shall monitor and enforce such requirement.

[Northwest Power Act, §6(j)(2), 94 Stat. 2722.]

839d(k). Equitable distribution of benefits

In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this chapter and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

[Northwest Power Act, §6(k), 94 Stat. 2722.]

839d(l). Investigations

839d(l)(1). The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources

Obligations secured
by revenues

Equitable distribution
of benefits

Pacific NW Power Act (continued)

located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

[Northwest Power Act, §6(l)(1), 94 Stat. 2722.]

Interregional
exchanges

839d(l)(2). The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.

[Northwest Power Act, §6(l)(2), 94 Stat. 2722.]

839d(l)(3). After the Administrator submits a report to Congress pursuant to paragraph (5) of this subsection, the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 839b(e)(1) of this title and the considerations of section 839b(e)(2) of this title. Such acquisitions shall be in accordance with the provisions of this subsection.

[Northwest Power Act, §6(l)(3), 94 Stat. 2722.]

839d(1)(4). The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

[Northwest Power Act, §6(l)(4), 94 Stat. 2723.]

839d(1)(5). No later than July 1, 1981, the Administrator shall submit to the Congress a report of the results of the investigation undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

[Northwest Power Act, §6(l)(5), 94 Stat. 2723.]

Shares offer
to utilities

839d(m). Offering of reasonable shares to each Pacific Northwest electric utility

Except as to resources under construction on December 5, 1980, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's Regional load.

[Northwest Power Act, §6(m), 94 Stat. 2723.]

Improvements funded
by Administrator

839d-1. Without further appropriation and without fiscal year limitation, the Secretaries of the Interior and Army are authorized to plan, design, construct,

Pacific NW Power Act (continued)

operate and maintain generation additions, improvements and replacements, at their respective Federal projects in the Pacific Northwest Region, 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 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 [2 U.S.C. 901-922]: **Provided further**, That this section not modify or affect the applicability of any provision of this chapter. This provision shall be effective on October 1, 1993.

[Energy Policy Act of 1992, P. L. No. 102-486, Title XXIV, §2406, Oct. 24, 1992, 106 Stat. 3099.]

839e. Rates

839e(a). Establishment; periodic review and revision; confirmation and approval by Federal Energy Regulatory Commission

839e(a)(1). The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the cost associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this chapter and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838) [16 U.S.C. 838g and 838h], section 5 of the Flood Control Act of 1944 [16 U.S.C. 825s], and the provisions of this chapter.

[Northwest Power Act, §7(a)(1), 94 Stat. 2723.]

839e(a)(2). Rates established under this section shall become effective only, except in the case of interim rules as provided in subsection (i)(6) of this section, upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

839e(a)(2)(A). are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs,

[Northwest Power Act, §7(a)(2)(A), 94 Stat. 2723.]

839e(a)(2)(B). are based upon the Administrator's total system costs, and

[Northwest Power Act, §7(a)(2)(B), 94 Stat. 2723.]

Rates for sale and
distribution of power

Approval by FERC

Pacific NW Power Act (continued)

839e(a)(2)(C). insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.

[Northwest Power Act, §7(a)(2)(C), 94 Stat. 2723.]

Application of rates

839e(b). General application of rates to meet general requirements

839e(b)(1). The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 839c(c) of this title. Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 839c(c) of this title and then from other resources.

[Northwest Power Act, §7(b)(1), 94 Stat. 2723.]

839e(b)(2). After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative and Federal agency customers, exclusive of amounts charged such customers under subsection (g) of this section for the costs of conservation, resource and conservation credits, experimental resources and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

839e(b)(2)(A). the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

839e(b)(2)(A)(i). served by the Administrator, and

[Northwest Power Act, §7(b)(2)(A)(i), 94 Stat. 2724.]

839e(b)(2)(A)(ii). located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

[Northwest Power Act, §7(b)(1)(A)(ii), 94 Stat. 2724.]

Section 7(b)(2)
analysis

839e(b)(2)(B). public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of December 5, 1980, (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

[Northwest Power Act, §7(b)(2)(B), 94 Stat. 2724.]

Pacific NW Power Act (continued)

839e(b)(2)(C). no purchases or sales by the Administrator as provided in section 839c(c) of this section were made during such five-year period;

[Northwest Power Act, §7(b)(2)(C), 94 Stat. 2724.]

839e(b)(2)(D). all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were—

839e(b)(2)(D)(i). purchased from such customers by the Administrator pursuant to section 839d of this title, or

[Northwest Power Act, §7(b)(2)(D)(i), 94 Stat. 2724.]

839e(b)(2)(D)(ii). not committed to load pursuant to section 839c(b), of this section

[Northwest Power Act, §7(b)(2)(D)(ii), 94 Stat. 2724.]

839e(b)(2)(D) [cont.]. and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

[Northwest Power Act, §7(b)(2)(D), 94 Stat. 2724.]

839e(b)(2)(E). the quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from—

839e(b)(2)(E)(i). reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and

[Northwest Power Act, §7(b)(2)(E)(i), 94 Stat. 2724.]

839e(b)(2)(E)(ii). reserve benefits as a result of the Administrator's actions under this chapter

[Northwest Power Act, §7(b)(2)(E)(ii), 94 Stat. 2724.]

839e(b)(2)(E)[cont.]. were not achieved.

[Northwest Power Act, §7(b)(2)(E), 94 Stat. 2724.]

839e(b)(3). Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) of this subsection shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

Supplemental
rate charges

Pacific NW Power Act (continued)

839e(b)(3)(A). a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1) of this subsection, and

[Northwest Power Act, §7(b)(3)(A), 94 Stat. 2724.]

839e(b)(3)(B). an overrecovery or underrecovery of the net costs incurred by the Administrator under section 839c(c) of this title as a result of such difference.

[Northwest Power Act, §7(b)(3)(B), 94 Stat. 2724.]

839e(b)(3) [cont.]. Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customer over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

[Northwest Power Act, §7(b)(3), 94 Stat. 2724-5.]

839e(b)(4). The term “general requirements” as used in this section means the public body, cooperative or Federal agency customer’s electric power purchased from the Administrator under section 839c(b) of this title, exclusive of any new large single load.

[Northwest Power Act, §7(b)(3), 94 Stat. 2725.]

839e(c). Rates applicable to direct service industrial customers

DSI rates

839e(c)(1). The rate or rates applicable to direct service industrial customers shall be established—

839e(c)(1)(A). for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers’ load and the net costs incurred by the Administrator pursuant to section 839c(c) of this title, based upon the Administrator’s projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

[Northwest Power Act, §7(c)(1)(A), 94 Stat. 2725.]

839e(c)(1)(B). for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

[Northwest Power Act, §7(c)(1)(B), 94 Stat. 2725.]

839e(c)(2). The determination under paragraph (1)(B) of this subsection shall be based upon the Administrator’s applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

Pacific NW Power Act (continued)

839e(c)(2)(A). the comparative size and character of the loads served,
[Northwest Power Act, §7(c)(2)(A), 94 Stat. 2725.]

839e(c)(2)(B). the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and
[Northwest Power Act, §7(c)(2)(B), 94 Stat. 2725.]

839e(c)(2)(C). direct and indirect overhead costs,
[Northwest Power Act, §7(c)(2)(C), 94 Stat. 2725.]

839e(c)(2) [cont.]. all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.
[Northwest Power Act, §7(c)(2), 94 Stat. 2725.]

839e(c)(3). The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.
[Northwest Power Act, §7(c)(3), 94 Stat. 2725.]

839e(d). Discount rates; special rates

839e(d)(1). In order to avoid adverse impacts on retail rates of the Administrator's customers with low system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.
[Northwest Power Act, §7(d)(1), 94 Stat. 2725.]

839e(d)(2). In order to avoid adverse impacts of increased rates pursuant to this chapter on any direct service industrial customer using raw minerals indigenous to the region as its primary resource, the Administrator, upon request of such customer showing such impacts and after considering the effect of such request on his other obligations under this chapter, is authorized, if the Administrator determines that such impacts will be significant, to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region. Such rate shall be established in accordance with this section and shall include such terms and conditions as the Administrator deems appropriate.
[Northwest Power Act, §7(d)(2), 94 Stat. 2725.]

839e(e). Uniform rates; rates for sale of peaking capacity; time-of-day, seasonal, and other rates

Nothing in this chapter prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.
[Northwest Power Act, §7(e), 94 Stat. 2726.]

Low-density discounts

Rate forms

Pacific NW Power Act (continued)

839e(f). Basis for rates

Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 839c(c) of this title and additional resources which, in the determination of the Administrator, are applicable to such sales.

[Northwest Power Act, §7(f), 94 Stat. 2726.]

839e(g). Allocation of costs and benefits

Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on December 5, 1980, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this chapter, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 839d of this title, the cost of credits granted pursuant to section 839d of this title, operating services, and the sale of or inability to sell excess electric power.

[Northwest Power Act, §7(g), 94 Stat. 2726.]

839e(h). Surcharges

Notwithstanding any other provision of this section (except the provisions of subsection (a) of this section), the Administrator shall adjust power rates to include any surcharges arising under section 838b(f) of this title, and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 838b(f) of this title.

[Northwest Power Act, §7(h), 94 Stat. 2726.]

839e(i). Procedures

In establishing rates under this section, the Administrator shall use the following procedures:

839e(i)(1). Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2) of this subsection.

[Northwest Power Act, §7(i)(1), 94 Stat. 2726.]

839e(i)(2). One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

839e(i)(2)(A). any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

[Northwest Power Act, §7(i)(2)(A), 94 Stat. 2726.]

Allocation of costs

Rate-making
procedures

Hearings

Pacific NW Power Act (continued)

839e(i)(2)(B). the hearing officer, in his discretion, shall allow a reasonable opportunity for cross examination, which, as determined by the hearing officer, is not dilatory, in order to develop information and material relevant to any such proposed rate.

[Northwest Power Act, §7(i)(2)(B), 94 Stat. 2726.]

839e(i)(3). In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before the close of, hearings shall be made a part of the administrative record.

[Northwest Power Act, §7(i)(3), 94 Stat. 2726.]

839e(i)(4). After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

[Northwest Power Act, §7(i)(4), 94 Stat. 2726.]

839e(i)(5). The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

[Northwest Power Act, §7(i)(5), 94 Stat. 2726-7.]

839e(i)(6). The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2) of this section. The Commission shall have the authority, in accordance with such procedures, if any, as the Commission shall promptly establish and make effective within one year after December 5, 1980, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection. Pending the establishment of such procedures by the Commission, if such procedures are required, the Secretary is authorized to approve such interim rates during such one-year period in accordance with the applicable procedures followed by the Secretary prior to December 5, 1980,. Such interim rates, at the discretion of the Secretary, shall continue in effect until July 1, 1982.

[Northwest Power Act, §7(i)(6), 94 Stat. 2727.]

839e(j). Cost figures to be indicated on rates schedules and power billings

All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

839e(j)(1). the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

[Northwest Power Act, §7(j)(1), 94 Stat. 2727.]

Interim rates

Pacific NW Power Act (continued)

839e(j)(2). the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

[Northwest Power Act, §7(j)(2), 94 Stat. 2727.]

839e(k). Statutory basis for procedures used in establishing rates or rate schedules

Rates for nonfirm

Notwithstanding any other provision of this chapter, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after December 5, 1980, by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act [16 U.S.C. 832 et seq.], the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.]. Notwithstanding section 201(f) of the Federal Power Act [16 U.S.C. 824(f)], such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) of this section. The parties to such proceedings under subsection (i) of this section shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act [16 U.S.C. 791a et seq.].

Review by FERC

[Northwest Power Act, §7(k), 94 Stat. 2727.]

839e(l). Rates for sales outside United States; negotiations

Negotiated rates
outside U.S.

In order to further the purposes of this chapter and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) of this section shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than rates established under this chapter for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

[Northwest Power Act, §7(l), 94 Stat. 2727.]

Payments

839e(m). Impact aid payments; formula

839e(m)(1). Beginning the first fiscal year after the plan and program required by section 838b(d) and (h) of this title are finally adopted, the Administrator may, subject to the provisions of this section, make annual impact aid payments to the appropriate local governments within the region with respect to major transmission facilities of the Administrator, as defined

Pacific NW Power Act (continued)

in section 3(c) of the Federal Columbia River Transmission Act [16 U.S.C. 838a(c)]—

839e(m)(1)(A). which are located within the jurisdictional boundaries of such governments,

[Northwest Power Act, §7(m)(1)(A), 94 Stat. 2727-8.]

839e(m)(1)(B). which are determined by the Administrator to have a substantial impact on such governments, and

[Northwest Power Act, §7(m)(1)(B), 94 Stat. 2728.]

839e(m)(1)(C). where the construction of such facilities, or any modification thereof, is completed after December 5, 1980, and, in the case of a modification of an existing facility, such modification substantially increases the capacity of such existing transmission facility.

[Northwest Power Act, §7(m)(1)(C), 94 Stat. 2728.]

839e(m)(2). Payments made under this subsection for any fiscal year shall be determined by the Administrator pursuant to a regionwide, uniform formula to be established by rule in accordance with the procedures set forth in subsection (i) of this section. Such rule shall become effective on its approval, after considering its effect on rates established pursuant to this section, by the Federal Energy Regulatory Commission, In developing such formula, the Administrator shall identify, and take into account, the local governmental services provided to the Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.

[Northwest Power Act, §7(m)(2), 94 Stat. 2728.]

839e(m)(3). Payments made pursuant to this subsection shall be made solely from the fund established by section 11 of the Federal Columbia River Transmission System Act [16 U.S.C. 838i]. The provisions of section 13 of such Act [16 U.S.C. 838k], and any appropriations provided to the Administrator under any law, shall not be available for such payments. The authorization of payments under this subsection shall not be construed as an obligation of the United States.

[Northwest Power Act, §7(m)(3), 94 Stat. 2728.]

839e(m)(4). No payment may be made under this subsection with respect to any land or interests in land owned by the United States within the region and administered by any Federal agency (other than the Administrator), without regard to how the United States obtained ownership thereof, including lands or interests therein acquired or withdrawn by a Federal agency for purposes of such agency and subsequently made available to the Administrator for such facilities.⁸

[Northwest Power Act, §7(m)(4), 94 Stat. 2728.]

⁸ §8 of this Act consists of amendments to existing law and is codified as part of the statutes that it amends. See, e.g., Transmission System Act §11(b)(6) 16 U.S.C. §838i(b)(6) *supra*, page 64.

Payment formula

Pacific NW Power Act (continued)

839e(n). Limiting the inclusion of costs of protection of, mitigation of damage to, and enhancement of fish and wildlife, within rates charged by the Bonneville Power Administration, to the rate period in which the costs are incurred

Notwithstanding any other provision of this section, rates established by the Administrator, under this section shall recover costs for protection, mitigation and enhancement of fish and wildlife, whether under this chapter or any other Act, not to exceed such amounts the Administrator forecasts will be expended during the fiscal year 2002-2006 rate period, while preserving the Administrator's ability to establish appropriate reserves and maintain a high Treasury payment probability for the subsequent rate period.

[As amended Pub.L. 106-60, § 316, Sept. 29, 1999, 113 Stat. 497.]

839f. Administrative provisions

Contracts

839f(a). Contract authority

Subject to the provisions of this chapter, The Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)). Other provisions of law applicable to such contracts on December 5, 1980, shall continue to be applicable.

