

Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3120, which enacted subchapters I to IV of this chapter and section 6808 of Title 42, The Public Health and Welfare, and amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

§ 2632. Consumer representation

(a) Compensation for costs of participation or intervention

(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) of this section and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subchapter II, such utility shall be liable to compensate such consumer (pursuant to paragraph (2)) for reasonable attorneys' fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

(b) Alternative means

Compensation shall not be required under subsection (a) of this section if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding).

(c) Transcripts

The State regulatory authority or nonregulated electric utility, as the case may be, shall make transcripts of the proceeding available, at cost of reproduction, to parties or intervenors in any ratemaking proceeding, or other regulatory proceeding relating to rates or rate design, before a State regulatory authority or nonregulated electric utility.

(d) Federal agencies

Any claim under this section against any Federal agency shall be subject to the availability of appropriated funds.

(e) Rights under other authority

Nothing in this section affects or restricts any rights of any participant or intervenor in any proceeding under any other applicable law or rule of law.

(Pub. L. 95-617, title I, §122, Nov. 9, 1978, 92 Stat. 3129.)

§ 2633. Judicial review and enforcement

(a) Limitation of Federal jurisdiction

Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of subchapter I or II or of this subchapter except for—

(1) an action over which a court of the United States has jurisdiction under subsection (b) or (c)(2) of this section; and

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28.

(b) Enforcement of intervention right

(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 2631(a) of this title, and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 2631(a) of this title is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) Review and enforcement

(1) Any person (including the Secretary) may obtain review of any determination made under subchapter I or II or under this subchapter with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this chapter in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or action in a State court shall be pursuant to any applicable State procedures.

(2) Any person (including the Secretary) may obtain review in the appropriate court of the United States of any determination made under subchapter I or II or this subchapter by a Federal agency if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if otherwise applicable law permits such review. Such court shall have jurisdiction to grant appropriate relief. Any person (including the Secretary) may bring an action to enforce the requirements of subchapter I or II or this subchapter with respect to any Federal agency in the appropriate court of the United States and such court shall have jurisdiction to grant appropriate relief.

(3) In addition to his authority to obtain review under paragraph (1) or (2), the Secretary may also participate as an amicus curiae in any review by any court of an action arising under the provisions of subchapter I or II or this subchapter.

(d) Other authority of Secretary

Nothing in this section prohibits the Secretary from—

- (1) intervening and participating in any proceeding, or
- (2) intervening and participating in any review by any court of any action

under section 6804 of title 42.

(Pub. L. 95-617, title I, § 123, Nov. 9, 1978, 92 Stat. 3130.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original “this title”, meaning title I (§101 et seq.) of Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3120, which enacted subchapters I to IV of this chapter and section 6808 of Title 42, The Public Health and Welfare, and amended sections 6802 to 6807 of Title 42. For complete classification of title I to the Code, see Tables.

§ 2634. Prior and pending proceedings

For purposes of subchapters I and II, and this subchapter, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of subchapters I and II, and this subchapter if such proceedings and actions substantially conform to such requirements. For purposes of subchapters I and

II, and this subchapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date, shall comply with the requirements of subchapters I and II, and this subchapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 2631(c) of this title. In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005. In the case of each standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection¹ to November 9, 1978, shall be deemed to be a reference to August 8, 2005.

(Pub. L. 95-617, title I, § 124, Nov. 9, 1978, 92 Stat. 3131; Pub. L. 109-58, title XII, §§ 1251(b)(3)(B), 1252(i)(2), 1254(b)(3)(B), Aug. 8, 2005, 119 Stat. 963, 967, 971.)

AMENDMENTS

2005—Pub. L. 109-58, § 1254(b)(3)(B), inserted at end “In the case of each standard established by paragraph (15) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”

Pub. L. 109-58, § 1252(i)(2), inserted at end “In the case of the standard established by paragraph (14) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”

Pub. L. 109-58, § 1251(b)(3)(B), inserted at end “In the case of each standard established by paragraphs (11) through (13) of section 2621(d) of this title, the reference contained in this subsection to November 9, 1978, shall be deemed to be a reference to August 8, 2005.”

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§ 2641. Voluntary guidelines

The Secretary may prescribe voluntary guidelines respecting the standards established by sections 2621(d) and 2623(b) of this title. Such guidelines may not expand the scope or legal effect of such standards or establish additional standards respecting electric utility rates.

(Pub. L. 95-617, title I, § 131, Nov. 9, 1978, 92 Stat. 3131.)

§ 2642. Responsibilities of Secretary**(a) Authority**

The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 2612(c) of this title, of—

- (1) load management techniques and the results of studies and experiments concerning load management techniques;
- (2) developments and innovations in electric utility ratemaking throughout the United States, including the results of studies and experiments in rate structure and rate reform;

¹ So in original. Probably should be “section”.