

### § 3202. Definitions

For purposes of this chapter—

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

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

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

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

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

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

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

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

(9) The term “integrated resource planning” means, in the case of a gas utility, planning by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand-side management measures and the supply of gas by a gas utility to minimize life-cycle costs of adequate and reliable utility services to gas consumers. Integrated resource planning shall take into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk and shall treat demand and supply to gas consumers on a consistent and integrated basis.

(10) The term “demand-side management” includes energy conservation, energy efficiency, and load management techniques.

(Pub. L. 95-617, title III, §302, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102-486, title I, §115(a), Oct. 24, 1992, 106 Stat. 2803.)

#### AMENDMENTS

1992—Pars. (9), (10). Pub. L. 102-486 added pars. (9) and (10).

#### ADDITIONAL DEFINITIONS

Except as otherwise specifically provided, the definitions in section 2602 of Title 16, Conservation, apply to this chapter.

### § 3203. Adoption of certain standards

#### (a) Adoption of standards

Not later than 2 years after November 9, 1978 (or after October 24, 1992, in the case of stand-

ards under paragraphs (3),<sup>1</sup> and (4) of subsection (b) of this section), each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) of this section, and, on the basis of such hearing, shall—

(1) adopt the standard established by subsection (b)(1) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate and is consistent with otherwise applicable State law, and

(2) adopt the standards established by paragraphs (2), (3)<sup>2</sup> (4), (5), and (6) of subsection (b) of this section, if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) and (2) and any review of such determination in any court under section 3207 of this title, the purposes of this chapter supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

#### (b) Establishment

The following Federal standards are hereby established:

##### (1) Procedures for termination of natural gas service

No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 3204(a) of this title.

##### (2) Advertising

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 3204(b) of this title.

##### (3) Integrated resource planning

Each gas utility shall employ, in order to provide adequate and reliable service to its gas customers at the lowest system cost. All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority. Subsection (c) of this section shall not apply to this paragraph to the extent that it could be construed to require the State regulatory authority to extend the record of a State proceeding in submitting reports to the Federal Government.

<sup>1</sup> So in original. The comma probably should not appear.

<sup>2</sup> So in original. A comma probably should appear.

**(4) Investments in conservation and demand management**

The rates charged by any State regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. This objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes.

**(5) Energy efficiency**

Each natural gas utility shall—

(A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and

(B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

**(6) Rate design modifications to promote energy efficiency investments**

**(A) In general**

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

**(B) Policy options**

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and

(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this chapter<sup>3</sup> to this paragraph, any reference in this chapter<sup>3</sup> to November 9, 1978, shall be treated as a reference to December 19, 2007.

**(c) Procedural requirements**

Each State regulatory authority (with respect to each gas utility for which it has ratemaking

authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a) of this section, shall adopt, pursuant to subsection (a) of this section, each of the standards established by subsection (b) of this section, or, with respect to any such standard which is not adopted, such authority or nonregulated gas utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

**(d) Small business impacts**

If a State regulatory authority implements a standard established by subsection (b)(3) or (4) of this section, such authority shall—

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

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

(Pub. L. 95-617, title III, §303, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102-486, title I, §115(b)–(d), Oct. 24, 1992, 106 Stat. 2803, 2804; Pub. L. 110-140, title V, §532(b), (c), Dec. 19, 2007, 121 Stat. 1666, 1667.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in subsec. (b)(4), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare and Tables.

CODIFICATION

This chapter, referred to in subsec. (b)(6), was in the original “this subtitle”, which was translated as meaning title III of Pub. L. 95-617 to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (a)(2). Pub. L. 110-140, §532(c), which directed substitution of “(4), (5), and (6)” for “and (4)” in subsec. (a), was executed by making the substitution in subsec. (a)(2) to reflect the probable intent of Congress.

Subsec. (b)(5), (6). Pub. L. 110-140, §532(b), added pars. (5) and (6).

1992—Subsec. (a). Pub. L. 102-486, §115(d), in introductory provisions inserted “(or after October 24, 1992, in the case of standards under paragraphs (3), and (4) of subsection (b) of this section)” and in par. (2) substituted “standards established by paragraphs (2), (3) and (4) of subsection (b)” for “standard established by subsection (b)(2)”.

Subsec. (b)(3), (4). Pub. L. 102-486, §115(b), added pars. (3) and (4).

Subsec. (d). Pub. L. 102-486, §115(c), added subsec. (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

REPORT TO PRESIDENT AND CONGRESS ON ENCOURAGEMENT OF INTEGRATED RESOURCE PLANNING AND INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY BY ELECTRIC UTILITIES

Section 115(e) of Pub. L. 102-486 provided that: “The report under section 111(e) of this Act [16 U.S.C. 2621

<sup>3</sup> See Codification note below.

note] transmitted by the Secretary of Energy to the President and to the Congress shall contain a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978 [15 U.S.C. 3203(b)(3) and (4)]. The report shall include an analysis, prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by gas utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand-side management measures and whether any unfair, deceptive, or predatory acts or practices exist, or are likely to exist, from implementation of such programs.”

#### DEFINITIONS

The definitions of State and system cost in section 2602 of Title 16, Conservation, apply to this section.

### § 3204. Special rules for standards

#### (a) Procedures for termination of gas service

The procedures for termination of service referred to in section 3203(b)(1) of this title are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

#### (b) Advertising

(1) For purposes of this section and section 3203 of this title—

(A) The term “advertising” means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's gas consumers.

(B) The term “political advertising” means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term “promotional advertising” means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the

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

(2) For purposes of this section and section 3203 of this title, the terms “political advertising” and “promotional advertising” do not include—

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

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notification of hearings thereon.

(Pub. L. 95-617, title III, §304, Nov. 9, 1978, 92 Stat. 3151.)

#### REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (b)(2)(B), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3208. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

### § 3205. Federal participation

#### (a) Intervention

In addition to the authorities vested in the Secretary pursuant to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 3201 of this title.

#### (b) Rights

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

#### (c) Nonregulated gas utilities

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

(Pub. L. 95-617, title III, §305, Nov. 9, 1978, 92 Stat. 3152.)

#### DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.