[Northwest Power Act, §9(a), 94 Stat. 2729-30.]

839f(b). Executive and administrative functions of Administrator of Bonneville Power Administration; sound and businesslike implementation of chapter

The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), section 7152(a)(2) and (3) of title 42, and this chapter. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this chapter in a sound and business-like manner. Nothing in this chapter shall be construed by the Secretary, the Administrator, or any other official of the Department of Energy to modify, after, or otherwise affect the requirements and directives expressed by the Congress in section 7152(a)(2) and (3) of title 42 or the operations of such officials as they existed prior to December 5, 1980.

[Northwest Power Act, §9(b), 94 Stat. 2730.]

Contracts outside
Pacific Northwest

839f(c). Limitations and conditions on contracts for sale or exchange of electric power for use outside Pacific Northwest

Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus

Pacific NW Power Act (continued)

peaking capacity” shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

[Northwest Power Act, §9(c), 94 Stat. 2730.]

839f(d). Disposition of power which does not increase amount of firm power Administrator is obligated to provide to any customer

No restrictions contained in subsection (c) of this section shall limit or interfere with the sale, exchange or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. In addition to the directives contained in subsections (i)(1)(B) and (i)(3) and subject to:

839f(d)(1). any contractual obligations of the Administrator,

[Northwest Power Act, §9(d)(1), 94 Stat. 2730.]

839f(d)(2). any other obligations under existing law, and

[Northwest Power Act, §9(d)(2), 94 Stat. 2730.]

839f(d)(3). the availability of capacity in the Federal transmission system,

[Northwest Power Act, §9(d)(3), 94 Stat. 2731.]

839f(d) [cont.] the Administrator shall provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and shall not discriminate against any utility or group thereof on the basis of independent development of such resource in providing such services.

[Northwest Power Act, §9(d), 94 Stat. 2730-1.]

Pacific NW Power Act (continued)

Judicial Review

839f(e). Judicial review; suits

839f(e)(1). For purposes of sections 701 through 706 of title 5, the following actions shall be final actions subject to judicial review—

839f(e)(1)(A). adoption of the plan or amendments thereto by the Council under section 839b of this title, adoption of the program by the Council, and any determination by the Council under section 839b(h) of this title;

[Northwest Power Act, §9(e)(1)(A), 94 Stat. 2731.]

839f(e)(1)(B). sales, exchanges, and purchases of electric power under section 839c of this title;

[Northwest Power Act, §9(e)(1)(B), 94 Stat. 2731.]

839f(e)(1)(C). the Administrator's acquisition of resources under section 839d of this title;

[Northwest Power Act, §9(e)(1)(C), 94 Stat. 2731.]

839f(e)(1)(D). implementation of conservation measures under section 839d of this title;

[Northwest Power Act, §9(e)(1)(D), 94 Stat. 2731.]

839f(e)(1)(E). execution of contracts for assistance to sponsors under section 839d(f) of this title;

[Northwest Power Act, §9(e)(1)(E), 94 Stat. 2731.]

839f(e)(1)(F). granting of credits under section 839d(h) of this title;

[Northwest Power Act, §9(e)(1)(F), 94 Stat. 2731.]

839f(e)(1)(G). final rate determinations under section 839e of this title; and

[Northwest Power Act, §9(e)(1)(G), 94 Stat. 2731.]

839f(e)(1)(H). any rule prescribed by the Administrator under section 839e(m)(2) of this title.

[Northwest Power Act, §9(e)(1)(H), 94 Stat. 2731.]

Record of final action

839f(e)(2). The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this chapter. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, except that final determinations regarding rates under section 839e of this title shall be supported by substantial evidence in the rulemaking record required by section 839e(i) of this title considered as a whole. The scope of review of an action under section 839d(c) of this title shall be governed by section 706 of title 5. Nothing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5.

[Northwest Power Act, §9(e)(2), 94 Stat. 2731.]

Pacific NW Power Act (continued)

839f(e)(3). Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

[Northwest Power Act, §9(e)(3), 94 Stat. 2731.]

839f(e)(4). For purposes of this subsection—

839f(e)(4)(A). major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 839d(c)(4)(B) of this title;

[Northwest Power Act, §9(e)(4)(A), 94 Stat. 2731.]

839f(e)(4)(B). resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

[Northwest Power Act, §9(e)(4)(B), 94 Stat. 2731.]

839f(e)(4)(C). conservation measures shall be deemed to be implemented upon execution of the contract or grant therefore; and

[Northwest Power Act, §9(e)(4)(C), 94 Stat. 2731.]

839f(e)(4)(D). rate determinations pursuant to section 839e of this title shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

[Northwest Power Act, §9(e)(4)(D), 94 Stat. 2731.]

839f(e)(5). Suits to challenge the constitutionality of this chapter, or any action thereunder, final actions and decisions taken pursuant to this chapter by the Administrator or the Council, or the implementation of such final actions, whether brought pursuant to this chapter, the Bonneville Project Act [16 U.S.C. 832 et seq.], the Act of August 31, 1964 (16 U.S.C. 837-837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the United States court of appeals for the region. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this chapter to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or programs or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such court shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan and program, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this chapter or any other law. Suits challenging any other actions under this chapter shall be filed in the appropriate court.

[Northwest Power Act, §9(e)(5), 94 Stat. 2731-2.]

839f(f). Tax treatment of interest on governmental obligations

For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross

Legal challenges

Pacific NW Power Act (continued)

income of interest on certain governmental obligations provided in section 103(a)(1) of title 26 shall not be affected by the Administrator's acquisition of such resources if—

839f(f)(1). the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 839c of this title are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of title 26), and

[Northwest Power Act, §9(f)(1), 94 Stat. 2732.]

839f(f)(2). based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of title 26).

[Northwest Power Act, §9(f)(2), 94 Stat. 2732.]

839f(f) [cont.]. The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

[Northwest Power Act, §9(f), 94 Stat. 2732.]

839f(g). Review of rates for sale of power to Administrator by investor-owned utility customers

When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 839c(c) or 839d of this title, the Federal Energy Regulatory Commission shall, in accordance with section 824h of this title—

839f(g)(1). convene a joint State board, and

[Northwest Power Act, §9(g)(1), 94 Stat. 2732.]

839f(g)(2). invest such board with such duties and authority as will assist the Commission in its review of such rates.

[Northwest Power Act, §9(g)(1), 94 Stat. 2732.]

839f(h). Companies which own or operate facilities for the generation of electricity primarily for sale to Administrator

839f(h)(1). No "Company" (as defined in section 79b(a)(2) of title 15), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 839d of this title shall be deemed an "electric utility company" (as defined in section 79b(a)(3) of the title 15), within the meaning of any provision or provisions of chapter 2C of title 15, if at least

FERC review of
investor-owned
utility rates

Pacific NW Power Act (continued)

90 per centum of the electricity generated by such company is sold to the Administrator under section 839d of this title, and if—

839f(h)(1)(A). the organization of such company is consistent with the policies of section 79a(b) and (c) of title 15, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

[Northwest Power Act, §9(h)(1)(A), 94 Stat. 2732.]

839f(h)(1)(B). participation in any facilities of such “company” has been offered to public bodies and cooperatives in the region pursuant to section 839d(m) of this title.

[Northwest Power Act, §9(h)(1)(B), 94 Stat. 2733.]

839f(h)(2). The Administrator shall include in any contract for the acquisition of a major resource from such “company” provisions limiting the amount of equity investment, if any, in such “company” to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

[Northwest Power Act, §9(h)(2), 94 Stat. 2733.]

839f(h)(3). In the case of any “company” which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such “company” and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policies of section 79a(b) and (c) of title 15 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

[Northwest Power Act, §9(h)(3), 94 Stat. 2733.]

839f(h)(4). Paragraph (1) of this subsection shall continue to apply to any such “company” unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the “company” no longer operates in a manner consistent with the policies of section 79a(b) and (c) of title 15 and in accordance with this subsection, and (B) notify the “company” in writing of such preliminary determination. This subsection shall cease to apply to such “company” thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

[Northwest Power Act, §9(h)(4), 94 Stat. 2733.]

839f(i). Electric power acquisition or disposition

Acquisition and
disposition of
electric power

Pacific NW Power Act (continued)

839f(i)(1). At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

839f(i)(1)(A). acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 839c(b) of this title, or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

[Northwest Power Act, §9(i)(1)(A), 94 Stat. 2733.]

839f(i)(1)(B). dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this chapter and other applicable laws.

[Northwest Power Act, §9(i)(1)(B), 94 Stat. 2733.]

839f(i)(2). In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

[Northwest Power Act, §9(i)(2), 94 Stat. 2733.]

839f(i)(3). The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on December 5, 1980, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this chapter and such offer is not accepted within one year.

[Northwest Power Act, §9(i)(3), 94 Stat. 2734.]

839f(j). Retail rate designs which encourage conservation and efficient use of electric energy, installation of consumer-owned renewable resources, and rate research and development

839f(j)(1). The Council, as soon as practicable after December 5, 1980, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will

Report

Pacific NW Power Act (continued)

encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

[Northwest Power Act, §9(j)(1), 94 Stat. 2734.]

839f(j)(2). Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 839d(h) of this title that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

[Northwest Power Act, §9(j)(2), 94 Stat. 2734.]

839f(k). Executive position for conservation and renewable resources

There is hereby established within the administration an executive position for conservation and renewable resources. Such executive shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

[Northwest Power Act, §9(k), 94 Stat. 2734.]

839g. Savings provisions

839g(a). Rights of States and political subdivisions of States

Nothing in this chapter shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to—

839g(a)(1). determine retail electric rates, except as provided by section 839c(c)(3) of this title;

[Northwest Power Act, §10(a)(1), 94 Stat. 2734.]

839g(a)(2). develop and implement plans and programs for the conservation, development, and use of resources; or

[Northwest Power Act, §10(a)(2), 94 Stat. 2734.]

839g(a)(3). make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites,

Executive for
conservation

Pacific NW Power Act (continued)

and considering alternative methods of meeting the determined need.

[Northwest Power Act, §10(a)(3), 94 Stat. 2734.]

839g(b). Rights and obligations under existing contracts

Nothing in this chapter shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of December 5, 1980.

[Northwest Power Act, §10(b), 94 Stat. 2735.]

839g(c). Statutory preferences and priorities of public bodies and cooperatives in sale of federally generated power

Nothing in this chapter shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

[Northwest Power Act, §10(c), 94 Stat. 2735.]

839g(d). Contractual rights under provisions later found to be unconstitutional

If any provision of this chapter is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 839c of this title, and section 839d(a), (f) or (h) of this title shall not be affected by such finding.

[Northwest Power Act, §10(d), 94 Stat. 2735.]

839g(e). Treaty and other rights of Indian tribes

Nothing in this chapter shall be construed to affect or modify any treaty or other right of an Indian tribe.

[Northwest Power Act, §10(e), 94 Stat. 2735.]

839g(f). Reservation of electric power for Montana; Hungry Horse and Libby Dams and Reservoirs

The reservation under law of electric power primarily for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State is hereby affirmed. Such reservation shall also apply to 50 per centum of any electric power produced at Libby Reregulating Dam if built. Electric power so reserved shall be sold at the rate or rates set pursuant to section 839e of this title.

[Northwest Power Act, §10(f), 94 Stat. 2735.]

839g(g). Rights of States to prohibit recovery of resource construction costs through retail rates

Nothing in this chapter shall be construed to affect or modify the right of any State to prohibit utilities regulated by the appropriate State regulatory body from recovering, through their retail rates, costs during any period of resource construction.

[Northwest Power Act, §10(g), 94 Stat. 2735.]

Pacific NW Power Act (continued)

839g(h). Water appropriations

Nothing in this chapter shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this chapter of any plan or program adopted pursuant to the chapter (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, (2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States, or (3) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

[Northwest Power Act, §10(h), 94 Stat. 2735.]

839g(i). Existing Federal licenses, permits, and certificates

Nothing in this chapter shall be construed to affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

[Northwest Power Act, §10(i), 94 Stat. 2735.]

839h. Separability of provisions

If any provision of section 839b(a) through (c) of this title or any other provision of this chapter or the application thereof to any person, State, Indian tribe, entity, or circumstance is held invalid, neither the remainder of section 839b of this title or any other provisions of this chapter, nor the application of such provisions to other persons, States, Indian tribes, entities, or circumstances, shall be affected thereby.

[Northwest Power Act, §12, 94 Stat. 2735.]

Pacific NW Power Act (continued)

**Legislative History for
Pacific Northwest Electric Power
Planning and Conservation Act**

Dates of Consideration and Passage

Senate: August 3, 1979; November 19, 1980

House: November 17, 1980

Senate Report (Energy and Natural Resources Committee)
No. 96-272, July 30, 1979 [To accompany S. 885]

House report (Interstate and Foreign Commerce Committee)
No. 96-976(I), May 15, 1980 [To accompany S. 885]

House Report (Interior and Insular Affairs Committee)
No. 976(II), Sept. 16, 1980 [To accompany S. 885]

Cong. Record Vol. 125 (1979)

Cong. Record Vol. 126 (1980)

**Legislative History for the Energy and
Water Appropriations Act of 1997**

Dates of Consideration and Passage

House: July 24, 25, September 12, 1996

Senate: July 26, 29, 30, September 17, 1996

House Report (Committee on Appropriations) 104-679
and (Committee of Conference) 104-782

Senate Report (Committee on Appropriations) 104-320
[To accompany S.1959]

Cong. Record Vol. 142 (1996)

Energy Policy Act of 2005 (cont).

25 United States Code Chapter 37 (2006).
Act of Aug. 8, 2005, Title V, 119 Stat. 594.
Public Law No. 109-58, H.R. 6 (S. 10).

3505. Federal power marketing administrations

3505(a). Definitions

In this section:

3505(a)(1). The term “Administrator” means the Administrator of the Bonneville Power Administration and the Administrator of the Western Area Power Administration.

3505(a)(2). The term “power marketing administration” means—

3505(a)(2)(A). the Bonneville Power Administration;

3505(a)(2)(B). the Western Area Power Administration; and

3505(a)(2)(C). any other power administration, the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

3505(b). Encouragement of Indian tribal energy development

Each Administrator shall encourage Indian tribal energy development by taking such action as the Administrators determine to be appropriate, including administration of programs of the power marketing administration, in accordance with this section.

3505(c). Action by Administrators

In carrying out this section, in accordance with laws in existence on August 8, 2005—

3505(c)(1). each Administrator shall consider the unique relationship that exists between the United States and Indian tribes;

3505(c)(2). power allocations from the western Area Power Administration to Indian tribes may be used to meet firming and reserve needs of Indian-owned energy projects on Indian land;

3505(c)(3). the Administrator of the Western Area Power Administration may purchase non-federally generated power from Indian tribes to meet the firming and reserve requirements of the Western Area Power Administration; and

3505(c)(4). each Administrator shall not—

3505(c)(4)(A). pay more than the prevailing market price for an energy product; or

Tribal energy
development

Energy Policy Act of 2005 (continued)

3505(c)(4)(B). obtain less than prevailing market terms and conditions.

3505(d). Assistance for transmission system use

3505(d)(1). An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

3505(d)(2). The costs of technical assistance provided under paragraph (1) shall be funded—

3505(d)(2)(A). by the Secretary of Energy using nonreimbursable funds appropriated for that purpose; or

3505(d)(2)(B). by any appropriate Indian tribe.

3505(e). Power allocation study

Not later than 2 years after August 8, 2005, the Secretary of Energy shall submit to Congress a report that—

3505(e)(1). describes the use by Indian tribes of Federal power allocations of the power marketing administration (or power sold by the Southwestern Power Administration) to or for the benefit of Indian tribes in a service area of the power marketing administration; and

3505(e)(2). identifies—

3505(e)(2)(A). the quantity of power allocated to, or used for the benefit of, Indian tribes by the Western Area Power Administration;

3505(e)(2)(B). the quantity of power sold to Indian tribes by any other power marketing administration; and

3505(e)(2)(C). barriers that impede tribal access to and use of Federal power, including an assessment of opportunities to remove those barriers and improve the ability of power marketing administrations to deliver Federal power.

3505(f). Authorization of appropriations

There are authorized to be appropriated to carry out this section \$750,000, non-reimbursable, to remain available until expended.

[Energy Policy Act of 2005, Title V §503, Aug 8, 2005, P. L. 109-58, 119 Stat. 594].

Energy Policy Act of 2005 (continued)

**Legislative History for
Energy Policy Act of 2005**

Dates of Consideration and Passage

House: April 20, 21, July 28, 1992

*Senate: June 14, 15, 16, 20, 21, 22, 23, 28,
July 29, 2005*

House Conference Report No. 109-190,
July 27, 2005
[To accompany H.R. 6]

Cong. Record Vol. 151 (2005)

Weekly Compilation of Presidential Documents, Vol. 41 (2005):

Aug. 8, Presidential remarks and statement

Government Corporation Control Act

31 United States Code Subtitle VI, Chapter 91 (2006).
Act of Dec. 6, 1945, 59 Stat. 597.

9101. Definitions

In this chapter—

(1) “Government corporation” means a mixed-ownership Government corporation and a wholly owned Government corporation.

(2) “mixed-ownership Government corporation” means—

(A) the Central Bank for Cooperatives.

(B) the Federal Deposit Insurance Corporation.

(C) the Federal Home Loan Banks.

(D) the Federal Intermediate Credit Banks.

(E) the Federal Land Banks.

(F) the National Credit Union Administration Central Liquidity Facility.

(G) the Regional Banks for Cooperatives.

(H) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950 (a)).

(I) the Financing Corporation.

(J) the Resolution Trust Corporation.

(K) the Resolution Funding Corporation.

(3) “wholly owned Government corporation” means—

(A) the Commodity Credit Corporation.

(B) the Community Development Financial Institutions Fund.

(C) the Export-Import Bank of the United States.

(D) the Federal Crop Insurance Corporation.

(E) Federal Prison Industries, Incorporated.

(F) the Corporation for National and Community Service.

Government Corporation Control Act (continued)

(G) the Government National Mortgage Association.

(H) the Overseas Private Investment Corporation.

(I) the Pennsylvania Avenue Development Corporation.

(J) the Pension Benefit Guaranty Corporation.

(K) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950 (a)).

(L) the Saint Lawrence Seaway Development Corporation.

(M) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

(N) the Tennessee Valley Authority.

[(O) Repealed. Pub. L. 104-134, title III, § 3117(a), Apr. 26, 1996, 110 Stat. 1321-350.]

(P) the Panama Canal Commission.

(Q) the Millennium Challenge Corporation.

9102. Establishing and acquiring corporations

An agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.

[Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1042]

9103. Budgets of wholly owned Government corporations

(a) Each wholly owned Government corporation shall prepare and submit each year to the President a business-type budget in a way, and before a date, the President prescribes by regulation for the budget program.

(b) The budget program for each wholly owned Government corporation shall—

(1) contain estimates of the financial condition and operations of the corporation for the current and following fiscal years and the condition and results of operations in the last fiscal year;

(2) contain statements of financial condition, income and expense, and sources and use of money, an analysis of surplus or deficit, and additional statements and information to make known the financial condition and operations of the corporation, including estimates of operations by major activities, administrative expenses, borrowings, the amount of United States Government capital that will be returned to the Treasury during the fiscal year, and appropriations needed to restore capital impairments; and

Annual budget

Government Corporation Control Act (continued)

(3) provide for emergencies and contingencies and otherwise be flexible so that the corporation may carry out its activities.

(c) The President shall submit the budget programs submitted by wholly owned Government corporations (as changed by the President) as part of the budget submitted to Congress under section 1105 of this title. The President thereafter may submit changes in a budget program of a corporation at any time.

[Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1042]

9104. Congressional action on budgets of wholly owned Government corporations

(a) Congress shall—

(1) consider budget programs for wholly owned Government corporations the President submits;

(2) make necessary appropriations authorized by law;

(3) make corporate financial resources available for operating and administrative expenses; and

(4) provide for repaying capital and the payment of dividends.

(b) This section does not—

(1) prevent a wholly owned Government corporation from carrying out or financing its activities as authorized under another law;

(2) affect section 26 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831y); or

(3) affect the authority of a wholly owned Government corporation to make a commitment without fiscal year limitation.

[Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1043]

Audits

9105. Audits

(a)

(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C. App.), or under other Federal law, or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

Government Corporation Control Act (continued)

(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

(4) The Comptroller General of the United States—

(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.

[As amended by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1043; Pub. L. 100-86, title IV, § 403, Aug. 10, 1987, 101 Stat. 609; Pub. L. 100-233, title VII, § 703, Jan. 6, 1988, 101 Stat. 1706; Pub. L. 100-399, title VI, § 602, Aug. 17, 1988, 102 Stat. 1006; Pub. L. 101-73, title V, § 511(b)(2), Aug. 9, 1989, 103 Stat. 406; Pub. L. 101-576, title III, § 305, Nov. 15, 1990, 104 Stat. 2853; Pub. L. 103-82, title II, § 202(e)(2), Sept. 21, 1993, 107 Stat. 888.]

Government Corporation Control Act (continued)

9106. Management reports

(a)

(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

(2) A management report under this subsection shall include—

(A) a statement of financial position;

(B) a statement of operations;

(C) a statement of cash flows;

(D) a reconciliation to the budget report of the Government corporation, if applicable;

(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);

(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and

(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.

[As amended by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1044; Pub. L. 101-576, title III, § 306(a), Nov. 15, 1990, 104 Stat. 2854.]

9107. Accounts

(a) With the approval of the Comptroller General, a Government corporation may consolidate its cash into an account if the cash will be expended as provided by law.

(b) The Secretary of the Treasury shall keep the accounts of a Government corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depository or fiscal agent of the United States Government

Government Corporation Control Act (continued)

may keep the accounts. The Secretary may waive the requirements of this subsection.

(c)

(1) Subsection (b) of this section does not apply to maintaining a temporary account of not more than \$50,000 in one bank.

(2) Subsection (b) of this section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

(3) Subsection (b) of this section does not apply to the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks. However, the head of each of those banks shall report each year to the Secretary the names of depositaries where accounts are kept. If the Secretary considers it advisable when an annual report is received, the Secretary may make a written report to the corporation, the President, and Congress.

[As amended by Pub. L. 97-258, §§ 1, 2 (l)(2), Sept. 13, 1982, 96 Stat. 1044, 1062; Pub. L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.]

9108. Obligations

(a) Before a Government corporation issues obligations and offers obligations to the public, the Secretary of the Treasury shall prescribe—

(1) the form, denomination, maturity, interest rate, and conditions to which the obligations will be subject;

(2) the way and time the obligations are issued; and

(3) the price for which the obligations will be sold.

(b) A Government corporation may buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than \$100,000 only when the Secretary approves the purchase or sale. The Secretary may waive the requirement of this subsection under conditions the Secretary may decide.

(c) The Secretary may designate an officer or employee of an agency to carry out this section if the head of the agency agrees.

(d)

(1) This section does not apply to a mixed-ownership Government corporation when the corporation has no capital of the Government.

Government Corporation Control Act (continued)

(2) Subsections (a) and (b) of this section do not apply to the Rural Telephone Bank (when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950 (a))), the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks. However, the head of each of those banks shall consult with the Secretary before taking action of the kind described in subsection (a) or (b). If agreement is not reached, the Secretary may make a written report to the corporation, the President, and Congress on the reasons for the Secretary's disagreement.

[As amended by Pub. L. 97-258, §§ 1, 2 (l)(2), Sept. 13, 1982, 96 Stat. 1045, 1062; Pub. L. 97-452, § 1(27), Jan. 12, 1983, 96 Stat. 2478.]

9109. Exclusion of a wholly owned Government corporation from this chapter

When the President considers it practicable and in the public interest, the President shall include in the budget submitted to Congress under section 1105 of this title a recommendation that a wholly owned Government corporation be deemed to be an agency (except a corporation) under chapter 11 of this title and for fiscal matters. If Congress approves the recommendation, the corporation is deemed to be an agency (except a corporation) under chapter 11 and for fiscal matters for fiscal years beginning after the fiscal year of approval and is not subject to this chapter. The corporate entity is not affected by this section.

[As amended by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1045.]

Legislative History for Government Corporation Control Act

Dates of Consideration and Passage

Senate: February 5, December 6, 1945

Senate Report (Committee on Banking and Currency)
No. 79-694, Nov. 2, 1945 [To accompany S. 469]

Water Resources Development Act of 1986

33 United States Code Chapter 36, Subchapter V (2006).
Act of Nov. 17, 1986, 100 Stat. 4082, 4253.
Public Law No. 99-662, §1146, H.R. 6

2213(c). Other purposes

The non-Federal share of the cost assigned to other project purposes shall be as follows;

[Pub. L. 99-662, Title I, §103, Nov. 17, 1986, 100 Stat. 4084.]

2213(c)(1). hydroelectric power: 100 percent, except that the marketing of such power and the recovery of costs of constructing, operating, maintaining, and rehabilitating such projects shall be in accordance with existing law: Provided, That after November 17, 1986, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 7152 of title 42 concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power expected to be generated and not required in the operation of the project under the applicable Federal power marketing law, so that, 100 percent of operation, maintenance and replacement costs, 100 percent of the capital investment allocated to the purpose of hydroelectric power (with interest at rates established pursuant to or prescribed by applicable law), and any other costs assigned in accordance with law for return from power revenues can be returned by or pursuant to such applicable Federal power marketing law;

[Pub. L. 99-662, Title I, §103(1), Nov. 17, 1986, 100 Stat. 4084.]

2286. Acceptance of funds for protection, mitigation, and enhancement of fish and wildlife

The Secretary is authorized to accept funds from any entity, public or private, in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.) to be used to protect, mitigate, and enhance fish and wildlife in connection with projects constructed or operated by the Secretary. The Secretary may accept and use funds for such purposes without regard to any limitation established under any other provision of law or rule of law.

[Pub. L. 99-662, § 1146, Nov. 17, 1986, 100 Stat. 4253].

Cost sharing

Water Resources Development Act (continued)

**Legislative History for
Water Resources Development Act of 1986**

Dates of Consideration and Passage

House: November 13, 1985; October 17, 1986

Senate: March 26, October 17, 1986

House Report (Public Works and Transportation Committee)

No. 99-251(I), Aug. 1, 1985 [To accompany H.R. 6]

House Report (Interior and Insular Affairs Committee)

No. 99-251(II), Sept. 16, 1985 [To accompany H.R. 6]

House Report (Ways and Means Committee) No. 99-251(III),
Sept. 23, 1985 [To accompany H.R. 6]

House Report (Merchant Marine and Fisheries Committee)

No. 99-251(IV), Sept. 23, 1985 [To accompany H.R. 6]

Senate Report (Environmental and Public Works Committee)

No. 99-126, Aug. 1, 1985 [To accompany S. 1567]

Senate Report (Finance Committee) No. 99-228,

Jan. 8, 1986 [To accompany S. 1567]

House Conference Report No. 22-1013,

Oct. 17, 1986 [To accompany H.R. 6]

Cong. Record Vol. 131 (1985)

Cong. record Vol. 132 (1986)

Federal Property and Administrative Services Act of 1949

40 United States Code Subtitle I, Chapter 1, Subchapter II (2006).
Act of June 30, 1949, Title V, 63 Stat. 372.

113. Limitations

113(a). In general —extent of authority

Except as otherwise provided in this section, the authority conferred by this subtitle is in addition to any other authority conferred by law and is not subject to any inconsistent provision of law.

* * *

113(c). Limitation regarding certain government corporations and agencies.—

Sections 121 (b) and 506 (c) of this title do not apply to a Government corporation or agency that is subject to chapter 91 of title 31.

* * *

113(e). Other limitations

Nothing in this subtitle impairs or affects the authority of—

* * *

113(e)(18). the Secretary of the Interior with respect to procurement for program operations under the Bonneville Project Act of 1937 (16 U.S.C. 832 et seq.);

* * *

[Act of June 30, 1949, §602 (formerly § 502), 63 Stat. 372, as amended Pub.L. 89-343, § 6, Nov. 8, 1965, 79 Stat. 1303, as amended Pub.L. 107-217, Aug. 21, 2002, 116 Stat. 1066, as amended Pub.L. 108-458, Title I §1080, Dec. 17, 2004, 118 Stat. 3696.]

Legislative History for Federal Property and Administrative Services Act of 1949

Senate Report No. 338, May 9, 1949
[To accompany S. 1809]

Senate Report No. 475, June 8, 1949
[To accompany S. 2020]

House Report No. 670, May 24, 1949
[To accompany H.R. 4754]

Conference Report No. 935, June 28, 1949

BPA exemption

Federal Property Act (continued)
Legislative History for BPA Amendment

Dates of Consideration and Passage

Senate: June 7, 1965

House: October 18, 1965

Senate report (Government Operations Committee) No. 274,
June 30, 1965 [To accompany S. 4001]

House report (Government Operations Committee) No. 1166,
Oct. 14, 1965 [To accompany S. 1004]

Cong. Record Vol. 111 (1965)

Department of Energy Organization Act

42 United States Code Chapter 84 (2006).

Act of Aug. 4, 1977, 91 Stat. 565, 578.

Public Law No. 95-91, S. 826

7152. Transfers from Department of Interior

7152(a). Functions relating to electric power

7152(a)(1). There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of Title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

7152(a)(1)(C). the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 (16 U.S.C. 832 et seq.) and the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.);

7152(a)(1)(D). the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

7152(a)(2). The Southeastern Power Administration, the Southwestern Power Administration and the Bonneville Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A),(1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

7152(a)(3). The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

[Pub.L. 95-91, Title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407; as amended Pub. L. 104-58, Title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.]

DOI functions
transferred to DOE

DOE Organization Act (continued)

7152 note. Use of funds to study noncost-based methods of pricing hydroelectric power

Pub. L. 102-377, title V, § 505, Oct. 2, 1992, 106 Stat. 1343, provided that: "Notwithstanding any other provision of this Act, subsequent Energy and Water Development Appropriations Acts or any other provision of law hereafter, none of the funds made available under this Act, subsequent Energy and Water Development Appropriations Acts or any other law hereafter shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required 'at cost' to a 'market rate' or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted."

Legislative History for Department of Energy Organization Act

Dates of Consideration and Passage

Senate: May 18, August 2, 1977

House: June 3, August 2, 1977

Senate Report (Governmental Affairs Committee) No. 95-164,
May 14, 1977 [To accompany S. 826]

House Report (Government Operations Committee) No. 95-346,
(Part I) May 16, 1977 [To accompany H.R. 6804]

House Report (Post Office and Civil Service Committee) No. 95-346,
(Part II) May 24, 1977 [To accompany H.R. 6804]

Senate Conference Report No. 95-367, July 27, 1977
[To accompany S. 826]

House Conference Report No. 95-539, July 26, 1977
[To accompany S. 826]

Cong. Record Vol. 123 (1977)

Clean Air Act Amendments of 1990

42 United States Code Chapter 85 (2006).
Act of Nov. 15, 1990, 109 Stat. 2399, 2631.
Public Law No. 101-549, S. 1630.

7651b note. Fossil Fuel Use

Section 402 of title IV of Pub. L. 101-549 provided that:

“(a) Contracts for Hydroelectric Energy. — Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990 (Nov. 15, 1990), enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person’s obligation under such contract.

“(b) Federal Power Marketing Administration. — A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title (enacting this subchapter, amending sections 7410, 7411, and 7479 of this title, and enacting provisions set out as notes under sections 7403, 7411, and 7651 of this title) with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title.”

Federal PMA
exemption

Clean Air Act Amendments of 1990 (continued)

**Legislative History for
Clean Air Act Amendments of 1990**

Dates of Consideration and Passage

Senate: April 3, October 27, 1990

House: May 23, October 26, 1990

Senate Report (Environment and Public Works Committee) No. 101-228,
Dec. 20, 1989 [To accompany S. 1630]

House Report (Energy and Commerce Committee) No. 101-490 (I),
May 17, 1990 [To accompany H.R. 3030]

House Report (Ways and Means Committee) No. 101-490 (II),
May 21, 1990 [To accompany H.R. 3030]

House Conference Report No. 101-952, Oct. 26, 1990
[To accompany S. 1630]

Cong. Record Vol. 136 (1990)

Reclamation Project Act of 1939

43 United States Code Chapter 12 (2006).
Act of Aug. 4, 1939, ch. 418, §9, 53 Stat. 1193.

485h(c). Furnishing water to municipalities; sale of electric power; lease of power privileges

The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: Provided, That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3 ½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: Provided further, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 [7 U.S.C.A. § 901 et seq.]. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.

Power sales
and leases

Preference to
public entities

Legislative History for Reclamation Project Act of 1939

[None set out.]

Hungry Horse Dam Act

43 United States Code Chapter 12 (2006).

Act of June 5, 1944, ch. 234, 58 Stat. 270.

Public Law No. 78-329, H.R. 3570.

593a. Construction, operation, and maintenance of Hungry Horse Dam

For the purpose of irrigation and reclamation of arid lands, for controlling floods, improving navigation, regulating the flow of the South Fork of the Flathead River, for the generating of electric energy, and for other beneficial uses primarily in the State of Montana but also in downstream areas, the Secretary of the Interior is authorized and directed to proceed as soon as practicable with the construction, operation, and maintenance of the proposed Hungry Horse Dam (including facilities for generating electric energy) on the South Fork of the Flathead River, Flathead County, Montana, to such a height as may be necessary to impound not less than one million acre-feet of water. The Hungry Horse project shall be subject to the Federal reclamation laws (Act of June 17, 1902 [32 Stat. 388] and Acts amendatory thereof or supplementary thereto).

The Secretary of the Interior is authorized to complete, as soon as the necessary additional material is available, the construction of the Hungry Horse Dam so as to provide a storage reservoir of the maximum usable and feasible capacity.

[Pub.L. 78-329, ch. 234, §§ (1), (2), June 5, 1944, 58 Stat. 270, as amended by Pub.L. 85-428, May 29, 1958, 72 Stat. 147.]

593b. Construction of additional works for irrigation purposes

The Secretary of the Interior is authorized to construct, operate, and maintain under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof or supplementary thereto), such additional works as he may deem necessary for irrigation purposes. Such irrigation works may be undertaken only after a report and findings thereon have been made by the Secretary of the Interior as provided in such Federal reclamation laws; and, within the limits of the water users' repayment ability, such report may be predicated on allocation to irrigation of an appropriate portion of the cost of constructing said dam and reservoir. Said dam and reservoir and said irrigation works may be utilized for irrigation purposes only pursuant to the provisions of said Federal reclamation laws.

[Pub.L. 78-329, § (3), June 5, 1944, 58 Stat. 270.]

Hungry Horse Dam Act (continued)

**Legislative History for
Hungry Horse Dam Act**

Dates of Consideration and Passage

House: April 20, 1944

Senate: August 20, 1944

House Report (Committee on Irrigation and Reclamation) No. 78-1193

Senate Report (Committee on Irrigation and Reclamation) No. 78-862

Cong. Report Vol. 90 (1944)

Reclamation States Emergency Drought Relief Act of 1991

43 United States Code Chapter 40 (2006).
Act of Mar. 5, 1992, 106 Stat. 53, 56, 57.
Public Law No. 102-250, H.R. 355.

2214. Applicable period of drought program

2214(a). In general

The programs and authorities established under this subchapter shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States, or on a reservation, when the governing body of the affected tribe has made a request for temporary drought assistance and the Secretary has determined that such temporary assistance is merited, or upon the approval of a drought contingency plan as provided in subchapter II of this chapter.

2214(b). Coordination with BPA

If a Governor referred to in subsection (a) of this section is the Governor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a) of this section.

2214(c). Termination of authority

The authorities established under this subchapter shall terminate ten years after March 5, 1992.

[Pub.L. 102-250, Title I, § 104, Mar. 5, 1992, 106 Stat. 56.]

2224. Recommendations

2224(a). Approval

The Secretary shall submit each plan prepared pursuant to section 2222 of this title to the Congress, together with the Secretary's recommendations, including recommendations for authorizing legislation, if needed.

2224(b). Pacific Northwest region

A contingency plan under subsection (a) of this section for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration.

[Pub.L. 102-250, Title II, § 204, Mar. 5, 1992, 106 Stat. 57.]

Coordination with BPA

Reclamation States Drought Relief (continued)

**Legislative History for
Reclamation States Emergency Drought
Relief Act of 1991**

Dates of Consideration and Passage

House: March 21, November 20, 1991, February 19, 1992

Senate: October 31, November 27, 1991

House Report (Interior and Insular Affairs Committee)
No. 102-21, Mar. 15, 1991 [To accompany H.R. 355]

Senate Report (Energy and Natural Resources Committee)
No. 102-185, Oct. 8, 1991 [To accompany H.R. 355]

Cong. Record Vol. 137 (1991)

Cong. Record Vol. 138 (1992)

Omnibus Budget Reconciliation Act of 1993

47 United States Code Chapter 7 (2006).
Act of Aug. 10, 1993, 107 Stat. 312, 380, 384.
Public Law No. 103-66, H.R. 2264

923. Identification of reallocable frequencies

923(a). Identification required

The Secretary shall, within 18 months after August 10, 1993 and within 6 months after August 5, 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies-

923(a)(1). that are allocated on a primary basis for Federal Government use;

923(a)(2). that are not required for the present or identifiable future needs of the Federal Government;

923(a)(3). that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act (47 U.S.C. 151 et seq.) (other than for Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305));

923(a)(4). the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

923(a)(5). that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act (47 U.S.C. 151 et seq.) if allocated for non-Federal use.

923(b). Minimum amount of spectrum recommended

923(b)(1). Initial reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the initial report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

923(b)(2). Mixed uses permitted to be counted

Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) of this section recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act (47 U.S.C. 151 et seq.) for use by

Omnibus Budget Reconciliation Act (continued)

non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) or (3) of this subsection, except that—

923(b)(2)(A). the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) or (3) of this subsection;

923(b)(2)(B). a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

923(b)(2)(C). the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act (47 U.S.C. 305(a)) and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

923(b)(3). (3) Second reallocation report: In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a band or bands of frequencies that —(A) in the aggregate span not less than 12 megahertz; (B) are located below 3 gigahertz; and (C) meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section.

923(c). Criteria for identification

923(c)(1). Needs of the Federal Government

In determining whether a band of frequencies meets the criteria specified in subsection (a)(2) of this section, the Secretary shall—

923(c)(1)(A). consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;

923(c)(1)(B). seek to promote—

923(c)(1)(B)(i). the maximum practicable reliance on commercially available substitutes;

923(c)(1)(B)(ii). the sharing of frequencies (as permitted under subsection (b)(2) of this section);

923(c)(1)(B)(iii). the development and use of new communications technologies; and

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923(c)(1)(B)(iv). the use of nonradiating communications systems where practicable; and

923(c)(1)(C). seek to avoid—

923(c)(1)(C)(i). serious degradation of Federal Government services and operations;

923(c)(1)(C)(ii). excessive costs to the Federal Government and users of Federal Government services; and

923(c)(1)(C)(iii). excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

923(c)(2). Feasibility of use

In determining whether a frequency band meets the criteria specified in subsection (a)(3) of this section, the Secretary shall—

923(c)(2)(A). assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

923(c)(2)(B). assume reasonable rates of scientific progress and growth of demand for telecommunications services;

923(c)(2)(C). seek to include frequencies which can be used to stimulate the development of new technologies; and

923(c)(2)(D). consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

923(c)(3). Analysis of benefits

In determining whether a band of frequencies meets the criteria specified in subsection (a)(5) of this section, the Secretary shall consider—

923(c)(3)(A). the extent to which equipment is or will be available that is capable of utilizing the band;

923(c)(3)(B). the proximity of frequencies that are already assigned for commercial or other non-Federal use;

923(c)(3)(C). the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

923(c)(3)(D). the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

923(c)(4). Power agency frequencies

Omnibus Budget Reconciliation Act (continued)

923(c)(4)(A). Applicability of criteria

The criteria specified by subsection (a) of this section shall be deemed not to be met for any purpose under this subchapter with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

923(c)(4)(B). Mixed use eligibility

The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) of this section in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

923(c)(4)(C). "Federal power agency" defined

As used in this paragraph, the term "Federal power agency" means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

923(c)(5). Limitation on reallocation

None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to August 10, 1993, for reallocation to non-Federal use by international agreement.

923(d). Procedure for identification of reallocable bands of frequencies

923(d)(1). Submission of preliminary identification to Congress

Within 6 months after August 10, 1993, the Secretary shall prepare, make publicly available, and submit to the President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

923(d)(2). Public comment

The Secretary shall provide interested persons with the opportunity to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

923(d)(3). Comment and recommendations from Commission

The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission's analysis of such comments and the Commission's recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

923(d)(4). Direct discussions

The Secretary shall encourage and provide opportunity for direct discussions

Omnibus Budget Reconciliation Act (continued)

among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the initial report required by subsection (a) of this section.

923(e). Timetable for reallocation and limitation

923(e)(1). Timetable required

The Secretary shall, as part of the reports required by subsections (a) and (d)(1) of this section, include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

923(e)(2). Expedited reallocation

923(e)(2)(A). Required reallocation

The Secretary shall, as part of the report required by subsection (d)(1) of this section, specifically identify and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 megahertz, that meet the criteria described in subsection (a) of this section, and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 megahertz.

923(e)(2)(B). Permitted reallocation

The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2) of this section, but such bands of frequencies may not count toward the minimums required by subparagraph (A).

923(e)(3). Delayed effective dates

In setting the recommended delayed effective dates, the Secretary shall-

923(e)(3)(A). consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 925(b) of this title;

923(e)(3)(B). be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

923(e)(3)(C). consider the need to coordinate frequency use with other nations; and

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923(e)(3)(D). take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

923(f). Additional reallocation report

If the Secretary receives a notice from the Commission pursuant to section 3002(c)(5) of the Balanced Budget Act of 1997, the Secretary shall prepare and submit to the President, the Commission, and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the licensees identified in the Commission's notice. The Commission shall, not later than one year after receipt of such report, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment of such frequencies under the 1934 Act (47 U.S.C. 151 et seq.) to incumbent licensees described in the Commission's notice.

923(g). Relocation of Federal Government stations

923(g)(1). Eligible Federal Entities

Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 928 of this title. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) of this section that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) of this section, are eligible to receive payment under this paragraph.

923(g)(2). Eligible frequencies

The bands of eligible frequencies for purposes of this section are as follows:

923(g)(2)(A). the 216-220 megahertz band, the 1432-1435 megahertz band, the 1710-1755 megahertz band, and the 2385-2390 megahertz band of frequencies; and

923(g)(2)(B). any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95032 (1995).

923(g)(3). Definition of relocation costs

For purposes of this subsection, the term "relocation costs" means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to

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a new frequency assignment or by utilizing an alternative technology. Such costs include—

923(g)(3)(A). the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;

923(g)(3)(B). the costs of all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expense, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities;

923(g)(3)(C). the costs of engineering studies, economic analyses, or other expenses reasonably incurred in calculating the estimated relocation costs that are provided to the Commission pursuant to paragraph (4) of this subsection;

923(g)(3)(D). the one-time costs of any modification of equipment reasonably necessary to accommodate commercial use of such frequencies prior to the termination of the Federal entity's primary allocation or protected status, when the eligible frequencies as defined in paragraph (2) of this subsection are made available for private sector uses by competitive bidding and a Federal entity retains primary allocation or protected status in those frequencies for a period of time after the completion of the competitive bidding process; and

923(g)(3)(E). the costs associated with the accelerated replacement of systems and equipment if such acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment.

923(g)(4). Notice to Commission of estimated relocation costs

923(g)(4)(A). The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation costs and timelines for such relocation.

923(g)(4)(B). Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

923(g)(4)(C). To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B) by the geographic location of the Federal

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entities' facilities or systems and the frequency bands used by such facilities or systems.

923(g)(5). Notice to congressional committees and GAO

The NTIA shall, at the time of providing an initial estimate of relocation costs to the Commission under paragraph (4)(A), submit to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a copy of such estimate and the timelines for relocation. Unless disapproved within 30 days, the estimate shall be approved. If disapproved, the NTIA may resubmit a revised initial estimate.

923(g)(6). Implementation of procedures

The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under section 928 (d)(2)(B) of this title.

[Omnibus Budget Reconciliation Act of 1993, Aug. 10, 1994, P. L. 103-66, as amended by, Commercial Spectrum Enhancement Act, Title II §202, Dec. 23, 2004, P. L. 108-44, 118 Stat. 3391.]

923(h). Federal action to expedite spectrum transfer

Any Federal Government station which operates on electromagnetic spectrum that has been identified in any reallocation report under this section shall, to the maximum extent practicable through the use of the authority granted under subsection (g) of this section and any other applicable provision of law, take action to relocate its spectrum use to other frequencies that are reserved for Federal use or to consolidate its spectrum use with other Federal Government stations in a manner that maximizes the spectrum available for non-Federal use.

923(i). "Federal entity" defined

For purposes of this section, the term "Federal entity" means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305).

[Pub.L. 102-538, Title I, § 113, as added Pub.L. 103-66, Title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 380; as amended Pub. L. 105-33, Title III, §3002(d)(1), Aug. 5, 1997, 111 Stat. 262; Pub.L. 105-261, Div. A, Title X, § 1064(a), (b), (c), Oct. 17, 1998, 112 Stat. 2132, 2133; Pub.L. 106-65, Div. A, Title X, § 1062(c)(2), Oct. 5, 1999, 113 Stat. 768.]

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924. Withdrawal or limitation of assignment to Federal Government stations

924(a). In general

The President shall—

924(a)(1). within 6 months after receipt of a report by the Secretary under subsection (a), (d)(1), or (f) of section 923 of this title, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

924(a)(2). within any such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 923(b)(2) of this title;

924(a)(3). by the delayed effective date recommended by the Secretary under section 923(e) of this title (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

924(a)(4). assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

924(a)(5). transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

924(b). Exceptions

924(b)(1). Authority to substitute

If the President determines that a circumstance described in paragraph (2) exists, the President—

924(b)(1)(A). may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a) of this section; and

924(b)(1)(B). shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Commission, Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

924(b)(2). Grounds for substitution

For purposes of paragraph (1), the following circumstances are described in this paragraph:

Omnibus Budget Reconciliation Act (continued)

924(b)(2)(A). the reassignment would seriously jeopardize the national defense interests of the United States;

924(b)(2)(B). the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

924(b)(2)(C). the reassignment would seriously jeopardize public health or safety;

924(b)(2)(D). the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency; or

924(b)(2)(E). the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

924(b)(3). Criteria for substituted frequencies

For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended by the report of the Secretary under section 923(a) of this title unless the substituted frequency also meets each of the criteria specified by section 923(a) of this title.

924(b)(4). Delays in implementation

If the President determines that any action cannot be completed by the delayed effective date recommended by the Secretary pursuant to section 923(e) of this title, or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 925 of this title, the President may—

924(b)(4)(A). withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

924(b)(4)(B). substitute alternative frequencies pursuant to the provisions of this subsection.

[Pub.L. 102-538, Title I, § 114, as added Pub.L. 103-66, Title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 384; as amended Pub. L. 105-33, Title III, §3002(d)(2), Aug. 5, 1997, 111 Stat. 264].

Omnibus Budget Reconciliation Act (continued)
Legislative History for
Omnibus Budget Reconciliation Act of 1993

Dates of Consideration and Passage

House: May 27, August 5, 1993

Senate: June 23, 24, 25, August 6, 1993

House Report (Budget Committee) No. 103-111,
May 25, 1993 [To accompany H.R. 2264]

House Conference Report No. 103-213,
Aug. 3, 1993 [To accompany H.R. 2264]

Cong. Record Vol. 139 (1993)

Special Energy Research and Development Appropriations Act, 1975

Act of June 30, 1974, 88 Stat. 276, 279
Pub. Law No. 93-322

Sec. 103.

Construction

For construction and acquisition of transmission lines, substations, and appurtenant facilities, as authorized by law, \$5,500,000, to remain available until expended.

Legislative History for Special Energy Research and Development Appropriations Act, 1975

House Reports: No. 93—1010 (Comm. on Appropriations)
and No. 93—1123 (Comm. of Conference).

Senate Report No. 93—903 (Comm. On Appropriations).

Congressional Record, Vol. 120 (1974):

Apr. 30, Considered and Passed House.

June 10, 12, Considered and Passed Senate, Amended.

June 24, House and Senate Agreed to Conference Report;

Resolved Amendments in Disagreement.

Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act

Act of Aug. 28, 1974, 88 Stat. 782, 788
Pub. Law No. 93-393

Sec. 202.

Construction

For construction and acquisition of transmission lines, substations, and appurtenant facilities, as authorized by law, \$128,000,000, to remain available until expended: Provided, that the amount appropriated for "Construction" in the Special Energy Research and Development Appropriations Act, 1975, shall be merged, without limitation, with this appropriation.

Operation and Maintenance

For necessary expenses of operation and maintenance of the Bonneville transmission system and of marketing electric power and energy, \$38,500,000.

Administrative Provisions

Appropriations of the Bonneville Power Administration shall be available to carry out all the duties imposed upon the administrator pursuant to law. Appropriations made herein to the Bonneville Power Administration shall be available in one fund, except that the appropriation herein made for operation and maintenance shall be available only for the service of the current fiscal year. Other than as may be necessary to meet local emergencies, not to exceed 12 per centum of the appropriation for construction herein made for the Bonneville Power Administration shall be available for construction work by force account or on a hired-labor basis.

Public Works for Water and Power Development
Legislative History for Public Works for
Water and Power Development and Energy
Research Appropriations Act

House Reports: No. 93—1077 (Comm. on Appropriations)
and No. 93—1274 (Comm. of Conference).

Senate Report No. 93—1032 (Comm. on Appropriations).

Congressional Record, Vol. 120 (1974)

June 6, Considered and Passed House.

Aug. 1, Considered and Passed Senate, Amended.

Aug. 13, House Agreed to Conference Report.

Aug. 15, Senate Agreed to Conference Report.

Weekly Compilation of Presidential Documents, Vol. 10, No. 35:

Aug. 29, Presidential Statement.

Second Supplemental Appropriations Act, 1975

Act of June 12, 1975, 89 Stat. 173, 202
Pub. Law No. 94-32

Sec. 200

Bonneville Power Administration Fund

In addition to the amounts transferred to this fund under Public Law 93-454 (88 Stat. 1376), \$4,470,000 shall be made available from current receipts of the Bonneville Power Administration to provide for increased pay costs during fiscal year 1975.

Legislative History for Second Supplemental Appropriations Act, 1975

House Reports: No. 94—141 (Comm. on Appropriations)
and No. 94—239 (Comm. of Conference).

Senate Report: No. 94—137 (Comm. on Appropriations).

Congressional Record, Vol. 121 (1975)

Apr. 15, May 22, June 2, 9, considered and passed House

May 20, 22, June 4, 11, considered and passed Senate.

Public Works for Water and Power Development and Energy Research Appropriations Act, 1976

Act of Dec. 26, 1975, 89 Stat. 1035, 1044
Pub. Law No. 94-180

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund established pursuant to Public Law 93-454 (16 U.S.C. 838 note) are hereby specifically approved for construction of the following major transmission facilities: (a) transmission lines and related facilities to integrate generation into the main Bonneville Power Administration system from WPPSS No. 3 and No. 5 Nuclear Generating Plants near Satsop, Washington.

For the period July 1, 1976, through September 30, 1976, expenditures at a rate not greater than the quarterly rate provided for fiscal year 1976 are hereby approved.

Legislative History for Public Works for Water and Power Development and Energy Research Appropriations Act, 1976

House Reports: No. 94—319 (Comm. on Appropriations)
and No. 94—711 (Comm. of Conference).

Senate Report: No. 94—505 (Comm. on Appropriations).

Congressional Record, Vol. 121 (1975)

June 24, considered and passed House.

Dec. 5, considered and passed Senate, amended.

Dec. 12, House and Senate agreed to conference report.

Public Works for Water and Power Development and Energy Research Appropriations Act, 1977

Act of July 12, 1976, 90 Stat. 889, 896
Pub. Law No. 94-355

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are hereby specifically approved for purchase of one aircraft for replacement only and construction of the following major transmission facilities: facilities to provide system support to the Lost River-Salmon River area in southeast Idaho.

Legislative History for Public Works for Water and Power Development and Energy Research Appropriations Act, 1977

House Reports: No. 94—1223 (Comm. on Appropriations)
and No. 94—1297 (Comm. of Conference).

Senate Report: No. 94—960 (Comm. on Appropriations).

Congressional Record, Vol. 122 (1976)

June 15, considered and passed House.

June 23, considered and passed Senate, amended.

June 29, House agreed to conference report; receded and concurred in
Senate amendments; Senate agreed to conference report.

Water Resources Development Act of 1976

Act of October 22, 1976, 90 Stat. 2917.
Pub. Law No. 94-587

Sec. 101. (a)

The Secretary of the Army, acting through the Chief of Engineers, is hereby authorized to undertake the phase I design memorandum stage of advanced engineering and design of the following water resources development projects, substantially in accordance with, and subject to the conditions recommended by the Chief of Engineers in, the reports hereinafter designated.

The project for construction and installation of a second powerhouse at McNary Lock and Dam, Columbia River, Oregon and Washington: Report of the Chief of Engineers dated June 29, 1976, at an estimated cost of \$1,800,000.

Sec. 102.

Sections 201 and 202 and the last three sentences in section 203 of the Flood Control Act of 1968 shall apply to all projects authorized in this section. The following works of improvement for the benefit of navigation and the control of destructive floodwaters and other purposes are hereby adopted and authorized to be prosecuted by the Secretary of the Army, acting through the Chief of Engineers, substantially in accordance with the plans and subject to the conditions recommended by the Chief of Engineers in the respective reports hereinafter designated.

Fish and Wildlife Compensation Plan for the Lower Snake River, Washington and Idaho, substantially in accordance with a report on file with the Chief of Engineers, at an estimated cost of \$58,400,000.

[Act of October 22, 1976, 90 Stat. 2917., Pub. Law No. 94-587.]

Water Resources Development Act (continued)

**Legislative History for
Water Resources Development Act of 1976**
Dates of Consideration and Passage

House: September 20, 29, 1976

Senate: September 16, 28, 29, 1976

House Report (Committee on Public Works and Transportation) No. 94-1702

Senate Report (Committee on Public Works) No. 94-1255.

House Report (Committee of Conference) No. 94-1755

Cong. Record Vol. 122 (1976)

Energy and Water Development Appropriations Act, 1978

Act of Aug. 7, 1977, 91 Stat. 797, 805
Pub. Law No. 95-96

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are hereby specifically approved for purchase of three helicopters for replacement only; and for official reception and representation expenses not to exceed \$1500.

Legislative History for Energy and Water Development Appropriations Act, 1978

House Reports: No. 95—379 (Comm. on Appropriations)
and No. 95—507 (Comm. of Conference).

Senate Report: No. 95—301 (Comm. on Appropriations).

Congressional Record, Vol. 123 (1977)

June 13, 14, considered and passed House.

June 30, July 1, 11—13, considered and passed Senate, amended.

July 25, House agreed to conference report; receded and concurred in certain Senate amendments; receded and concurred in one Senate amendment with an amendment.

July 25, Senate agreed to conference report;
concurred in House amendment.

Weekly Compilation of Presidential Documents, Vol. 13, No. 33:
Aug. 8, Presidential statement.

Energy and Water Development Appropriations Act, 1981

Act of Oct. 1, 1980, 94 Stat. 1331, 1334
Pub. Law No. 96-367

Sec. 100

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are approved for construction of Southwest Oregon Service-Buckley-Summer Lake 500 KV transmission line and related facilities, and for official reception and representation expenses in an amount not to exceed \$1,000.

During fiscal year 1981 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed \$2,400,000.

Legislative History for Energy and Water Development Appropriations Act, 1981

House Reports: No. 96—1093 (Comm. on Appropriations)
and No. 96—1366 (Comm. of Conference).

Senate Report: No. 96—927 (Comm. on Appropriations).

Congressional Record, Vol. 126 (1980)

June 24, 25, considered and passed House.

Sept. 9, 10, considered and passed Senate, amended.

Sept. 24, House agreed to conference report; concurred in certain Senate amendments, in others with amendments; Senate agreed to conference report; concurred in House amendments.

Weekly Compilation of Presidential Documents, Vol. 40, No. 16:
Oct. 1, Presidential statement.

Energy and Water Development Appropriations Act, 1982

Act of Dec. 4, 1981, 95 Stat. 1135, 1144
Pub. Law No. 97-88

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are approved for purchase of one fixed wing aircraft for replacement only, for construction of Surprise Valley Area Service in the Alturas-Cedarville, California area and for official reception and representation expenses in an amount not to exceed \$2,000.

During fiscal year 1982 and within the resource and authority available, gross obligations for the principal amount of direct loans shall not exceed \$40,000,000.

Legislative History for Energy and Water Development Appropriation Act, 1982

House Reports: No. 97—177 (Comm. on Appropriations)
and No. 97—345 (Comm. of Conference).

Senate Report: No. 97—256 (Comm. on Appropriations).

Congressional Record, Vol. 127 (1981)

July 23, 24, considered and passed House.

Nov. 3—5, considered and passed Senate, amended.

Nov. 20, House agreed to conference report;
concurred in certain Senate amendments.

Nov. 21, Senate agreed to conference report;
resolved amendments in disagreement.

Weekly Compilation of Presidential Documents, Vol. 17, No. 49 (1981):
Dec. 4, Presidential statement.

Continuing Appropriations for 1983

Act of December 21, 1982, Title V, §115, 96 Stat. 1830, 1912.
Pub. Law No. 97-377

Sec. 115.

Notwithstanding any other provision of this joint resolution, except section 102, expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are approved for construction of Boundary Integration and Colville Valley Support; official reception and representation expenses in an amount not to exceed \$2,500; and for the purposes of providing funds for conservation and renewable resource loans and grants as specified in the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501), \$1,250,000,000 borrowing authority is made available to remain outstanding at any given time: Provided, That the obligation of such additional borrowing authority not exceed \$276,000,000 in fiscal year 1983.

[Act of December 21, 1982, Title V, §115, 96 Stat. 1912.]

Legislative History for Continuing Appropriations for 1983

Dates of Consideration and Passage

House: December 14, 19, 20, 1983

Senate: December 18, 19, 20, 1982

House Report (Committee on Appropriations) No. 97-959

House Report (Committee of Conference) No. 97-980

Cong. Record Vol. 128 (1982)

Borrowing authority
increase

Energy and Water Development Appropriations Act of 1984

Act of July 14, 1983, Title III, 97 Stat. 247, 257.
Pub. Law No. 98-50

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are approved for official reception and representation expenses in an amount not to exceed \$2,500; and for continuity of financing the construction program, as well as financing new programs, an additional \$1,250,000,000 in borrowing authority is made available, under the Federal Columbia River Transmission System Act [16 U.S.C. 838] to remain outstanding at any given time: Provided, That the obligation of such additional borrowing authority shall not exceed \$123,400,000 in fiscal year 1984.

During fiscal year 1984 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed \$40,000,000; during fiscal year 1984, commitments to guarantee loans may be made only to the extent that the total loan principal, any part of which is to be guaranteed, shall not exceed \$20,000,000.

[Act of July 14, 1983, Title III, 97 Stat. 257.]

Legislative History for Energy and Water Development Appropriations Act of 1984

Dates of Consideration and Passage

House: June 6, 7, 23, 29, 1983

Senate: June 21, 22, 1984

House Report (Committee on Appropriations) No. 98-217

House Report (Committee of Conference) No. 98-272

Senate Report (Committee on Appropriations) No. 98-153

Cong. Record Vol. 129 (1983)

Borrowing authority
increase

Energy and Water Development Appropriations Act, 1985

Act of July 16, 1984, 98 Stat. 403, 415
Pub. Law No. 98-360

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are provided for Three Mile Dam Fish Passage Facilities, Sunnyside Dam Passage, Wapato Diversion Dam Passage, Toppenish Creek/Status Unit Diversion, Prosser Dam Passage, and Roza Dam Passage. These expenditures and the transfer of funds to the Bureau of Reclamation for the purpose of constructing fish passage facilities are approved. Expenditures are also approved for: (1) Lake Pend Oreille Kokanee Hatchery, (2) the Umatilla Hatchery, and (3) official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1985, and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed \$40,000,000.

Legislative History for Energy and Water Development Appropriations Act, 1985

House Reports: No. 98-755 (Comm. on Appropriations)
and No. 98-866 (Comm. on Conference).

Senate Report: No. 98-502 (Comm. on Appropriations).

Congressional Record, Vol. 130 (1984)

May 22, considered and passed House.

June 21, considered and passed Senate, amended.

June 27, House agreed to conference report; concurred in certain Senate amendments and in others with amendments. Senate agreed to conference report and concurred in House amendments.

Energy and Water Development Appropriations Act, 1986

Act of Nov. 1, 1985, 99 Stat. 564, 574
Pub. Law No. 99-141

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454 (16 U.S.C. 838i) are approved for Nez Perce Fish Propagation Facility, Yakima Hatchery, Colville Hatchery, Dryden Dam Fish Passage Facilities, and Tumwater Falls Dam Fish Passage Facilities. Expenditures are also approved for: (1) acquisition of one fixed wing aircraft for replacement only and (2) official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1986, and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed \$20,000,000.

Legislative History for Energy and Water Development Appropriations Act, 1986

House Reports: No. 99-195 (Comm. on Appropriations)
and No. 99-307 (Comm. of Conference).

Senate Report: No. 99-110 (Comm. on Appropriations).

Congressional Record, Vol. 131 (1985)

July 16, considered and passed House.

Aug. 1, considered and passed Senate, amended.

Oct. 17, House agreed to conference report; receded and concurred in Senate amendments, in others with amendments. Senate agreed to conference report; concurred in House amendments.

Urgent Supplemental Appropriations Act of 1986

Act of July 2, 1986, Title II, §208, 100 Stat. 710, 749
Pub.L. No. 99-349, H.R. 5415

Title II: General Provisions

Sec. 208.

No funds appropriated or made available under this or any other Act shall be used by the executive branch for soliciting proposals, preparing or reviewing studies or drafting proposals designed to transfer out of Federal ownership, management or control in whole or in part the facilities and functions of the Federal power marketing administrations located within the contiguous 48 States, and the Tennessee Valley Authority, until such activities have been specifically authorized and in accordance with terms and conditions established by an Act of Congress hereafter enacted: Provided, That this provision shall not apply to the authority granted under section 2(e) of the Bonneville Project Act of 1937; or to the authority of the Tennessee Valley Authority pursuant to any law under which it may transfer facilities or functions in the normal course of business in carrying out the purposes of the Tennessee Valley Authority Act of 1933, as amended; or to the authority of the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and the Surplus Property Act of 1944 to sell or otherwise dispose of surplus property.

[Pub.L. 99-349, Title II, §208, July 2, 1986, 100 Stat. 749.]

Legislative History for Urgent Supplemental Appropriations Act of 1986

Dates of Consideration and Passage

House: May 8, June 24, 26, 1986

Senate: June 6, 26, 1986

House Report (Appropriations Committee) No. 99-510,
Mar. 25, 1986 [To accompany H.R. 4515]

Senate Report (Appropriations Committee) No. 99-301,
May 15, 1986 [To accompany H.R. 4515]

House Conference Report No. 99-649,
June 19, 1986 [To accompany H.R. 4515]

Cong. record Vol. 132 (1986)

Energy and Water Development Appropriations Act, 1987

Act of Oct. 1986, 100 Stat. 3341-195, 3341-207
Pub. Law No. 99-591

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for Enloe Dam Fish Passage Facilities. Expenditures are also approved for official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1987, and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed \$10,000,000.

Sec. 507

None of the funds appropriated in this Act shall be used to pay the salary of the Administrator of a Power Marketing Administration or the Board of Directors of the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, may be used to pay the salary of the Administrator of the Bonneville Power Administration, unless such Administrators or Directors award contracts for the procurement of extra high voltage (EHV) power equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 per centum of the bid or offering price of the most competitive foreign bidder.

Energy and Water Development, 1987 (continued)

**Legislative History for
Energy and Water Development
Appropriations Act, 1987**

House Report: No. 99-1005 (Comm. of Conference).

Senate Report: No. 99-500 (Comm. on Appropriations).

Congressional Record, Vol. 132 (1986)

Sept. 25, considered and passed House.

Sept. 29, 30, Oct. 1-3, considered and passed Senate, amended.

Oct. 15, House agreed to conference report, receded and concurred in certain Senate amendment, in others with amendments.

Oct. 16, Senate agreed to conference report, concurred in certain House amendment and receded from another.

Oct. 17, Senate concurred in certain House amendment with an amendment; House receded from certain Senate amendments and concurred in another.

Energy and Water Development Appropriations Act, 1988

Act of Dec. 22, 1987, 101 Stat. 1329-104, 1329-123
Pub. Law No. 100-202

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for fish passage improvements at the Umatilla River Diversion and for the Ellensburg Screen Fish Passage Facilities. Expenditures are also approved for official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1988, no new direct loan obligations may be made.

Sec. 507

None of the funds appropriated in this Act for Power Marketing Administrations or the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund or the Tennessee Valley Authority Fund, may be used to pay the costs of procuring extra high voltage (EHV) power equipment unless contract awards are made for EHV equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 per centum of the bid or offering price of the most competitive foreign bidder: Provided, That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: Provided further, That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: Provided further, That this section shall not apply to procurement of domestic end product as defined in 48 C.F.R. sec. 25.101: Provided further, That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Energy and Water Development, 1988 (continued)

**Legislative History for
Energy and Water Development Act, 1988**

House Reports: No. 100-415 (Comm. on Appropriations)
and No. 100-487 (Comm. of Conference).

Senate Report: No. 100-238 (Comm. on Appropriations).

Congressional Record, Vol. 133 (1987)

Dec. 3, considered and passed House.

Dec. 11, considered and passed Senate, amended.

Dec. 21, House and Senate agreed to conference report.

Weekly Compilation of Presidential Documents, Vol. 23 (1987):

Dec. 22, Presidential remarks.

Energy and Water Development Appropriations Act of 1989

Act of July 19, 1988, Title V, §507, 102 Stat. 857, 874.
Pub.L. No. 100-371.

Sec. 300.

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1989, no new direct loan obligations may be made.

Without fiscal year limitation, the Bonneville Power Administration continues to be authorized to incur obligations for authorized purposes and may do so in excess of borrowing authority and cash in the Bonneville Power Administration Fund.

Sec. 507.

None of the funds appropriated in this Act for Power Marketing Administrations or the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund or the Tennessee Valley Authority Fund, may be used to pay the costs of procuring extra high voltage (EHV) power equipment unless contract awards are made for EHV equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 per centum of the bid or offering price of the most competitive foreign bidder: Provided, That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: Provided further, That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: Provided further, That this section shall not apply to procurement of domestic end product as defined in 48 C.F.R. sec. 25.101: Provided further, That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

[Pub. L. 100-371, Title V, §507, July 19, 1988, 102 Stat. 874.]

Energy and Water Development, 1989 (continued)

**Legislative History for
Energy and Water Development
Appropriations Act of 1989**

Dates of Consideration and Passage

House: May 17, June 30 1988

Senate: June 14, 15, July 6,7, 1988

House Report (Committee on Appropriations) No. 100-618

House Report (Committee of Conference) No. 100-724

Senate Report (Committee on Appropriations) No. 100-381

Cong. Record Vol. 134 (1988)

Energy and Water Development Appropriations Act, 1990

Act of Sept. 29, 1989 103 Stat. 641, 600
Pub. Law No. 101-101

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for expenses of the Northeast Oregon Spring Chinook Facility and Galbraith Springs/Sherman Creek Hatcheries; and for official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1990, no new direct loan obligations may be made.

Sec. 507

None of the funds appropriated in this Act for Power Marketing Administrations or the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund or the Tennessee Valley Authority Fund, may be used to pay the costs of procuring extra high voltage (EHV) power equipment unless contract awards are made for EHV equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 per centum of the bid or offering price of the most competitive foreign bidder: Provided, That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: Provided further, That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: Provided further, That this section shall not apply to procurement of domestic end product as defined in 48 C.F.R. sec. 25.101: Provided further, That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Energy and Water Development, 1990 (continued)

**Legislative History for
Energy and Water Development
Appropriations Act, 1990**

Dates of Consideration and Passage

House: June 28, Sept. 12, 1989

Senate: July 27, Sept. 14, 1989

House Report (Committee on Appropriations) No. 101-96

House Report (Committee of Conference) No. 101-235

Senate Report (Committee on Appropriations) No. 101-83

Cong. Record Vol. 135 (1989)

Weekly Compilation of Presidential Documents, Vol. 25 (1989)

Sept. 29, Presidential statement.

Energy and Water Development

Appropriations Act, 1991

Act of Nov. 5, 1990, 104 Stat. 2074, 2092
Pub. Law No. 101-514

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for expenses of the Yakima Basin Screen Facilities Phase II; and for official reception and representation expenses in an amount not to exceed \$2,500.

During fiscal year 1991, no new direct loan obligations may be made.

Sec. 507

None of the funds appropriated in this Act for Power Marketing Administrations or the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund or the Tennessee Valley Authority Fund, may be used to pay the costs of procuring extra high voltage (EHV) power equipment unless contract awards are made for EHV equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 per centum of the bid or offering price of the most competitive foreign bidder: Provided, That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: Provided further, That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: Provided further, That this section shall not apply to procurement of domestic end product as defined in 48 CFR sec. 25.101: Provided further, That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Energy and Water Development, 1991 (continued)

**Legislative History for
Energy and Water Development
Appropriations Act, 1991**

Dates of Consideration and Passage

House: June 19, Oct. 19, 1990

Senate: Aug. 1, 2, Oct. 19, 1990

House Report (Committee on Appropriations) No. 101-536

House Report (Committee of Conference) No. 101-235

Senate Report (Committee on Appropriations) No. 101-378

Cong. Record Vol. 136 (1990)

Weekly Compilation of Presidential Documents, Vol. 26 (1990)

Nov. 5, Presidential statement.

Energy and Water Development Appropriations Act, 1992

Act of Aug. 17, 1991, 105 Stat. 510, 530
Pub. Law No. 102-104

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the purchase, maintenance and operation of two rotary-wing aircraft for replacement only; and for official reception and representation expenses in an amount not to exceed \$3,000.

During fiscal year 1992, no new direct loan obligations may be made.

Legislative History for Energy and Water Development Appropriations Act, 1992

Dates of Consideration and Passage

House: May 29, July 31, Aug. 1 1991

Senate: July 9, 10, Aug. 2 1991

House Report (Committee on Appropriations) No. 102-75

House Report (Committee of Conference) No. 102-177

Senate Report (Committee on Appropriations) No. 102-180

Cong. Record Vol. 137 (1991)

Weekly Compilation of Presidential Documents, Vol. 27 (1991)

Aug. 17, Presidential statement.

Energy and Water Development Appropriations Act, 1993

Act of Oct. 12, 1992, 106 Stat. 1315
Pub. Law No. 102-377

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the Springfield Hatchery Production Facility, Dryden Dam Fish Screens, Bonneville Fish Sampling Facility, and Hungry Horse Resident Fish Hatchery, and, the purchase, maintenance and operation of two rotary-wing aircraft for replacement only; and for official reception and representation expenses in an amount not to exceed \$3,000.

During fiscal year 1993, no new direct loan obligations may be made.

Legislative History for Energy and Water Development Appropriations Act, 1993

Dates of Consideration and Passage

House: June 17, Sept. 17, Sept. 24 1992

Senate: July 31, Aug. 3, Sept. 24 1992

House Report (Committee on Appropriations) No. 102-555

House Report (Committee of Conference) No. 102-866

Senate Report (Committee on Appropriations) No. 102-344

Cong. Record Vol. 138 (1992)

Weekly Compilation of Presidential Documents, Vol. 28 (1992)

Oct. 2, Presidential statement.

Elwha River Ecosystem and Fisheries Restoration Act

Act of Oct. 24, 1992, 106 Stat. 3173
Public Law No. 102-495

Sec. 2. Definitions

For the purposes of this Act:

Sec. 2(a). The term "Administrator" means the Administrator of the Bonneville Power Administration.

[Pub. L. 102-495, §2(a), Oct. 24, 1992, 106 Stat. 3173.]

Sec. 2(f). The term "local industrial consumer" means the owner of the pulp and paper mill located on Ediz Hook in Port Angeles, Washington, that, on the date of enactment of this Act, receives and consumes the electric power produced by the Projects, or its successors or assignees.

[Pub. L. 102-495, §2(f), Oct. 24, 1992, 106 Stat. 3173.]

Sec. 2(g). The term "local preference customer" means Port Angeles City Light.

[Pub. L. 102-495, §2(g), Oct. 24, 1992, 106 Stat. 3173.]

Sec. 2(k). The term "project replacement power" means electric power delivered to the local industrial consumer to replace losses of electric power generation from the Projects following their acquisition by the Secretary pursuant to this Act, in an amount not to exceed 172.088 gigawatthours of energy in any year.

[Pub. L. 102-495, §2(k), Oct. 24, 1992, 106 Stat. 3173-4.]

Sec. 5. Project operation and replacement power

Sec. 5(b). To ensure the availability of adequate electric power supplies to the operating facilities of the local industrial consumer, the Administrator shall, following acquisition of the Projects pursuant to this Act, deliver all project replacement power required by the operating facilities of the local industrial consumer through the local preference customer at a rate equal to the priority firm rate, or the rate which is then the equivalent of the priority firm rate if that designation is no longer used by the Administrator, as such rate is fixed by the Administrator from time to time, without regard to any new large single load determinations or similar factors. The local industrial consumer shall pay the local preference customer for such project replacement power at the same rate as all other industrial consumers of the local preference customer.

[Pub. L. 102-495, §5(b), Oct. 24, 1992, 106 Stat. 3177.]

Elwha River and Fisheries Restoration (continued)

**Legislative History for
Elwha River Ecosystem and
Fisheries Restoration Act**

Dates of Consideration and Passage

House: October 5, 1992

Senate: October 7, 1992

H.R. 4844

Cong. Record Vol. 138 (1992)

Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act

Act of Nov. 2, 1994, 108 Stat. 4577.
Public Law No. 103-436, H.R. 4757
(as amended (Sec. 6) by Public Law 104-134, H.R. 3019).

Sec. 1. Short title

This Act may be cited as the "Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act".

Sec. 2. Definitions

For purposes of this Act:

Sec. 2(1). The term 'Administrator' means the Administrator of the Bonneville Power Administration.

Sec. 2(2). The term 'Bonneville Power Administration' means the Bonneville Power Administration of the Department of Energy or any successor Agency, Corporation, or entity that markets power produced at the Dam.

Sec. 2(3). The term 'Dam' means the Grand Coulee Dam operated by the Bureau of Reclamation of the Department of the Interior, the power from which is marketed by the Bonneville Power Administration of the Department of Energy.

Sec. 2(4). The term 'Settlement Agreement' means the Settlement Agreement entered into between the United States and the Tribe, signed by the United States on April 21, 1994, and by the Tribe on April 16, 1994, to settle the claims of the Tribe in Docket 181-D of the Indian Claims Commission, which docket has been transferred to the United States Court of Federal Claims.

Sec. 2(5). The term 'Tribe' means the Confederated Tribes of the Colville Reservation, a federally recognized Indian tribe.

Sec. 3. Findings and purposes

Sec. 3(a). Findings—The Congress finds that—

Sec. 3(a)(1). there is pending before the United States Court of Federal Claims, a suit by the Confederated Tribes of the Colville Reservation against the United States, in which the Tribe seeks to recover damages under the 'Fair and Honorable Dealings' clause of the Indian Claims Commission Act (Act of August 13, 1946, 60 Stat. 1049), and in which, although the matter is in dispute, the potential liability of the United States is substantial;

Sec. 3(a)(2). the claim alleges that the United States has since the construction of Grand Coulee Dam used Colville Reservation land in the generation of electric power, and will continue to use such reservation land

Grand Coulee Dam Settlement Act (continued)

for as long as Grand Coulee Dam produces power; and that the United States has promised and undertaken to pay the Tribe for such use and has not done so;

Sec. 3(a)(3). the United States, after years of litigation, has negotiated a Settlement Agreement with the Tribe, signed by the Department of Justice, the Bonneville Power Administration and the Department of the Interior. The Settlement Agreement is contingent on the enactment of the enabling legislation; and

Sec. 3(a)(4). the Settlement Agreement, approved in this Act, will provide mutually agreeable compensation for the past use of reservation land in connection with the generation of electric power at Grand Coulee Dam, and will establish a method to ensure that the Tribe will be compensated for the future use of reservation land in the generation of electric power at Grand Coulee Dam, and will settle the claims of the Tribe against the United States brought under the Indian Claims Commission Act.

Sec. 3(b). Purposes—It is the purpose of this Act—

Sec. 3(b)(1). to approve and ratify the Settlement Agreement entered into by the United States and the Tribe; and

Sec. 3(b)(2). to direct the Bonneville Power Administration to carry out its obligations under the Settlement Agreement.

Sec. 4. Approval, ratification, and implementation of settlement agreement

Sec. 4(a). Approval and Ratification—The Settlement Agreement is approved and ratified.

Sec. 4(b). Annual Payments—The Bonneville Power Administration shall make annual payments to the Tribe as set forth in the Settlement Agreement and shall carry out its other obligations under the Settlement Agreement.

Sec. 4(c). Settlement—Consistent with the negotiated terms of the Settlement Agreement, the United States shall join in the motion that the Tribe has agreed to file in *Confederated Tribes v. United States*, Indian Claims Commission Docket 181-D, for the entry of a compromise final judgment in the amount of \$53,000,000. The judgment shall be paid from funds appropriated pursuant to section 1304 of Title 31, United States Code, and is not reimbursable by the Bonneville Power Administration.

Sec. 5. Distribution of the settlement funds

Sec. 5(a). Lump-Sum Payment—The judgment of \$53,000,000, when paid, shall be deposited in the Treasury of the United States and the principal amount and interest on the judgment, shall be credited to the account of

Grand Coulee Dam Settlement Act (continued)

the Tribe. These funds may be advanced or expended for any purpose by the tribal governing body of the Confederated Tribes of the Colville Reservation, pursuant to a distribution plan developed by the Tribe and approved by the Secretary of the Interior pursuant to section 3 of Public Law 93-134 (25 U.S.C. 1403): Provided, That any payment to a minor under the distribution plan shall be held in trust by the United States for the minor until the minor reaches the age of 18, or until the minor's class is scheduled to graduate from high school, whichever is later: Provided further, That emergency use of trust funds may be authorized for the benefit of the minor pursuant to regulations of the Bureau of Indian Affairs.

Sec. 5(b). Annual Payments—In addition to the lump-sum payment, annual payments shall be made directly to the Tribe in accordance with the Settlement Agreement, and may be used in the same manner as any other income received by the tribe from the lease or sale of natural resources.

Sec. 6. Credits to Administrator's repayment to the United States Treasury

So long as the Administrator makes annual payments to the tribes under the settlement agreement, the Administrator shall apply against amounts otherwise payable by the Administrator to the United States Treasury a credit that reduces the Administrator's payment, in the amount and for each fiscal year as follows: \$15,860,000 in fiscal year 1997; \$16,490,000 in fiscal year 1998; \$17,150,000 in fiscal year 1999; \$17,840,000 in fiscal year 2000; \$18,550,000 in fiscal year 2001; and \$4,600,000 in each succeeding fiscal year.

Sec. 7. Miscellaneous provisions

Sec. 7(a). Liens and Forfeitures, Etc—Funds paid or deposited to the credit of the Tribe pursuant to the Settlement Agreement or this Act, the interest or investment income earned or received on those funds, and any payment authorized by the Tribe or the Secretary of the Interior to be made from those funds to tribal members, and the interest or investment income on those payments earned or received while the payments are held in trust for the member, are not subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

Sec. 7(b). Eligibility for Federal and Federally Funded Programs—Funds paid or deposited to the credit of the Tribe pursuant to the Settlement Agreement or this Act, the interest or investment income earned or received on such funds, and any payment authorized by the Tribe or the Secretary of the Interior to be made from those funds to tribal members, and the interest or investment income on those payments earned or received while the payments are held in trust for the member, may not be treated as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefit to which the Tribe, a tribal member, or household would otherwise be entitled under the Social Security Act or any Federal or federally assisted program.

Grand Coulee Dam Settlement Act (continued)

Sec. 7(c). Trust Responsibility—This Act and the Settlement Agreement do not affect the trust responsibility of the United States and its agencies to the Tribe and the members of the Tribe.

Legislative History for the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act

Dates of Consideration and Passage

House: October 3, 1994

Senate: October 7, 1994

House Report (Committee on Natural Resources) No. 103-685

Senate Report (Committee on Indian Affairs) No. 103-356
[To accompany S. 2259]

Cong. Record Vol. 140 (1994)

Energy and Water Development Appropriations Act, 1998

Act of Oct. 13, 1997, 111 Stat. 1320, 1333
Pub. Law No. 105-62

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the anadromous fish supplementation facilities in the Yakima River Basin, Methow River Basin and Upper Snake River Basin, for the Billy Shaw Reservoir resident fish substitution project, and for the resident trout fish culture facility in Southeast Idaho; and official reception and representation expenses in an amount not to exceed \$3,000.

During fiscal year 1998, no new direct loan obligations may be made.

Legislative History for Energy and Water Development Appropriations Act, 1998

Dates of Consideration and Passage

House: July 24, 25, Sept. 30 1997

Senate: July 28, Sept. 30 1997

House Report (Committee on Appropriations) No. 105-90

House Report (Committee of Conference) No. 105-271

Senate Report (Committee on Appropriations) No. 105-44

Cong. Record Vol. 143 (1997)

Weekly Compilation of Presidential Documents, Vol. 33 (1997)

Oct. 13, Presidential statement.

Oct. 17, President's special message on line item veto.

Energy and Water Development Appropriations Act, 2000

Act of Sept. 29, 1999, 113 Stat. 484, 493
Pub. Law No. 106-60

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the Northeast Oregon Hatchery Master Plan, and for official reception and representation expenses in an amount not to exceed \$1,500.

During fiscal year 2000, no new direct loan obligations may be made.

Sec. 314

No funds are provided in this Act or any other Act for the Administrator of the Bonneville Power Administration to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies that such services are not available from private sector businesses.

Legislative History for Energy and Water Development Appropriations Act, 2000

Dates of Consideration and Passage

House: July 27, Sept. 27 1999

Senate: July 28, Sept. 28 1999

House Report (Committee on Appropriations) No. 106-253

House Report (Committee of Conference) No. 106-336

Senate Report (Committee on Appropriations) No. 106-58

Cong. Record Vol. 145 (1999)

Weekly Compilation of Presidential Documents, Vol. 35 (1999)

Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001

Act of Oct. 27, 2001, 114 Stat. 1441, 1441A-76, Pub. Law No. 106-377

Sec. 300

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the Nez Perce Tribe Resident Fish Substitution Program, the Cour D'Alene Tribe Trout Production facility, and for official reception and representation expenses in an amount not to exceed \$1,500.

During fiscal year 2001, no new direct loan obligations may be made. Section 511 of the Energy and Water Development Appropriations Act, 1997.

Sec. 308

No funds are provided in this Act or any other Act for the Administrator of the Bonneville Power Administration to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies that such services are not available from private sector businesses.

Legislative History for Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001

[None Set Out]

Consolidated Appropriations Resolution, 2003

Act of February 20, 2003, Title VII, §701, 117 Stat. 551.
Pub.L. No. 108-7.

Sec. 300

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for official reception and representation expenses in an amount not to exceed \$1,500.

During fiscal year 2003, no new direct loan obligations may be made.

Sec. 306

None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

Sec. 701.

For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator under the Pacific Northwest Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional \$700,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.) to remain outstanding at any time: Provided, That the Bonneville Power Administration shall not use more than \$531,000,000 of its permanent borrowing authority in fiscal year 2003.

[Pub. L. 108-7, Title VII, §701, February 20, 2003, 117 Stat. 551.]

Consolidated Appropriations, 2003 (continued)

**Legislative History for Consolidated
Appropriations Resolution, 2003**

Dates of Consideration and Passage

House: January 8, February 20, 2003

Senate: January 15-17, 21-23, February 20, 2003

House Report (Committee of Conference) No. 108-10

Cong. Record Vol. 149 (2003)

Weekly Compilation of Presidential Documents, Vol. 39 (2003)
February 20, 2003 Presidential Statements

Consolidated Appropriations Act, 2008

Act of December 26, 2007, Title III, 121 Stat. 1844, 1964
Pub.L. No. 110-161.

Bonneville Power Administration Fund

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93-454, are approved for the Lower Granite Dam fish trap, the Kootenai River White Sturgeon Hatchery, the Nez Perce Tribal Hatchery, Redfish Lake Sockeye Captive Brood expansion, hatchery production facilities to supplement Chinook salmon below Chief Joseph Dam in Washington, Hood River Production Facility, Klickitat production expansion, Mid-Columbia Coho restoration, and Yakama Coho restoration, and in addition, for official reception and representation expenses in an amount not to exceed \$1,500.

During fiscal year 2008, no new direct loan obligations may be made.

Sec. 306. Bonneville Power Authority Service Territory.

None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

Consolidated Appropriations Act, 2008 (continued)

**Legislative History for Consolidated
Appropriations Act, 2008**

Legislative History—H.R. 2764:

House Report: No. 110-197 (Comm. on Appropriations).

Senate Report: No. 110-128 (Comm. on Appropriations).

Congressional Record, Vol. 153 (2007):

June 20, 21, considered and passed House.

Sept. 6, considered and passed Senate, amended.

Dec. 17, House concurred in Senate amendment with amendments.

Dec. 18, Senate concurred in certain House amendments,
in another with an amendment.

Dec. 19, House concurred in Senate amendment pursuant to H. Res. 893.

Weekly Compilation of Presidential Documents, Vol. 43 (2007):

Dec. 26, Presidential Statement.

American Recovery and Reinvestment Act of 2009

Act of February 17, 2009, Title IV, §401, 123 Stat. 115.
Pub. L. No. 108-7.

Sec. 401. Bonneville Power Administration Borrowing Authority.

For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional \$3,250,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any time.

[Pub. L. 111-5, Title IV, §401, February 17, 2009, 123 Stat. 115]

Legislative History for American Recovery and Reinvestment Act of 2009

Dates of Consideration and Passage

House: January 28, February 13, 2009

Senate: January 10, February 13, 2009

House Report (Committee of Conference) No. 111-16

Senate Report (Appropriations Committee) No. 111-3

Cong. Record Vol. 155 (2009)

Borrowing authority
increase

Cite List of Appropriations Acts for the Bonneville Power Agency

American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Title IV, February 17, 2009, 123 Stat. 115.

Consolidated Security, Disaster, Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329, Division A, September 30, 2008, 122 Stat. 3574.

Consolidated Appropriations Act, 2008, Pub. L. 110-161, Division C, Title III, December 26, 2007, 121 Stat. 1844, 1964.

Continuing Appropriations Resolution, 2007, Pub. L. 109-289, Division B, September 29, 2006, 120 Stat. 1311.

Energy and Water Development Appropriations Act, 2006, Pub. L. 109-103, Title III, November 19, 2005, 119 Stat. 2247, 2276.

Consolidated Appropriations Act, 2005, Pub. L. 108-447, Division C, Title III, December 8, 2004, 118 Stat. 2809, 2955.

Energy and Water Development Appropriations Act, 2004, Pub. L. 108-137, Title III, December 1, 2003, 117 Stat. 1827, 1857.

Consolidated Appropriations Resolution, 2003, Pub. L. 108-7, Division D, Title III, Title V, § 306, Division N, Title VII, § 701, February 20, 2003, 117 Stat. 11, 151, 154, 551.

Energy and Water Development Appropriations Act, 2002, Pub. L. 107-66, Title III, November 12, 2001, 115 Stat. 486, 506.

Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001, Pub. L. 106-377, Appendix B, October 27, 2000, 114 Stat. 1441, 1441A-76.

Energy and Water Development Appropriations Act, 2000, Pub. L. 106-60, Title III, September 29, 1999, 113 Stat. 484, 493.

Energy and Water Development Appropriations Act, 1999, Pub. L. 105-245, Title III, October 7, 1998, 112 Stat. 1838, 1850.

Energy and Water Development Appropriations Act, 1998, Pub. L. 105-62, Title III, October 13, 1997, 111 Stat. 1320, 1333.

Energy and Water Development Appropriations Act, 1997, Pub. L. No. 104-206, Title III, January 3, 1996, 110 Stat. 2984, 2994.

Energy and Water Development Appropriations Act, 1996, Pub. L. No. 104-46, Title III, §300, November 13, 1995, 109 Stat. 402, 412.

Cite List of Appropriations for BPA (continued)

Energy and Water Development Appropriations Act, 1995, Pub. L. No. 103-316, Title III, §300, August 26, 1994, 108 Stat. 1707, 1714.

Energy and Water Development Appropriations Act, 1994, Pub. L. No. 103-126, Title III, §300, October 28, 1993, 107 Stat. 1312, 1325.

Energy and Water Development Appropriations Act, 1993, Pub. L. No. 102-377, Title III, §300, October 2, 1992, 106 Stat. 1315.

Energy and Water Development Appropriations Act, 1992, Pub. L. No. 102-104, Title III, §300, August 17, 1991, 105 Stat. 510, 530.

Energy and Water Development Appropriations Act, 1991, Pub. L. No. 101-514, Title III, §300, November 5, 1990, 104 Stat. 2074, 2092.

Energy and Water Development Appropriations Act, 1990, Pub. L. No. 101-101, Title III, §300, September 29, 1989, 103 Stat. 641, 660.

Energy and Water Development Appropriations Act, 1989, Pub. L. No. 100-371, Title III, §300, July 19, 1988, 102 Stat. 857, 869.

Energy and Water Development Appropriations Act, 1988, Pub. L. No. 100-202, Title III, §300, December 22, 1987, 101 Stat. 1329-104, 1329-123.

Energy and Water Development Appropriations Act, 1987, Pub. L. No. 99-591, Title III, §300, October 30, 1986, 100 Stat. 3341-195, 3341-207.

Urgent Supplemental Appropriations Act, 1986, Pub. L. 99-349, Title II, §208, July 2, 1986, 100 Stat. 710, 749.

Energy and Water Development Appropriations Act, 1986, Pub. L. No. 99-141, Title III, §300, November 1, 1985, 99 Stat. 564, 574.

Energy and Water Development Appropriations Act, 1985, Pub. L. No. 98-360, Title III, §300, July 16, 1984, 98 Stat. 403, 415.

Energy and Water Development Appropriations Act, 1984, Pub. L. No. 98-50, Title III, §300, July 14, 1983, 97 Stat. 247, 256.

Continuing Appropriations, 1983, Pub. L. No. 97-377, Title V, §115, December 21, 1982, 96 Stat. 1830, 1912.

Energy and Water Development Appropriations Act, 1982, Pub. L. No. 97-88, Title III, §300, December 4, 1981, 95 Stat. 1135, 1144.

Energy and Water Development Appropriations Act, 1981, Pub. L. No. 96-367, Title I, §100, October 1, 1980, 94 Stat. 1331, 1334.

Cite List of Appropriations for BPA (continued)

Energy and Water Development Appropriations Act, 1980, Pub. L. No. 96-69, Title I, §100, September 25, 1979, 93 Stat. 437, 439.

Continuing Appropriations, 1979, Pub. L. No. 95-482, Title I, §101(b), October 18, 1978, 92 Stat. 1603.

Energy and Water Development Appropriations Act, 1978, Pub. L. No. 95-96, Title III, §300, August 7, 1977, 91 Stat. 797, 805.

Public Works for Water and Power Development and Energy Research Appropriations Act, 1977, Pub. L. No. 94-355, Title III, §300, July 12, 1976, 90 Stat. 889, 896.

Public Works for Water and Power Development and Energy Research Appropriations Act, 1976, Pub. L. No. 94-180, Title III, §300, December 26, 1975, 89 Stat. 1035, 1044.

Second Supplemental Appropriations Act, 1975, Pub. L. No. 94-32, Title II, §200, June 12, 1975, 89 Stat. 173, 202.

Public Works for Water and Power Development and Energy Research Appropriations Act, 1975, Pub. L. No. 93-393, Title III, §300, August 28, 1974, 88 Stat. 782, 788.

Special Energy Research and Development Appropriations Act, 1975, Pub. L. No. 93-322, Title I, §100, June 30, 1974, 88 Stat. 276, 279.

Second Supplemental Appropriations Act, 1974, Pub. L. No. 93-305, Title II, §200, June 8, 1974 88 Stat. 195, 222.

Public Works for Water and Power Development and Atomic Energy Commission Appropriations Act, 1974, Pub. L. No. 93-97, Title III, §300, August 16, 1973, 87 Stat. 318, 325.

Public Works for Water and Power Development and Atomic Energy Commission Appropriations Act, 1973, Pub. L. No. 92-405, Title III, §300, August 16, 1972, 86 Stat. 621, 628.

Public Works for Water and Power Development and Atomic Energy Commission Appropriations Act, 1972, Pub. L. No. 92-134, Title III, §300, October 5, 1971, 85 Stat. 365, 372.

Second Supplemental Appropriations Act, 1971, Pub. L. No. 92-18, Title II, §200, May 25, 1971, 85 Stat. 40, 67.

Public Works for Water, Pollution Control, Power Development and Atomic Energy Commission Appropriations Act, 1971, Pub. L. No. 91-439, Title III, §300, October 7, 1970, 84 Stat. 890, 899.

Cite List of Appropriations for BPA (continued)

Second Supplemental Appropriations Act, 1971, Pub. L. No. 91-305, Title II, §200, July 6, 1970, 84 Stat. 376, 396.

Public Works for Water, Pollution Control, Power Development and Atomic Energy Commission Appropriations Act, 1970, Pub. L. No. 91-144, Title III, §300, December 11, 1969, 83 Stat. 323, 333.

Second Supplemental Appropriations Act, 1969, Pub. L. No. 91-47, Title III, §300, July 22, 1969, 83 Stat. 49, 75.

Public Works for Water, Power Resource Development, and Atomic Energy Commission Appropriations Act, 1969, Pub. L. No. 90-479, Title II, §200, August 12, 1968, 82 Stat. 705, 712.

Second Supplemental Appropriations Act, 1968, Pub. L. No. 90-392, Title II, §200, July 9, 1968, 82 Stat. 307, 331.

Public Works and Atomic Energy Commission Appropriations Act, 1968, Pub. L. No. 90-147, Title II, §200, November 20, 1967, 81 Stat. 471, 478.

Public Works Appropriations Act, 1967, Pub. L. No. 89-869, Title II, §200, October 15, 1966, 80 Stat. 1002, 1010.

Second Supplemental Appropriations Act, 1968, Pub. L. No. 89-426, Title II, §200, May 13, 1966, 80 Stat. 141, 157.

Public Works Appropriations Act, 1966, Pub. L. No. 89-299, Title II, §200, October 28, 1975, 79 Stat. 1096, 1104.

Public Works Appropriations Act, 1965, Pub. L. No. 88-511, Title II, §200, August 30, 1964, 78 Stat. 682, 689.

Deficiency Appropriations Act, 1964, Pub. L. No. 88-317, Chap. VIII, §100, June 9, 1964, 78 Stat. 204, 211.

Public Works Appropriations Act, 1964, Pub. L. No. 88-257, Title II, §200, December 31, 1963, 77 Stat. 844, 851.

Supplemental Appropriations Act, 1963, Pub. L. No. 88-25, Title II, §200, May 17, 1963, 77 Stat. 20, 39.

Public Works Appropriations Act, 1963, Pub. L. No. 87-880, Title II, §200, October 24, 1962, 76 Stat. 1216, 1223.

Public Works Appropriations Act, 1962, Pub. L. No. 87-330, Title II, §200, September 30, 1961, 75 Stat. 722, 728.

Continuing Appropriations, 1962, Pub. L. No. 87-182, Title I, §100, August 30, 1961, 75 Stat. 412.

Cite List of Appropriations for BPA (continued)

Continuing Appropriations, 1962, Pub. L. No. 87-65, Title I, §100, June 30, 1961, 75 Stat. 144, 145.

Third Supplemental Appropriations Act, 1961, Pub. L. No. 87-14, Title II, §200, March 31, 1961, 75 Stat. 20, 36.

Public Works Appropriations Act, 1961, Pub. L. No. 86-700, Title II, §200, September 2, 1960, 74 Stat. 743, 749.

Second Supplemental Appropriations Act, 1960, Pub. L. No. 86-424, Title I, §100, April 13, 1960, 74 Stat. 42, 47.

Public Works Appropriations Act, 1960, Pub. L. No. 86-254, Title II, §200, September 10, 1959, 73 Stat. 491, 497.

Second Supplemental Appropriations Act, 1959, Pub. L. No. 86-30, Title II, §200, May 20, 1959, 73 Stat. 33, 57.

Public Works Appropriations Act, 1959, Pub. L. No. 85-863, Title II, §200, September 2, 1958, 72 Stat. 1572, 1578.

Public Works Appropriations Act, 1958, Pub. L. No. 85-167, Title II, §200, August 26, 1957, 71 Stat. 416, 422.

Second Supplemental Appropriations Act, 1957, Pub. L. No. 84-855, Chap. VIII, §100, July 31, 1956, 70 Stat. 763, 771.

Federal Executive Pay Act, 1956, Pub. L. No. 84-854, Title I, §100, July 31, 1956, 70 Stat. 736, 739.

Public Works Appropriations Act, 1957, Pub. L. No. 84-641, Title II, §200, July 2, 1956, 70 Stat. 474, 475.

Second Supplemental Appropriations Act, 1956, Pub. L. No. 84-553, Title II, §200, May 19, 1956, 70 Stat. 161, 181.

Public Works Appropriations Act, 1956, Public Works Appropriations Act, 1956, Pub. L. No. 84-163, Title II, §200, July 15, 1955, 69 Stat. 354, 356.

Second Supplemental Appropriations Act, 1955, Pub. L. No. 83-663, Chap. VII, §100, August 26, 1954, 68 Stat. 800, 814.

Interior Department Appropriations Act, 1955, Pub. L. No. 83-465, Title I, §100, July 1, 1954, 68 Stat. 361, 362.

Interior Department Appropriations Act, 1954, Pub. L. No. 83-172, Title I, §100, July 31, 53, 67 Stat. 261, 262.

Cite List of Appropriations for BPA (continued)

Interior Department Appropriations Act, 1953, Pub. L. No. 82-470, Title I, §100, July 9, 1952, 66 Stat. 445, 446 & 447.

Third Supplemental Appropriations Act, 1952, Pub. L. No. 82-375, Chap. VI, §100, July 5, 1952, 66 Stat. 101, 106, 117 & 125.

Interior Department Appropriations Act, 1952, Pub. L. No. 82-136, Title I, §100, August 31, 1951, 65 Stat. 248, 250.

Supplemental Appropriations Act, 1951, Pub. L. No. 82-43, Chap. III, §100, May 31, 1951, 65 Stat. 48, 50.

Second Supplemental Appropriations Act, 1951, Pub. L. No. 81-911, Chap. V, §100, January 6, 1951, 64 Stat. 1223, 1228.

General Appropriations Act, 1951, Pub. L. No. 81-759, Title I, §100, September 6, 1950, 64 Stat. 595, 681.

Deficiency Appropriations Act, 1950, Pub. L. No. 81-583, Chap. VII, §100, June 29, 1950, 64 Stat. 275, 284.

Interior Department Appropriations Act, 1950, Pub. L. No. 81-350, Title I, §100, October 12, 1949, 63 Stat. 765, 767.

First Deficiency Appropriations Act, 1949, Pub. L. No. 81-71, Title I, §100, May 24, 1949, 63 Stat. 76, 83.

Interior Department Appropriations Act, 1949, Pub. L. No. 80-841, Title I, §100, June 29, 1948, 62 Stat. 1112, 1114.

First Deficiency Appropriations Act, 1948, Pub. L. No. 80-519, Title I, §100, May 10, 1948, 62 Stat. 213, 220.

Supplemental Appropriations Act, 1951, Pub. L. No. 80-271, Title I, §100, July 30, 1947, 61 Stat. 610, 620.

Interior Department Appropriations Act, 1948, Pub. L. No. 80-247, Title I, §100, July 25, 1947, 61 Stat. 460, 462.

Interior Department Appropriations Act, 1947, Pub. L. No. 79-478, Title I, §100, July 1, 1946, 60 Stat. 348, 350.

Interior Department Appropriations Act, 1946, Pub. L. No. 79-123, Title I, §100, July 3, 1945, 59 Stat. 318, 320.

Interior Department Appropriations Act, 1945, Pub. L. No. 78-369, Title I, §100, June 28, 1944, 58 Stat. 463, 466.

Cite List of Appropriations for BPA (continued)

Interior Department Appropriations Act, 1944, Pub. L. No. 78-133, Title I, §100, July 12, 1943, 57 Stat. 451, 454.

Interior Department Appropriations Act, 1943, Pub. L. No. 77-645, Title I, §100, July 2, 1942, 56 Stat. 506, 510.

Third Supplemental National Defense Appropriations Act, 1942, Pub. L. No. 77-353, Title III, §300, December 17, 1941, 55 Stat. 810, 826.

Interior Department Appropriations Act, 1942, Pub. L. No. 77-136, Title I, §100, June 28, 1941, 55 Stat. 303, 308.

First Deficiency Appropriations Act, 1942, Pub. L. No. 77-25, Title I, §100, April 1, 1941, 55 Stat. 62, 67.

First Supplemental Civil Functions Appropriations Act, 1942, Pub. L. No. 76-812, Title I, §100, October 9, 1940, 54 Stat. 1030, 1040.

Interior Department Appropriations Act, 1941, Pub. L. No. 76-640, Title I, §100, June 18, 1940, 54 Stat. 406, 410.

Interior Department Appropriations Act, 1940, Pub. L. No. 76-68, Title I, §100, May 10, 1939, 53 Stat. 685, 689.

Interior Department Appropriations Act, 1939, Pub. L. No. 75-497, Title I, §100, May 9, 1938, 52 Stat. 291, 295.

Third Deficiency Appropriations Act, 1942, Pub. L. No. 75-354, Title I, §100, August 25, 1937, 50 Stat. 755, 764.

Authorizing Authority of the Federal Hydroelectric Dams in the Columbia River Basin

Dam	Authorized	Operator	Authority
Black Canyon	1902	BOR	Pub. L. No. 57-161, 32 Stat. 388.
Boise River Div.	1902	BOR	Pub. L. No. 57-161, 32 Stat. 388.
Minidoka	1902	BOR	Pub. L. No. 57-161, 32 Stat. 388. Pub. L. No. 61-289, 36 Stat. 836.
Anderson Ranch	1902	BOR	Pub. L. No. 57-161, 32 Stat. 388. Pub. L. No. 76-260, 53 Stat. 1187.
Bonneville	1935	USCE	Pub. L. No. 73-67, 48 Stat. 195.
Grand Coulee	1937	BOR	16 U.S.C. 835 (1994). Pub. L. No. 43-8, 57 Stat. 14. Pub. L. No. 74-409, 49 Stat. 1028, 1040.
Big Cliff	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222.
Detroit	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222.
Cougar	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222.
Green Peter	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222.
Foster	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222.

Authority of Federal Columbia Dams (continued)

Lookout Point	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222. Pub. L. No. 81-516, 64 Stat. 163, 179.
Dexter	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222. Pub. L. No. 81-516, 64 Stat. 163, 179.
Hills Creek	1938	USCE	Pub. L. No. 75-761, 52 Stat. 1215, 1222. Pub. L. No. 81-516, 64 Stat. 163, 179.
Hungry Horse	1939	BOR	43 U.S.C. 593a (1994). Pub. L. No. 76-260, 53 Stat. 1187. Pub. L. No. 78-329, 58 Stat. 270, 271.
Palisades	1939	BOR	Pub. L. No. 76-260, 53 Stat. 1187. Pub. L. No. 81-864, 64 Stat. 1083.
Roza	1939	USCE	Pres. Franklin Roosevelt pursuant to Pub. L. No. 61-289, 36 Stat. 835, and Pub. L. No. 68-292, 43 Stat. 672, 701.
Ice Harbor	1945	USCE	Pub. L. No. 79-14, 59 Stat. 10, 21.
Lower Monumental	1945	USCE	Pub. L. No. 79-14, 59 Stat. 10, 21.
Little Goose	1945	USCE	Pub. L. No. 79-14, 59 Stat. 10, 21.
Lower Granite	1945	USCE	Pub. L. No. 79-14, 59 Stat. 10, 21.
McNary	1945	USCE	Pub. L. No. 79-14, 59 Stat. 10, 22.

Authority of Federal Columbia Dams (continued)

Chief Joseph	1946	USCE	Pub. L. No. 79-525, 60 Stat. 634, 637.
Chandler	1948	BOR	Pub. L. No. 80-629, 62 Stat. 382.
Albeni Falls	1950	USCE	Pub. L. No. 81-516, 64 Stat. 163, 178.
John Day	1950	USCE	Pub. L. No. 81-156, 64 Stat. 163, 179.
The Dalles	1950	USCE	Pub. L. No. 81-156, 64 Stat. 163, 179.
Libby	1950	USCE	Pub. L. No. 81-156, 64 Stat. 163, 179.
Dworshak (formerly Bruces Eddy)	1962	USCE	Pub. L. No. 87-874, 76 Stat. 1173, 1193.

